

Scrutiny of National Funding Agreements

Introduction

- 5.1 This chapter discusses the adequacy of parliamentary scrutiny of national funding agreements, noting that such agreements are typically negotiated at executive-to-executive level.
- 5.2 Participants' views on the adequacy of accountability mechanisms and the level of transparency in place for national funding agreements will firstly be presented. Comments relating to the sufficiency of parliamentary scrutiny will follow and arguments for and against the current level of scrutiny will be explored.
- 5.3 The chapter will then go on to outline the type and extent of accountability and transparency provided through the work of the Council of Australian Governments Reform Council (CRC). Also included, will be participants' views on the role of Auditors-General in providing accountability for funds expended under the new framework and insight to the parliament on the outcomes of these agreements.
- 5.4 Taking into account the views presented, the chapter will consider the adequacy of current scrutiny arrangements and pose suggestions to improve parliamentary scrutiny as well as the supporting accountability mechanisms.

Accountability and transparency

- 5.5 Typically, all funding agreements under the Intergovernmental Agreement on Federal Financial Relations (IGA FFR) are negotiated through the Council of Australian Governments (COAG) at an executive-to-executive level. Although this approach enables negotiations to occur in a speedy manner,¹ it can be at the expense of transparency.
- 5.6 The Committee received evidence to suggest that unlike the exposure of other government policies to the parliament through legislation, democratic accountability and parliamentary scrutiny of national funding agreements is minimal.² For example, the Centre of Public Law from the University of New South Wales informed the Committee that, funding agreements which do not require legislative implementation ‘will not be subject to any parliamentary scrutiny’.³
- 5.7 The Committee was particularly interested to gain insight from the inquiry’s participants on the mechanisms available for parliamentary scrutiny and oversight of national funding agreements including perspectives on the adequacy of these arrangements.

High level accountability and transparency mechanisms

- 5.8 The balance between flexibility and accountability under the new federal financial framework has been identified as an ‘ongoing challenge for all governments’.⁴ Further, within a federal system the CRC notes that the improvement of Australians’ wellbeing will require:
- ...strong public accountability to give the community confidence that governments are on track to achieve results’.⁵
- 5.9 Parliamentary access to clear and reliable information that ‘provides insights to the success or otherwise’ of programs funded under national funding agreements is essential.⁶ As stated by the Australian National Audit Office (ANAO), measuring and assessing performance against program objectives is at the core of public sector accountability.⁷

1 Gilbert + Tobin Centre of Public Law (Centre of Public Law), University of New South Wales, Faculty of Law, *Submission 2*, p. [2].

2 Centre of Public Law, *Submission 2*, p. [2].

3 Centre of Public Law, *Submission 2*, p. [2].

4 COAG Reform Council (CRC), *Submission 11*, p. 5.

5 CRC, *Submission 11*, p. 5.

6 Australian National Audit Office (ANAO), *Submission 1*, p. 8.

7 ANAO, *Submission 1*, p. 8.

- 5.10 The Committee was advised that under the current arrangements there were a number of high level mechanisms in place for parliament to gain insight on the operation of national funding agreements. The ANAO pointed to reporting to the Parliament through portfolio budget statements and annual reports, as well as information reported through the CRC.⁸
- 5.11 The ANAO's submission also noted that The Treasury's (Treasury) Portfolio Budget Statements (PBS)⁹ included the funding provided for National Partnership (NP) agreements, with a link to the relevant agency's program.¹⁰
- 5.12 However, the ANAO raised a number of issues with these mechanisms commenting that PBS reporting requirements and national funding agreements often have a different focus and 'do not intersect'.¹¹ The ANAO's submission noted that while Treasury's PBS include funding provided for NPs often there is:
- ...variability in whether agencies include performance indicators for those programs in their own publications. As such, reporting is often either at a very high level or, in some cases, is non-existent.¹²
- 5.13 The ANAO identified that currently there is no guidance for agencies on 'how to assess and report' through these mechanisms on the performance of programs funded under NPs.¹³ The ANAO suggested that in this context current arrangements could be improved by:
- agencies being required to provide clear and consistent reporting to Parliament on the outcomes being achieved under national funding agreements...¹⁴
- 5.14 In light of this, the Commonwealth Auditor-General in oral evidence to the Committee noted that as part of the evolving arrangements, it is timely that requirements for PBS and annual reports are reviewed.¹⁵

8 ANAO, *Submission 1*, p. 5.

9 Portfolio Budget Statements 2011–12, Treasury Portfolio, *Budget Related Paper No. 1.18*, <http://www.treasury.gov.au/documents/2027/PDF/00_Treasury_PBS_combined.pdf> viewed 23 November 2011.

10 ANAO, *Submission 1*, p. 6.

11 ANAO, *Submission 1*, p. 5.

12 ANAO, *Submission 1*, p. 6.

13 ANAO, *Submission 1*, p. 5.

14 ANAO, *Submission 1*, p. 8.

15 Mr Ian McPhee, Auditor-General, Australian National Audit Office (ANAO), *Committee Hansard*, Canberra, 24 June 2011, p. 5.

- 5.15 Treasury also identified Budget Paper No. 3¹⁶, which presents information on the Commonwealth's financial relations with state, territory and local governments, and includes an overview of the federal financial relations framework.¹⁷
- 5.16 More broadly, Treasury advised the Committee that the mechanism for money to be paid through national specific purpose payments allows for parliamentary scrutiny. The base amount for each of the national specific purpose payments is established in legislation.¹⁸ Treasury explained that the *Federal Financial Relations Act 2009* allows the Treasurer, 'through written determination'¹⁹, to credit amounts to the COAG Reform Fund for making payments for NPs'²⁰ and that those determinations are tabled in parliament.²¹
- 5.17 The Committee was advised that it is a requirement for the Treasurer to gain parliamentary approval for the 'maximum amount'²² to be credited to the COAG Reform Fund and the Treasurer annually indexes those amounts.²³ From Treasury's perspective the parliament essentially sets the drawing right limits for the amount of money that can be placed in the COAG Reform Fund²⁴ conserving the parliament's role in approving Commonwealth expenditure.²⁵

State perspectives on accountability and transparency mechanisms

- 5.18 The general consensus from evidence given to the Committee by state government representatives was that current accountability mechanism

16 Mr Peter Robinson, General Manager, Commonwealth-State Relations Division, Treasury, *Committee Hansard*, Canberra, 16 September, p. 31.

The most recent example is Budget Paper No. 3 *Australia's Federal Relations 2011-12* which is produced as a suit of budget documents, available at <<http://www.budget.gov.au/2011-12/content/bp3/html/index.htm>> viewed 23 November 2011.

17 Mr Robinson, Treasury, *Committee Hansard*, 16 September 2011, p. 31.

18 Mr Bede Fraser, Manager, Federal Finances Unit, Commonwealth-State Relations Division, Treasury, *Committee Hansard*, Canberra, 16 September 2011, p. 31.

19 Determinations are legislative instruments registered on the Federal Register of Legislative Instruments.

20 The Treasury (Treasury), *Submission 13*, p. [20].

21 Mr Fraser, Treasury, *Committee Hansard*, Canberra, 16 September 2011, p. 31.

22 Treasury, *Submission 13*, p. [20].

23 Mr Fraser, Treasury, *Committee Hansard*, Canberra, 16 September 2011, p. 31.

24 Treasury advised that for the current financial year \$18 billion can be drawn out of the Fund.

25 Treasury, *Submission 13*, p. [20].

are appropriate and that the new framework generally fostered improved Commonwealth-level parliamentary accountability.²⁶

- 5.19 Representatives from the Victorian and Queensland governments highlighted that the reform agenda, which centralises intergovernmental transfers is both a major step forward in federal fiscal transparency²⁷ and an improvement in accountability in areas where different levels of government share policy objectives.²⁸
- 5.20 The Victorian Government identified however, that a shared and critical challenge for all jurisdictions is to clarify the ‘public and parliamentary expectations of the accountability arrangements for intergovernmental transfers’.²⁹ The submission stated that while it is appropriate that the Commonwealth Government, through the Commonwealth Parliament, is accountable for areas it is directly responsible for (including its decisions and agreements for the transfer of public funds through the IGA FFR):
- ...Commonwealth Ministers and officials should not, however, be asked to answer for the performance of State and Territory governments.³⁰
- 5.21 Dr Gary Ward, Assistant Under Treasurer and Government Statistician for Queensland was satisfied with the current arrangements, however advised that he could not comment on whether there was a need for a ‘broader oversight regime or mechanism’. Dr Ward explained the line of accountability for the state of Queensland:

The Ministerial Council for Federal Financial Relations comprising the treasurers has the responsibility of oversight of the intergovernmental agreement and the agreements that sit under the IGA. So there is a direct connection between elected representatives and the oversight process. Ultimately of course COAG is the body that signs off on the agreements in the first instance and all reports from the work that we do at HoTs [Heads of Treasuries] level ultimately ends up at either the Ministerial Council for Federal Financial Relations and COAG.³¹

26 Victorian Government, *Submission 6*, p. 11.

27 Victorian Government, *Submission 6*, p. 11.

28 Dr Gary Ward, Assistant Under Treasurer and Government Statistician, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 1.

29 Victorian Government, *Submission 6*, p. 11.

30 Victorian Government, *Submission 6*, p. 11.

31 Dr Ward, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 3.

5.22 The Committee went on to ask whether any processes were in place which enabled the Queensland Government to report to its state parliament about the achievement of outcomes from national partnership agreements.

5.23 While the Committee heard that there was a regime allowing the Queensland Treasury to report upwards through the treasurer and premier to parliament, there was:

...no specific process for individual partnership agreements to be reported back to parliament. There is the review process through the estimates committee...³²

5.24 The NSW Government's views are largely in line with the Queensland and Victorian Governments. While acknowledging room for improvement for accountability arrangements, the NSW Government considers that '...a high level of transparency and public accountability has already been achieved'.³³

5.25 The NSW Government's submission provided specific examples to illustrate its views. The My School and My Hospitals websites were described as providing 'unprecedented transparency in the education and health sectors'.³⁴ The submission stated that:

My Hospitals provides information about bed numbers, patient admissions and hospital accreditation, as well as the types of specialised services each hospital provides. It also provides comparisons to national public hospital performance statistics on waiting times for elective surgery and emergency department care.³⁵

5.26 The Tasmanian Government's submission concurred with the perspectives of its state counterparts describing that under the Intergovernmental Agreement (IGA), funding agreements were both 'transparent' and 'publicly accessible'.³⁶ Additionally, that all funding agreements have clearly specified:

- outcomes;
- outputs;

32 Mr Laurie Ehrenberg, Principal Treasury Analyst, Intergovernmental Relations Branch, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 4.

33 Mr Laurie Ehrenberg, Principal Treasury Analyst, Intergovernmental Relations Branch, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 4.

34 NSW Government, Treasurer, *Submission 10*, p. 10.

35 NSW Government, Treasurer, *Submission 10*, p. 10.

36 Tasmanian Government, *Submission 8*, p. 12.

- performance indicators; and
 - defined roles and responsibilities.³⁷
- 5.27 The Tasmanian Government described these elements as enabling ‘enhanced public accountability (and parliamentary scrutiny)’.³⁸

Other perspectives on accountability and transparency mechanisms

- 5.28 While the Committee heard that the states were generally satisfied with accountability and transparency mechanisms available for national funding agreements, a number of end-user peak bodies and academics were not. Although increased transparency is a stated outcome under the new framework, some witnesses were concerned that this has not been fully realised.
- 5.29 The Centre of Public Law at the University of New South Wales advised that an inevitable outcome of the executive centric approach to developing and implementing funding agreements is that the role of parliaments is sidelined and democratic accountability is undermined.³⁹ The result is a ‘democratic deficit’. The Centre of Public Law’s submission identified that these weaknesses did not only relate to funding but were:
- ...instead part of broader accountability problems that exist with respect to intergovernmental relations in Australia. These broader concerns extend to the operation of COAG, and the processes for the making of IGAs.⁴⁰
- 5.30 The Committee heard from other academics such as Associate Professor Twomey who cautioned against a system with ‘everybody checking everybody all the time’.⁴¹ Professor Twomey raised concerns that to some extent, the burden of accountability is created by the Commonwealth making commitments which can only be delivered by the states. For example, by linking NP agreements to a Commonwealth election commitment, such as the National Partnership Agreement for the Funding of Fort Street High School Noise Insulation.⁴²
- 5.31 To increase transparency, Professor Twomey suggested an audit of all the intergovernmental agreements entered into by the Commonwealth be

37 Tasmanian Government, *Submission 8*, p. 12.

38 Tasmanian Government, *Submission 8*, p. 12.

39 Centre of Public Law, *Submission 2*, p. [2].

40 Centre of Public Law, *Submission 2*, p. [2].

41 Associate Professor Anne Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 12.

42 Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 12.

undertaken (not solely funding agreements), and all agreements placed on a database.⁴³ The development of this database would make a significant contribution to the current level of transparency allowing parliamentarians, academics and other stakeholders to have complete access.⁴⁴ The Centre of Public Law also encouraged the development of such a database.⁴⁵

- 5.32 Professor Brown, from Griffith University also suggested improvements to current accountability mechanisms. Professor Brown drew on examples from the United States of America such as the introduction of the False Claims Act into their whistle blowing regimes.⁴⁶ Professor Brown suggested that the Committee consider whether as part of the new framework there is a need to 'strengthen and systematise those sorts of mechanisms'.⁴⁷ While the types of disclosure and accountability mechanisms did not necessarily need to mirror those in the US, Professor Brown was of the opinion that they were part of the answer to the Commonwealth's level of confidence that funds were being expended accountably.⁴⁸
- 5.33 The Independent Schools Council of Australia (ISCA) was also of the view transparency needed to be addressed under the new framework. ISCA acknowledges that a key feature of the funding reforms was increased transparency. In practice however, transparency in Commonwealth funding for government schools has diminished, reducing the capacity for scrutiny by the public and the parliament.⁴⁹
- 5.34 ISCA's submission notes that the Commonwealth Government funding for government schools is now appropriated under the *Federal Financial Relations Act 2009* while funding for non-government schools continues under the *Schools Assistance Act 2008*.⁵⁰ Under these arrangements and with the implementation of the National Education Agreement (NEA) it is 'virtually impossible to find a state/territory breakdown of

43 Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 10.

44 Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 11.

45 Mr Paul Kildea, Director, Federalism Project, Gilbert + Tobin Centre of Public Law, University of New South Wales, *Committee Hansard*, 19 August 2011, p. 16 and p. 19.

46 Professor Alexander Jonathan Brown, Professor of Public Law, Griffith University, *Committee Hansard*, Brisbane, 19 July 2011, p. 19.

47 Professor Brown, Griffith University, *Committee Hansard*, Brisbane, 19 July 2011, p. 19.

48 Professor Brown, Griffith University, *Committee Hansard*, Brisbane, 19 July 2011, p. 19.

49 The Independent Schools Council of Australia (ISCA), *Submission 3*, p. 3.

50 ISCA, *Submission 3*, p. 11.

Commonwealth funding for government schools in any publicly available document'.⁵¹

- 5.35 Mr William Daniels, Executive Director from ISCA told the Committee that it was the view of his organisation that 'the greater the transparency, the better'.⁵² Mr Daniels stressed that all members of the public should be able to clearly see how much money the Commonwealth government is providing for the funding of government and non-government schools.⁵³ For example, prior to 2009, the Green Report⁵⁴ not only extensively included details on funding provided to non-government schools from the Commonwealth, but also the funding that was provided to government schools.⁵⁵
- 5.36 The ISCA outlined to the Committee that the *Federal Financial Relations Act 2009* has resulted in a loss of transparency at a number of levels:
- [f]irst, in the already contested area of government funding assistance for schools it is no longer apparent, by looking at the Schools Assistance Act, that the Commonwealth government actually provides any funding to government schools;
 - [s]econd, even if you know where to look in the Federal Financial Relations Act to locate Commonwealth government funding for government schools, it is very difficult to find a state-by-state breakdown of that funding; and
 - [t]hird, state and territory government budget papers generally make no distinction between Commonwealth and state school funding appropriations.⁵⁶
- 5.37 The Committee was interested in ISCA's views on whether this decrease in transparency was an inadvertent consequence of the new arrangements. ISCA stated that it was 'probably an unintended consequence of the financial reforms'.⁵⁷

51 ISCA, *Submission 3*, p. 11.

52 Mr William Daniels, Executive Director, Independent Schools Council of Australia (ISCA), *Committee Hansard*, Canberra, 24 June 2011, p. 12.

53 Mr Daniels, ISCA, *Committee Hansard*, Canberra, 24 June 2011, p. 12.

54 The Green Reports are available from <<http://www.deewr.gov.au/Schooling/RecurrentGrants/NonGovSchools/Pages/GrantsToStates.aspx>> viewed 23 November 2011.

55 ISCA, *Submission 3*, p. 11.

56 Mr Daniels, ISCA, *Committee Hansard*, Canberra, 24 June 2011, p. 10.

57 Mr Daniels, ISCA, *Committee Hansard*, Canberra, 24 June 2011, p. 12.

Parliamentary scrutiny

- 5.38 Transparency and accountability considerations within the new intergovernmental arrangements and wider COAG system are directly linked to the issue of parliamentary scrutiny.

Commonwealth perspectives on parliamentary scrutiny

- 5.39 As previously outlined, the Committee heard from Treasury that a number of mechanisms were in place to ensure that the Commonwealth parliament is able to scrutinise the financial arrangements of the new framework. Treasury responded positively when asked by the Committee whether it was comfortable with the level of scrutiny at the Commonwealth level.⁵⁸
- 5.40 The Committee also raised questions regarding the entry point of the public into the reform program. The Department of the Prime Minister and Cabinet (PM&C) expanded on the mechanisms available to members of the public to understand the operation of funding under the new framework.

In addition to a member of the public relying on parliamentary scrutiny, other information is also available through the website that includes the various agreements, and through CRC reports themselves. Progressively, there are going to be more and more of those, including one coming up quite soon on the overall progress under the new arrangements, both in terms of the institutional arrangements and whether substantial policy outcomes are being achieved.⁵⁹

State perspectives on parliamentary scrutiny

- 5.41 State government representatives' evidence on this topic echoed their sentiments regarding the adequacy of current accountability and transparency mechanisms. Generally, the Committee heard that enhancements to Commonwealth parliamentary scrutiny were not seen as necessary and participants argued that current oversight arrangements were sufficient including the scrutiny of funding under the IGA FFR through state parliaments and state Auditors-General.

58 Mr Robinson, Treasury, *Committee Hansard*, Canberra, 16 September 2011, p. 31.

59 Mr David Hazlehurst, First Assistant Secretary, Economic Division, Department of the Prime Minister and Cabinet (PM&C), *Committee Hansard*, Canberra, 16 September 2011, p. 31.

- 5.42 The Tasmanian Government for example was explicit in its view that parliamentary scrutiny had been enhanced rather than reduced under the new framework.⁶⁰
- 5.43 The NSW Government's submission considered that despite the executive-to-executive negotiation phase, the current level of scrutiny for funding agreements is appropriate due to:
- agreements required to be signed by Heads of Governments or delegated Ministers;⁶¹
 - state parliamentary scrutiny;
 - activities of the NSW Auditor-General⁶²; and
 - state and territory Treasurers providing the Commonwealth Treasurer with annual reports from acquittals of expenditure of National Agreement and National Partnership funds.
- 5.44 The submission also pointed to significant public scrutiny of agreements' content under the IGA FFR and jurisdictions' performance.⁶³
- 5.45 Two main contributing factors were identified:
- the publishing of signed agreements on the Ministerial Council for Federal Financial Relations' website, noting the website also provides information on the funding, performance reporting and accountabilities elements of the framework; and
 - performance reports released by the CRC on National Agreements and National Partnerships.⁶⁴
- 5.46 In summary, the NSW Government was of the view that 'the addition of another layer of scrutiny by the Commonwealth within States is not required, nor appropriate'.⁶⁵
- 5.47 Similarly, representatives from the Queensland Government noted the 'direct connection between elected representatives and the oversight process'.⁶⁶ The Committee delved further into this claim inquiring as to

60 Tasmanian Government, *Submission 8*, p. 12.

61 NSW Government, Treasurer, *Submission 10*, p. 11.

62 NSW Government, Treasurer, *Submission 10*, p. 12.

63 NSW Government, Treasurer, *Submission 10*, p. 11.

64 NSW Government, Treasurer, *Submission 10*, p. 12.

65 NSW Government, Treasurer, *Submission 10*, p. 12.

66 Dr Gary Ward, Assistant Under Treasurer and Government Statistician, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 3.

the specific role the Queensland parliament carried out regarding the sign-off of an agreement, including the development and finalisation stages. The Queensland Government informed the Committee that the parliament was not directly engaged at either phase but there was a 'connection' in the lead-in phase:

When we draft agreements what generally happens is that we assess the fiscal implications of those and indeed what it would mean to the service delivery activity in Queensland and we would put a submission to the budget review committee of cabinet or cabinet – depending on the magnitude of the agreement that we are talking about – but not parliament as such.⁶⁷

- 5.48 The Committee queried the Queensland Auditor-General on oversight arrangements and general community engagement. The Queensland Auditor-General advised that 'public engagement is in the programs that are being delivered – education, health, Indigenous affairs...and so forth'.⁶⁸ The state parliament is 'heavily involved' through audit reports and committee works in the programs that are being delivered through the National Agreements (NA). The Auditor-General went on to state that:

I am not sure that the state parliament is necessarily interested in base level funding coming from the Commonwealth as a separate exercise.⁶⁹

- 5.49 In line with evidence from other state representatives, the Victorian Government's submission highlighted the state's 'independent regime of parliamentary and institutional oversight of government actions'⁷⁰ and cautioned against defaulting to 'mechanisms for additional centralised oversight'.⁷¹ Key elements identified within the state's accountability regime were the Victorian Auditor-General and parliamentary committees such as the Public Accounts and Estimates Committee and the Joint Investigatory Committee of the Parliament of Victoria.⁷²
- 5.50 Appearing before the Committee, the Victorian Government representative highlighted that 'there is no glaring gap in accountability and no need for Commonwealth scrutiny of state spending of

67 Dr Ward, Queensland Treasury, *Committee Hansard*, Brisbane, 19 July 2011, p. 8.

68 Mr Glenn Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 15.

69 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 15.

70 Victorian Government, *Submission 6*, p. 9.

71 Victorian Government, *Submission 6*, p. 3.

72 Victorian Government, *Submission 6*, p. 9.

Commonwealth grants'.⁷³ Considering this statement, the Committee was interested in the Victorian Government's view on parliamentary scrutiny.

- 5.51 Mr Donald Speagle, Deputy Secretary, Department of Premier and Cabinet, Victoria advised that while agreeing that there is a scrutiny role to be played by the Commonwealth parliament and its committees, the appropriate accountability for examining Commonwealth grants to states is through state parliaments.⁷⁴

Other perspectives on parliamentary scrutiny

- 5.52 Several academics were not as content with or supportive of the current level of Commonwealth parliamentary scrutiny. The power of the Executive to negotiate and develop national funding agreements was a key area of concern raised.
- 5.53 At one end of the spectrum, Mr Bryan Pape expressed the opinion that 'there is no scrutiny', maintaining that the Executive has been given the freedom to spend 'at will' by the Commonwealth Parliament.⁷⁵
- 5.54 The Centre of Public Law was also critical of the effects of the executive driven approach on the Commonwealth parliament's ability to provide adequate scrutiny. The Centre of Public Law explained that funding agreements will not be subject to parliamentary scrutiny if they do not require legislative implementation and that even when this is needed the impact of parliamentary scrutiny is limited because the details of the agreement are presented 'as a fait accompli'.⁷⁶
- 5.55 As mentioned earlier, the Centre of Public Law described the sidelining of parliaments in this process as a 'democratic deficit'. The executive's accountability to the legislature is weak, therefore, reducing the practice of 'responsible government' a cornerstone of Australia's Westminster system.⁷⁷ Further, valuable input from a variety of perspectives may not be capitalised and potential for improvements may be absent from the process.

73 Mr Donald Speagle, Deputy Secretary, Federalism, Citizenship and Climate Change Group, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 15.

74 Mr Speagle, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 15.

75 Mr Bryan Pape, *Submission 15*, p. [1].

76 Centre of Public Law, *Submission 2*, p. [2].

77 Centre of Public Law, *Submission 2*, p. [2].

- 5.56 The Centre of Public Law's submission identified that this deficit was not exclusive to funding matters but extended to broader intergovernmental accountability issues, such as COAG and the process of developing IGAs. COAG's deliberations for example are not open, with scarce details on decision making provided through press releases or communiqués.⁷⁸
- 5.57 The Committee received a number of suggestions to improve COAG, including the need for Constitutional recognition of the institution and a more structured approach to its operation. Associate Professor Twomey told the Committee that Constitutional reform to institutionalise COAG was possible.⁷⁹ Moreover, the Victorian Government considered that something as simple as regular, twice-yearly meetings would be beneficial.⁸⁰
- 5.58 Similar to the sentiments of other witnesses the Centre of Public Law recognises the important role the CRC has made to enhance 'the public accountability of governments for their performance against agreed objectives in funding agreements'.⁸¹ However, the Centre of Public Law argued that it is not the role of the CRC to provide democratic accountability.⁸²
- 5.59 Three reforms were suggested by the Centre of Public Law to improve the existing arrangements for parliamentary scrutiny of funding agreements:
1. That a complete register of funding agreements be publicly available;
 2. That all funding agreements be tabled in the parliaments of affected jurisdictions; and
 3. Reference of funding agreements to joint parliamentary committees for review and report.⁸³
- 5.60 In oral evidence to the Committee, the Centre of Public Law expanded on their first suggestion noting that the Ministerial Council for Federal Financial Relations' website includes the six NAs and the NPs.⁸⁴ The Centre of Public Law also acknowledged that this list was being kept up to date on the website.

78 Centre of Public Law, *Submission 2*, p. [2].

79 Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, pp. 13-15.

80 Victorian Government, *Submission 6*, p. 11.

81 Centre of Public Law, *Submission 2*, p. [2].

82 Centre of Public Law, *Submission 2*, p. [2].

83 Centre of Public Law, *Submission 2*, p. [3].

84 Mr Kildea, Centre of Public Law, *Committee Hansard*, Sydney, 19 August 2011, p. 19.

5.61 The Committee questioned the practicality of the Centre of Public Law's second reform that funding agreements should be referred to joint parliamentary committees for review and report.⁸⁵ The Centre of Public Law conceded that it would slow the process down but maintained that it would improve efficiency and effectiveness in the long term as parliaments would have already considered the full implications of the agreement before it reached the final stages:

We are conscious of the practical difficulties but suggest that, although the process would certainly be slowed by having parliamentary involvement, one plus of that is the ability of governments to know what they can certainly commit to.⁸⁶

5.62 The Centre of Public Law reminded the Committee that a previous House of Representatives Committee has twice made a similar recommendation, indicating that the parliament considers it a reasonable process.⁸⁷ In 2006 the House of Representatives Standing Committee on Legal and Constitutional Affairs recommended that:

... the Australian Government raise, at the Council of Australian Governments or other appropriate forum:

- The circulation of draft intergovernmental agreements for public scrutiny and comment;
- The parliamentary scrutiny of draft intergovernmental agreements; and
- The augmentation of the COAG register of intergovernmental agreements so as to include all agreements requiring legislative implementation.

With a view to the implementation of these reforms throughout the jurisdictions.⁸⁸

5.63 In 2008 the House of Representatives Standing Committee on Legal and Constitutional Affairs reinforced its position recommending:

The Committee recommends that the Australian Government introduce the requirement for intergovernmental agreements to be

85 Centre of Public Law, *Submission 2*, p. [3].

86 Dr Andrew Lynch, Director, Gilbert + Tobin Centre of Public Law, University of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 18.

87 Dr Lynch, Centre of Public Law, *Committee Hansard*, Sydney, 19 August 2011, p. 18.

88 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Harmonisation of legal systems within Australia and between Australia and New Zealand*, November 2006, p. xx.

automatically referred to a parliamentary committee for scrutiny and report to the Parliament.⁸⁹

5.64 Insufficient parliamentary scrutiny of national funding agreements was also raised in the ACT Standing Committee on Public Accounts' (ACT Standing Committee) submission.⁹⁰ The ACT Standing Committee suggested a number of avenues to improve or boost parliamentary scrutiny of national funding agreements, including further exploration of the:

- reforms suggested by the Centre of Public Law; and
- ACT Legislative Assembly's Standing Committee on Planning and Environment's 2008 recommendation – dual sittings of parliamentary standing committees regarding issues of 'common interest and importance'.⁹¹

COAG Reform Council

5.65 As discussed in Chapter 4, the CRC is seen as playing a 'pivotal role'⁹² in providing transparency and accountability for the COAG reform agenda and is integral to the workings of the reform agenda. The Committee heard that there was general recognition that the CRC is enhancing the accountability and transparency of governments' performance under the reform agenda.⁹³

5.66 However, the ANAO and the Centre of Public Law highlighted to the Committee that the CRC is not accountable to the Australian Parliament, only to COAG.⁹⁴

5.67 The Committee directly asked the CRC whether there were mechanisms for CRC reports to be tabled in parliament. The CRC informed the Committee that currently CRC reports go directly to COAG. While there is no mechanism for CRC reports to be tabled in parliament, the CRC

89 House of Representatives Standing Committee of Legal and Constitutional Affairs, *Reforming our Constitution: a roundtable discussion*, June 2008, p. xiii.

90 ACT Standing Committee on Public Accounts, *Submission 14*, p. 14.

91 ACT Standing Committee on Public Accounts, *Submission 14*, p. 14.

92 Business Council of Australia (BCA), *Submission 9*, p. 4.

93 BCA, *Submission 9*, p. 4 and Centre of Public Law, *Submission 2*, p. [2]; Mr Speagle Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 15; Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 11.

94 ANAO, *Submission 1*, p. 6 and Centre of Public Law, *Submission 2*, p. [2].

outlined that the following steps are undertaken in submitting reports to COAG:

- reports are submitted to the individual first ministers; and
- reports are distributed to COAG and the Prime Minister and at the same time to premiers and chief ministers.⁹⁵

5.68 The Committee was therefore interested whether the CRC thought that this gap should be filled with these or other reports being made available to the Commonwealth parliament. For example, the Prime Minister making annual reports to the parliament which cover all six national agreements. The CRC stated that its role is to report to COAG and for respective governments to respond, advising:

It is not our role or our area of remit to advise on whether there should be other accountability mechanisms for those reports.⁹⁶

5.69 Despite the lack of accountability of the CRC to the parliament, the Committee received positive comments in other aspects of the CRC's operations. For example, the robust independence of the CRC was reinforced to the Committee through comments by PM&C.⁹⁷

5.70 Further, both the Tasmanian and NSW Governments⁹⁸ highlighted public access to the CRC's reports. The CRC via its website publishes and releases performance reports on national agreements and national reward partnerships. These assessments enable the public to compare governments' performances in delivering outcomes across key delivery areas such as health and education.⁹⁹ In September 2010 the CRC publicly released its first report on progress towards the COAG reform agenda.¹⁰⁰

5.71 The ANAO also expressed that while the CRC is not accountable to parliament, the CRC's gathering and reporting of information on national agreements provides the Commonwealth parliament with 'insights' as to the overall progress of outcomes under national funding agreements.¹⁰¹

95 Ms Mary Ann O'Loughlin, Executive Councillor and Head of Secretariat, COAG Reform Council, *Committee Hansard*, Canberra, 6 July 2011, p. 7.

96 Ms O'Loughlin, Executive Councillor and Head of Secretariat, COAG Reform Council, *Committee Hansard*, Canberra, 6 July 2011, p. 7.

97 Mr Hazlehurst, PM&C, *Committee Hansard*, Canberra, 16 September 2011, p. 32.

98 Tasmanian Government, *Submission 8*, p. 11 and NSW Government, Treasurer, *Submission 10*, p. 12.

99 Tasmanian Government, *Submission 8*, p. 11.

100 COAG Reform Council, *COAG reform agenda: Report on progress 2010*, <<http://www.coagreformcouncil.gov.au/reports/progress.cfm>> viewed 23 November 2011.

101 ANAO, *Submission 1*, p. 6

- 5.72 Broader support and engagement by all jurisdictions with the CRC's reports was also raised as desirable by the Victorian Government. Their submission noted remarks by the COAG Reform Council Chairman:

“... our heads of governments and key ministers have not done enough to promote the agenda and the new governance approach”.¹⁰²

The Auditor-General's role

- 5.73 The Committee's previous report, *Report 419 Inquiry into the Auditor-General Act 1997 (Report 419)*,¹⁰³ considered the assurance role of the Auditor-General plays with regard to the scrutiny of Commonwealth funds delivered to the states and territories. The Committee's report contained 13 recommendations including to empower the Commonwealth Auditor-General with the 'authority to follow the dollar' where non-Commonwealth bodies receive Commonwealth funding to deliver agreed national outcomes.¹⁰⁴ In response to the Committee's report, the *Auditor-General Amendment Bill 2011* is currently before the Parliament and largely reflects the report's recommendations.

- 5.74 The Commonwealth Auditor-General emphasised the importance these proposed extended powers would play in providing transparency and accountability of the new arrangements under the IGA FFR framework.¹⁰⁵ In light of the complexity of the 'multijurisdictional delivery arrangements underpinning the new framework' the Commonwealth Auditor-General believes that an enhanced capacity to follow the money for his office will ensure that:

...parliament has access to clear and reliable information that provides insights to the success or otherwise of services delivered through national funding agreements.¹⁰⁶

- 5.75 The ANAO's submission highlighted the significance of the role of the Auditor-General in providing the Parliament with independent assurance

102 Victorian Government, *Submission 6*, p. 11.

103 Joint Committee of Public Accounts and Audit (JCPAA), *Report 419 Inquiry into the Auditor-General Act 1997*, <<http://www.aph.gov.au/house/committee/jcpaa/agact/report.htm>> viewed 23 November 2011.

104 JCPAA, *Report 419 Inquiry into the Auditor-General Act 1997*, p. vi and xvii.

105 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 24 June 2011, p. 2.

106 Mr McPhee, ANAO, *Committee Hansard*, Canberra, 24 June 2011, p. 2.

on administrative effectiveness and efficiency on government programs and entities. In line with the Committee's recommendations in Report 419, the ANAO's submission reiterated that barriers to the Commonwealth Auditor-General's powers exist impeding the Auditor-General's ability to carry out activities which will help inform the Parliament on the 'operations and outcomes of the new arrangements'.¹⁰⁷ The ANAO's submission expressed support for the 'follow the money' provisions in the proposed *Auditor-General Amendment Bill 2011*. The ANAO argued that extending the power of the Commonwealth Auditor-General is integral to addressing the limitations of the Auditor-General to assess how Commonwealth resources are used.¹⁰⁸

5.76 The ANAO is aware that some state Auditors-General have the power to follow funding expended by non-state recipients, this is limited to their own respective jurisdictions. The arrangement did not 'provide sufficient information to the Australian Parliament on the Commonwealth's role and the outcomes being achieved'.¹⁰⁹

5.77 The ANAO therefore recommended that the current arrangements for national funding agreements could be improved by:

...the Auditor-General being provided with an appropriate mandate that allows the operation of the arrangements to be examined (this would also entail the inclusion of explicit references to access and audit powers in national funding agreements).¹¹⁰

5.78 The ANAO noted that the legislation currently before the Commonwealth parliament would assist in transforming the Auditor-General's mandate along these lines.

5.79 The Committee questioned PM&C regarding this tension between the roles of the Commonwealth and states Auditors-General. PM&C asserted that a 'balance always needs to be struck' and highlighted the need for consideration of the jurisdictional separations and accountability of the Commonwealth and state Executives to their own respective parliaments and Auditors-General.¹¹¹ Subject to the passing of the amendments to the *Auditor-General Act 1997*, PM&C cautioned that the capacity of both the state Auditors-General and the Commonwealth Auditor-General to follow

107 ANAO, *Submission 1*, p. 7.

108 ANAO, *Submission 1*, p. 7.

109 ANAO, *Submission 1*, p. 7.

110 ANAO, *Submission 1*, pp. 7-8.

111 Mr Hazlehurst, PM&C, *Committee Hansard*, Canberra, 16 September 2011, p. 30.

the money will not automatically result in the measurement of outcomes as a primary focus but rather:

...whether the money has been spent on stuff that relates to the purposes for which the money has been passed over to the states.¹¹²

- 5.80 The states did not agree that the Commonwealth Auditor-General's powers should be extended to follow the dollar. The Victorian and NSW Governments¹¹³ maintained that the current oversight arrangements under the new framework and the work of state Auditors-General provided sufficient and appropriate scrutiny of payments via national partnerships.
- 5.81 The Victorian Government argued that at the most fundamental level applying the terminology of 'Commonwealth money' to intergovernmental transfers is 'inappropriate'.¹¹⁴
- 5.82 Associate Professor Twomey also supported the Victorian Government's views on misconceptions regarding 'Commonwealth money'. Professor Twomey strongly disagrees with the emphasis the Commonwealth places on ownership of 'Commonwealth money'. Professor Twomey argued that it is the 'taxpayer's money' as it is:
- ...money collected from the taxpayers that should be distributed in such a way as to ensure that all functions of government, be it state, Commonwealth or local, are capable of being fulfilled in a sensible way.¹¹⁵
- 5.83 In this context, the Victorian Government explicitly argued against the view that Commonwealth agencies remain accountable to the relevant Commonwealth Ministers and Commonwealth parliament for funds transferred to the states under the IGA FFR.¹¹⁶
- 5.84 The Victorian Government's submission highlighted that institutional oversight of intergovernmental financial transfers is maximised by state Auditors-General exercising their mandates rather than 'access clauses in

112 Mr Hazlehurst, PM&C, *Committee Hansard*, Canberra, 16 September 2011, p. 30.

113 NSW Government, Treasurer, *Submission 10*, p. 12.

114 Victorian Government, *Submission 6*, p. 6.

115 Associate Professor Twomey, *Committee Hansard*, Sydney, 19 August 2011, p. 11.

116 The Victorian Government's submission referenced ANAO Report No. 30, 2010–11 *Digital Education Revolution Program – National Secondary Schools Computer Fund*, paragraph 22.

intergovernmental funding agreements, or be extending the investigative authority of the Commonwealth Auditor-General'.¹¹⁷

- 5.85 The Committee made further inquiries about the Victorian Government's position noting the current frustrations of the Commonwealth Parliament being able to discern whether policy objectives are being achieved through funding to the states. The Victorian Government identified to the Committee that adequate scrutiny could be delivered by the Commonwealth requesting through national partnership agreements that state Auditors-General undertake additional activities.¹¹⁸
- 5.86 Further, the Victorian Government was of the view that as state Auditors-General are authorised to audit the expenditure of Commonwealth grants by a state, there is 'no strong case for the Commonwealth to duplicate that role'.¹¹⁹
- 5.87 The NSW Auditor-General believed that where government dollars are expended it is the role of an auditor-general to provide accountability. However, consideration as to which auditor-general, state or Commonwealth, is to be given within the context of each situation.¹²⁰ The NSW Auditor-General expressed that where the Commonwealth provides funding in areas of state responsibility such as health, there is a stronger case for the state Auditor-General to review this expenditure.¹²¹

Constitutional, legal and operational implications

- 5.88 Specific commentary on the proposal to bestow additional powers and functions on the Commonwealth Auditor-General was provided by the Victorian Government within a constitutional context. The Victorian Government's submission outlined a number of issues. Enabling the Commonwealth Auditor-General to audit a state agency receiving Commonwealth funding was raised as 'inconsistent with the basic constitutional structure of the Australian Federation'.¹²²

117 Victorian Government, *Submission 6*, p. 7.

118 Mr Speagle, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 17.

119 Mr Speagle, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 14.

120 Mr Peter Achterstraat, Auditor-General, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 2.

121 Mr Achterstraat, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 2.

122 Victorian Government, *Submission 6*, p. 12.

5.89 Difficulties regarding the practical and legal consequences resulting from extending the Auditor-General's powers were also raised including:

...questions about the extent of the Commonwealth's constitutional power to enable the Commonwealth Auditor-General to perform such functions, and the interaction with any State legislation.¹²³

5.90 The Victorian Government's submission also raised the potential for 'administrative inefficiencies' with the extension of the Auditor-General's powers and the risk of 'confusing accountability at the entity level'.¹²⁴

Collaborative audits

5.91 While state governments and state Auditors-General cautioned against the extension of the Commonwealth Auditor-General's powers to 'follow the dollar' they were generally supportive of changes to enable collaborative audits between the Commonwealth and states and territories.

5.92 The Queensland Auditor-General was of the view that the best way for the parliament to gain greater assurance is through collaborative audits. According to the Queensland Auditor-General this approach would 'harness the capacity of state audit offices to increase the level of assurance for both state and Commonwealth parliaments'.¹²⁵

5.93 However, witnesses identified a number of concerns. One area was resourcing. The Queensland Auditor-General cautioned that, if the Commonwealth Auditor-General were to undertake performance audits of states, territories and local government agencies this would involve either a 'diversion of audit effort from Commonwealth agencies or require a significant increase in the capacity of the ANAO'.¹²⁶

5.94 Further, as discussed in chapter two and three, state Auditors-General called for clarity of objectives, outcomes and assurance requirements. The Queensland Auditor-General emphasised the need for the Commonwealth to provide clear direction as to what they want and why.¹²⁷

123 Victorian Government, *Submission 6*, p. 12.

124 Victorian Government, *Submission 6*, p. 12.

125 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 9.

126 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 9.

127 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 11.

5.95 The NSW Auditor-General felt that collaborative audits 'could well be the way forward'¹²⁸ and did not feel that such audits would unduly take up his resources. However, he advised that the framework for collaborative audits would need to be carefully considered to ensure:

... that there can be no misunderstanding, no breaches of trust and, obviously, once all of that is established, good trust.¹²⁹

5.96 The Committee asked if collaborative audits were normal practice in other countries and, if so, were there advantages or disadvantages to the process. The NSW Auditor-General confirmed that collaborative audits are used in a number of other countries, citing Canada and a collaboration between numerous South Pacific countries.¹³⁰ Overall, the NSW Auditor-General considered that collaborative audits had produced good results in these countries but warned that reporting requirements can prove a problem, as each Auditor-General obliged to report to his/her own parliament. He used the example of the seven South Pacific countries involved in a collaborative audit to illustrate the difficulty:

They had to time the tabling of their report because they had different countries. It would be a lot easier if it was in the one country with different states. I think they had to go to a fair bit of effort to make sure those performance audits were tabled at the same time.¹³¹

Secrecy provisions

5.97 The main barrier to collaborative audits raised by state Auditors-General is the secrecy provisions contained in audit legislation across both Commonwealth and state and territory jurisdictions. The Committee inquired whether the proposed amendments to the *Auditor-General Act 1997* are sufficient to enable successful collaborative audits or whether other legislative changes would also be required. The

128 Mr Peter Achterstraat, Auditor-General, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 3.

129 Mr Achterstraat, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 3.

130 Mr Archterstratt, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 7.

131 Mr Achterstraat, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 7.

states told the Committee that without changes to Auditor-General Acts across the board the success of such audits will be constrained.¹³²

- 5.98 The Committee asked if steps are being taken to address this issue and change state and territory legislation. The Queensland Auditor-General informed the Committee that the Queensland parliament currently has a bill before the parliament to amend the Auditor-General Act. If passed, the new legislation will allow the Queensland Auditor-General to undertake joint or collaborative audits with other state Auditors-General or the Commonwealth Auditor-General if it is the belief of the Queensland Auditor-General that these other jurisdictions have an 'interest in that audit'.¹³³
- 5.99 The Queensland Auditor-General explained that even with the passing of this legislation this would only enable the Queensland Audit Office to share some information with the Commonwealth Auditor-General, however the Commonwealth Auditor-General would still not be able to reciprocate.¹³⁴
- 5.100 The Victorian Government told the Committee that the Victorian Department of Treasury and Finance and the state Auditor-General are currently examining the legal and operational issues which currently prohibit collaborative audits.¹³⁵ The NSW Auditor-General was reluctant to comment on NSW government policy but was not aware of any changes currently being contemplated.¹³⁶

Committee comment

- 5.101 The public often uses the parliament as the main point of entry to follow the triumphs or otherwise of government policy. The Committee is acutely aware of the significant role the Commonwealth Parliament plays in facilitating the public's visibility of public policy outcomes.

132 Mr Speagle, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 17; Mr Achterstraat, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, pp. 6-7; Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 9.

133 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 9.

134 Mr Poole, Auditor-General, Queensland, *Committee Hansard*, Brisbane, 19 July 2011, p. 12.

135 Mr Speagle, Department of Premier and Cabinet, Victoria, *Committee Hansard*, Canberra, 16 September 2011, p. 17.

136 Mr Achterstraat, Audit Office of New South Wales, *Committee Hansard*, Sydney, 19 August 2011, p. 3.

- 5.102 The Committee acknowledges the tensions between Commonwealth accountability and state/territory flexibility and understands the importance of striking the right balance within Australia's federal structure. However, while the Committee is conscious that the accountability and transparency principles underpinning the new framework are sound, in reality the public often holds the Commonwealth directly to account for the expenditure of taxpayers' money. Therefore, the Committee maintains that efforts must continue to obtain satisfactory scrutiny of national funding agreements and ensure value for money, including through transparency and accountability, for the Australian people.
- 5.103 The Committee is conscious that high level accountability and transparency mechanisms exist for the parliament and the public to gain insights into the operation and progress of the reform agenda. For example, initial scrutiny of national funding agreements is possible through approval of the budget and through national funding agreements which require legislative implementation. The Committee notes however, that while the parliament's role in approving Commonwealth expenditure has been preserved under the IGA FFR, there are a number of weaknesses with these high level mechanisms.
- 5.104 Overall the Committee is of the view that more can be done to facilitate parliamentary scrutiny of national funding agreements, in particular at the implementation stages. Increased parliamentary scrutiny will help ensure value for money is achieved for Australian taxpayers, and that a clearer picture of the success or otherwise of the national funding agreements is obtained. Parliamentary scrutiny can be enhanced through parliament having:
- ready access to a more holistic picture of key national funding agreements - in particular through the related CRC progress reports; and
 - a mechanism to routinely review the CRC reports and progress against the agreed outcomes within the national funding agreements.
- 5.105 The Committee is of the view that the CRC reports are a critical missing piece of the puzzle for parliamentary scrutiny. The initial budget and related legislative approvals provide parliament with a starting point for scrutiny, but need to be coupled with the CRC reports to allow full parliamentary engagement. While CRC reports are publicly accessible, the CRC itself is not accountable to the Commonwealth Parliament and the CRC reports are not tabled in Parliament. Furthermore, the Committee

feels that the Productivity Commission's reports investigating the impacts of the reforms are also necessary for Parliament's effective oversight.

- 5.106 Therefore, the Committee recommends that CRC reports are tabled in the Commonwealth Parliament one month after submission to COAG, in line with their public release and that relevant Productivity Commission reports are tabled as soon as practical.¹³⁷ This links with the Committee's recommendation in chapter 4 regarding the public release of the Government's response to the CRC reports in a timely manner.
- 5.107 To further give the Parliament a more holistic picture of national funding agreements, the Committee recommends that signed NPs are tabled in Parliament, along with a complementary Ministerial Statement. This will help increase the Parliament's visibility regarding the number and type of NPs being entered into and inform the Parliament whether new NPs are targeted and appropriately align with the intention of the IGA FFR.
- 5.108 Additionally, the Committee recommends that the Prime Minister make an annual Statement to the House giving the Government's perspective on the contribution of these national funding agreements to the improvement of the well-being of all Australians, and progress towards the objectives of the agreements. This statement should also summarise the number of current, new, upcoming and expired NAs and NPs.
- 5.109 With regard to the development of a mechanism whereby the parliament can routinely review progress against the reform's agenda, the JCPAA recognises the Senate Select Committee on the Reform of the Australian Federation's recommendation that a dedicated new Joint Standing Committee be established.¹³⁸ The JCPAA sees that committee review should be the main mechanism to enable the parliament to routinely scrutinise and review progress against the reform agenda's stated outcomes. Therefore, the Committee recommends that once CRC reports are tabled in the parliament, they are automatically referred to an appropriate Joint Standing Committee for review and report.
- 5.110 Further, the Committee acknowledges the recommendations made by previous parliamentary committees which called for the referral of draft intergovernmental agreements to a parliamentary committee. The JCPAA is aware of the Government Response to these recommendations and that such a referral would place additional time delays and complexity to the

137 CRC reports are currently publicly released approximately one month after being submitted to COAG.

138 Senate Select Committee on the Reform of the Australian Federation, *Australia's Federation: an agenda for reform*, 2011, p. xv.

process. The Committee also notes that the appropriateness of a parliamentary committee reviewing intergovernmental agreements while in the negotiation stage is questionable and would hence need further investigation before such a change could be fully considered and implemented.

- 5.111 Transparency of outcomes flowing from the funding provided under the new framework is essential and the Committee considers the Commonwealth Parliament's visibility to this information of high importance. The Committee recognises the need for agencies to provide clearer and more consistent reporting to the Commonwealth Parliament on performance and outcomes of programs under NPs.¹³⁹ The Committee sees the merits in the Commonwealth Auditor-General's suggestion that the requirements of portfolio budget statements and annual reports to be reviewed, with particular regard to enhancing reporting of the performance and outcomes of programs under NPs.
- 5.112 Further, the Committee supports and notes a recommendation in a recent Auditor-General report that Finance 'develops more expansive policy guidance for entities on how to reference performance reporting for programs delivered through national agreements'.¹⁴⁰
- 5.113 The Committee appreciates the states' overall support for the current accountability and transparency mechanisms, including scrutiny provided through state legislatures and auditors-general. However, the Committee also acknowledges that a number of witnesses identified gaps in parliamentary scrutiny at both the Commonwealth and state level.
- 5.114 In this regard, the Committee is of the belief that increased accountability of funding flowing to the states and other key institutions under national funding agreements is needed through Commonwealth Auditor-General reports to the Commonwealth parliament. The Committee supports the legislation before the parliament to extend the Commonwealth Auditor-General's powers in the area of federal-state financial relations and reinforces its view expressed in Report 419 that the Commonwealth Auditor-General should be:

139 The Commonwealth Auditor-General expressed the need for better reporting in terms of whole of government initiatives to the Committee for the inquiry into ANAO Audit Report No. 22 2010-11, *Audits of Financial Statements of Australian Government Entities*. The report concluding this inquiry is due to be tabled in December as part of the Committee's latest review of Auditors-General reports and contains further comments and recommendations regarding financial reporting across government.

140 ANAO Audit Report No. 05 2011-12, *Development and Implementation of Key Performance Indicators to Support the Outcomes and Programs Framework*, p. 25 and p. 29.

- able to easily access information relating to recipients expenditure of Commonwealth funding; and
 - empowered to assess the performance of bodies receiving Commonwealth funding.¹⁴¹
- 5.115 The Committee is aware of constitutional questions raised in the past and during this inquiry regarding the extension of the Commonwealth Auditor-General's powers in this way.¹⁴² However, due to the significance of the funding flows and subsequent national impacts in key areas such as health and education, it is important that these auditing and oversight powers be granted. In the Committee's view there is no other mechanism that will provide the necessary rigour and overall accountability picture needed of these significant national issues.
- 5.116 As a complement to extended powers for the Commonwealth Auditor-General, the Committee recognises the role collaborative audits may play in strengthening existing accountability and assurance arrangements under the new framework. The Committee recognises that the main barrier to successful collaborative audits is the secrecy provisions embedded within auditors-general legislation across all jurisdictions. The Committee is aware of one state's move to lift these restrictions and encourages individual jurisdictions to introduce amendments to their own auditors-general acts so that information can be more easily shared across current boundaries. The Committee notes the restrictions on collaborative audits between the states/territories and the Commonwealth in the absence of similar amendments to the *Auditor-General Act 1997* and flags this as an area to be considered and addressed in the future.
- 5.117 The Committee welcomes the work of the Ministerial Council for Federal Financial Relations in publishing a comprehensive and easily accessible list of NAs, NPs and Implementation Plans online. However, the Committee recognises the importance of the transparency of intergovernmental agreements more broadly and the merits of developing an online database which includes all intergovernmental agreements. The Committee encourages the Australian Government to review and extend its communication concerning COAG initiatives generally. The Committee notes the recent recommendation by the CRC that COAG provide an overview of their agenda, including a summary of the institutional framework, an explanation of the themes and a description of the content and timeframes for key reform activities.
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141 JCPAA, *Report 419 Inquiry into the Auditor-General Act 1997*, pp. 63–67.

142 JCPAA, *Report 419 Inquiry into the Auditor-General Act 1997*, p. 66.

- 5.118 The Committee recognises that reform to the IGA FFR is ongoing. The Committee notes that similar themes and recommendations have been made across this JCPAA report and the recent CRC report. Evidence to the Committee suggests that the HoTs Review confirmed many of the same findings. The Committee also notes that a range of reports are due for release in late 2011 and early 2012 evaluating the impact of the IGA FFR.¹⁴³ The Committee is of the view that it is timely for the Commonwealth Government to take consolidated action to address the issues identified in all of these reports.
- 5.119 Therefore, the Committee recommends that the Commonwealth Government take this opportunity to correct the identified problems and ensure that the IGA FFR fulfils its potential. With these changes Australia will be well positioned to continue on the reform pathway in the coming decade.

Recommendation 11

- 5.120 **The Committee recommends that the Prime Minister table COAG Reform Council reports in the Commonwealth Parliament one month after submission to COAG, and that relevant Productivity Commission reports are tabled as soon as practical.**

Once tabled, these reports should be automatically referred to an appropriate Joint Standing Committee for review.

Recommendation 12

- 5.121 **The Committee recommends that signed National Partnerships are tabled in Parliament, along with a complementary Ministerial Statement.**

¹⁴³ The Productivity Commission will release the draft *Impacts and Benefits of COAG Reforms* report in December 2011 and the final report in March 2012. The GST Review Panel interim report will be released in February 2012 and the final report by September 2012

Recommendation 13

5.122 **The Committee recommends that the Prime Minister deliver an annual Statement to the House:**

- **outlining the Commonwealth Government's perspective on the contribution of national funding agreements to the improvement of the well-being of all Australians; and**
- **summarising the number of current, new, upcoming and expired National Agreements and National Partnerships**

Recommendation 14

5.123 **The Committee recommends that the Department of the Prime Minister and Cabinet and central agencies investigate steps so that Portfolio Budget Statements and annual reporting requirements provide a more comprehensive picture of the performance and outcomes of programs under national partnerships across government.**

Recommendation 15

5.124 **The Committee recommends that, in light of the range of review activity currently underway, the Commonwealth Government take this opportunity to institute and deliver on the Intergovernmental Agreement on Federal Financial Relations' full potential.**

With these changes Australia will be well positioned to continue on the reform pathway in the coming decade.

Rob Oakeshott
Committee Chair

November 2011