

**GOVERNMENT RESPONSE TO THE SENATE SELECT
COMMITTEE REPORT ON THE REFORM OF THE AUSTRALIAN
FEDERATION, *AUSTRALIA'S FEDERATION: AN AGENDA FOR
REFORM***

NOVEMBER 2011

Introduction

The Australian Government welcomes the report by the Senate Select Committee on the Reform of the Australian Federation, *Australia's Federation: an agenda for reform* (the Report), and acknowledges the importance of the issues it raises.

The Australian Government believes Australia's federal system provides a solid foundation for good governance, and enables governments at all levels to deliver the best possible outcomes for the Australian people. Moreover, the Australian Government agrees with the Committee's position that Australia's federation 'should be dynamic, and open to carefully considered reform.'

The recommendations made in the Report are diverse and wide-ranging. However, the Report and its recommendations largely rest on two points. Firstly, that over the last century there has been a tendency toward greater centralisation within the Australian federation, and the consequences of this tendency should be a matter of greater public discussion. Secondly, that there is a need for enhanced transparency and accountability in current intergovernmental relations and processes, and the Parliament of Australia should assume an expanded role in ensuring this transparency and accountability. Specifically, the Committee recommends the creation of a new Joint Standing Committee, which would take on a 'significant and integral role in helping to manage Australia's modern federation.'

It is worth emphasising that since 2007, the Australian Government has made significant progress in enhancing the flexibility of the states and territories to deliver services and reforms at the intersection of inter-jurisdictional responsibility, while strengthening transparency and accountability in federal financial relations. Most notably, the Australian Government, in cooperation with the states and territories, implemented a new federal financial relations framework through the Intergovernmental Agreement on Federal Financial Relations (the IGA FFR), which commenced on 1 January 2009.

Prior to the introduction of the new arrangements, federal financial relations were characterised by agreements where the national government placed a high degree of prescription on payments to the states and territories. This approach was seen as constraining flexibility and innovation in service delivery, making it difficult for states and territories to set their own priorities and address their own circumstances to achieve the best overall community outcomes. It also created inefficiencies, with the national government devoting unnecessary time to administering the many payments and detailed agreements and assuming risk and responsibility for delivery as a result.

The new framework provides the states and territories with the flexibility to deliver high-priority services where they determine the most appropriate approach to delivery. This also increases government accountability to the public through a combination of transparent identification of outcomes to be achieved, clearer specification of each government's roles and responsibilities and improved mechanisms for performance reporting. It is aimed at improving the quality and effectiveness of government services by reducing national government prescriptions on service delivery by the states and territories, providing them with increased flexibility in the way they deliver services to the Australian people.

The new federal financial framework has also strengthened the Parliament of Australia's oversight of intergovernmental processes. Previously, payments to the states were provided by Commonwealth portfolio departments to the relevant state agencies, and each payment had its own payment and administrative arrangements. Under the new arrangements, all payments are centrally processed by the Commonwealth Treasury and paid directly to each state treasury. These payments come under the umbrella of an overarching piece of legislation, the *Federal Financial Relations Act 2009*. This provides the Commonwealth Parliament with the ability to scrutinize better the payment arrangements through this single Act.

It is important to allow enough time for the framework to 'bed down' properly before making large and potentially disruptive changes. The case for increased Parliamentary scrutiny of new intergovernmental agreements, as suggested in recommendation 2, could in fact obscure lines of responsibility and accountability, which currently rest with the states and territories and Commonwealth ministers.

In this connection, it is also worth noting the range of other accountability measures that form part of the new federal financial relations landscape. The Council of Australian Governments (COAG) has established the COAG Reform Council as an independent organisation to monitor, assess and publicly report on the performance of governments in implementing nationally-agreed reforms. Moreover, pre-existing institutions, such as the Commonwealth Auditor-General and state and territory Auditors-General, provide significant and robust means of ensuring that spending of taxpayers' funds is carefully monitored, while enabling governments to respond flexibly to local need. The Australian Government also notes that the *Auditor-General Amendment Bill 2011* aims to enhance further the capacity of the Commonwealth Auditor-General to assure that value for money is being achieved at the level where the expenditure occurs.

The Australian Government's detailed responses to the recommendations made by the Committee are set out below. The Government considers that a number of the recommendations have been or are being addressed, either directly or through the reform to the federal financial framework discussed above.

RECOMMENDATION 1

[2.29] The committee recommends that the tendency towards greater centralisation within the Australian federation resulting from High Court decisions be among the matters referred for inquiry to the Joint Standing Committee proposed in Recommendation 17 of this report. In the event that the proposed committee is not established, it encourages more extensive academic research to be undertaken on the subject with a view to formulating policy proposals that might be referred to a constitutional convention for possible constitutional change.

Response

The Government notes the recommendation.

As noted in the Government's response to Recommendation 17, a Joint Standing Committee established along the lines suggested by the Select Committee would need to ensure the continued capacity of the executive to discharge its responsibilities in the field of intergovernmental relations flexibly.

RECOMMENDATION 2

[2.55] The committee recommends that proposed intergovernmental agreements between the Commonwealth and state and territory governments be referred for consideration and review to the Joint Standing Committee proposed in Recommendation 17 of this report.

Response

The Government does not agree with the recommendation.

Intergovernmental agreements between the Commonwealth and state and territory governments are agreements between executive governments, often entered into by First Ministers. There already exist a number of mechanisms available to the Parliament to consider and review intergovernmental agreements, including through the consideration by the Senate's legislation committees of estimates of proposed annual expenditure by government departments and authorities. A further formal referral process to the proposed Joint Standing Committee, should it be established, is not needed for the Parliament to exercise its review function.

RECOMMENDATION 3

[2.56] The committee recommends that exposure drafts of legislation intended as the foundation for a referral of power to the Commonwealth be made available for examination by parliamentary committees, including, as appropriate, the Joint Standing Committee proposed in Recommendation 17 of this report and the Senate Standing Committee for the Scrutiny of Bills, prior to their adoption.

Response

The Government does not agree with the recommendation.

It is a matter for the Parliament to determine on a case-by-case basis whether a Bill, once introduced, is referred to a committee for consideration and whether the Bill is to be passed.

RECOMMENDATION 4

[2.57] The committee recommends that the Joint Standing Committee proposed in Recommendation 17 of this report, inquire into the consequences and uncertainties created as a result of the decisions in *Re Wakim* and *R v Hughes*.

Response

The Government notes the recommendation.

The recommendation is directed to concerns that the High Court decisions in *Re Wakim* and *R v Hughes* limit the potential for cooperative schemes between the Commonwealth, state and territory governments. The reference mechanism provided by existing section 51(xxxvii) of the Australian Constitution continues to enable co-operative objectives.

RECOMMENDATION 5

[3.53] The committee recommends that COAG be strengthened through institutionalisation to ensure the Council's effective continuing operation and ability to promote improved mechanisms for managing federal state relations. The principles of transparency and joint ownership should be central to this institutionalisation.

Response

The Government does not agree with this recommendation.

COAG's organisational arrangements and operations should maintain the strategic capacity of First Ministers, in particular to respond in a flexible and timely manner to current and emerging issues at the intersection of jurisdictional responsibilities.

Chairing COAG and bringing leadership to the Federation is an inherent aspect of the Prime Minister's role. The Department of the Prime Minister and Cabinet (PM&C) supports the Prime Minister in this role. The location of the COAG Secretariat in PM&C enhances the capacity of the Secretariat to provide strategic support to COAG, and to ensure the timely and successful preparation of agenda papers and other materials for COAG meetings.

RECOMMENDATION 6

[3.54] The committee recommends that agendas for COAG meetings be developed jointly by Commonwealth and State and Territory governments, that they be made publicly available before meetings, and that the timing, chairing and hosting of COAG meetings similarly be shared.

Response

The Government notes the recommendation that Commonwealth and State and Territory governments jointly develop agendas for COAG meetings. However, the Government does not agree with the recommendation that agendas be made publicly available before meetings, or that the chairing of COAG meetings be shared.

The existing process for developing COAG meeting agendas is a collaborative one which invites input from all COAG members. State and territory governments not only provide comment on agenda items proposed by the Commonwealth, but also have the capacity to propose items for inclusion on the agenda.

The Government does not support making the COAG agenda publicly available before meetings. The confidentiality of COAG proceedings promotes the open and frank exchange of ideas, and ultimately enhances the capacity of COAG members to reach agreement in addressing issues of strategic national importance. Notwithstanding the Government's position in this respect, it should be noted that COAG members can, and as a matter of course do, publicly identify key items for discussion in advance of COAG meetings.

The Government does not support changing the current chairing arrangements for COAG meetings. The Prime Minister of the day has served as the Chair of COAG since its inception in 1992. The arrangement remains appropriate, given the leadership Australians expect the Prime Minister to bring to the Federation. The current arrangement also reflects the fact that the Commonwealth is uniquely placed in the Federation to provide strategic direction and oversight on issues requiring inter-jurisdictional cooperation.

RECOMMENDATION 7

[3.55] The committee recommends that outcomes of COAG meetings be published in a more transparent manner than is currently the case with the communiqués.

Response

The Government notes the recommendation.

The COAG communiqué represents high-level outcomes of COAG meetings, as agreed by all COAG members. It is publicly released and published on the COAG website immediately following the conclusion of a COAG meeting. Intergovernmental agreements are published on the COAG website, and National Agreements, National Partnership Agreements and Implementation Plans are published on the Standing Council on Federal Financial Relations website.

RECOMMENDATION 8

[3.56] The committee recommends that the states and territories establish a stronger foundation for the Council for Australia's Federation *[sic]* by providing additional funding, formalising Council processes and ensuring that it meets more regularly than is currently the case.

Response

The operation and funding of the Council for the Australian Federation is a matter for the states and territories.

RECOMMENDATION 9

[4.47] The committee recommends that the Joint Standing Committee proposed in Recommendation 17 of this report inquire into the need for adjustments to the IGA on Federal Financial Relations and to the level and structure of taxation in Australia to provide the states certainty regarding revenue raising and their capacity to meet their responsibilities. In considering this issue, the committee should inquire into any related matters that the committee determines are appropriate, including the roles of the state and federal governments, and seek advice from the Productivity Commission, the COAG Reform Council and the Commonwealth Grants Commission as required.

Response

The Government notes the recommendation.

On 4-5 October 2011, the Government hosted a tax forum which brought together around 180 representatives to discuss priorities and directions for further tax reform in a variety of areas, including state taxes.

During the course of the forum the states and territories agreed to work through the Council for the Australian Federation to develop a state tax plan that will be considered by the Standing Council on Federal Financial Relations before it is taken to COAG for agreement and implementation.

RECOMMENDATION 10

[5.26] The committee recommends that the recently announced review into the distribution of revenue from the Goods and Services Tax give particular attention to the issue of incentives and disincentives to states and territories to maximise their revenue.

Response

The Government agrees in principle with the recommendation.

The terms of reference of the Review of the GST Distribution direct the Review Panel to consider any possible changes to the form of equalisation with regard to efficiency, equity, simplicity and the predictability and stability of GST shares.

Having regard to its terms of reference, the Review Panel has released an issues paper which outlines a range of potential efficiency issues, including those relating to incentives/disincentives for states to undertake particular activities, such as maximising their own-source revenue.

RECOMMENDATION 11

[5.34] The Committee recommends that the Joint Standing Committee proposed in Recommendation 17 of this report be asked to inquire into the extent of and need for reform of the arrangements for horizontal equalisation that currently exists between local government shires and municipalities across Australia.

Response

The Government notes the recommendation.

In the 2011-12 Budget, the Government provided \$1.2 million to conduct a review into the equity and efficiency of the current funding provided through the Financial Assistance Grants program. This review is to be completed in 2012-13.

RECOMMENDATION 12

[6.67] The committee recommends that the issues of funding and constitutional recognition of local government be among the matters proposed for inquiry by the Joint Standing Committee proposed in Recommendation 17 of this report.

Response

The Government notes the recommendation.

The Government has committed to pursue recognition of local government in the Australian Constitution. The Government has established an expert panel, led by former Chief Justice of the NSW Supreme Court, the Honourable James Spigelman AC QC, to report on and make recommendations regarding the level of support for constitutional recognition among stakeholders and in the general community, and options for recognition. The expert panel will report to Government in December 2011.

In addition to the review of the Financial Assistance Grants program mentioned in the response to Recommendation 11, the Government has also commenced an evaluation of the *2006 Inter-governmental Agreement Establishing Principles Guiding Inter-governmental Relations on Local Government Matters* in association with the other signatories to that agreement: the Commonwealth, State and Territory Local Government Ministers and the President of the Australian Local Government Association.

RECOMMENDATION 13

[6.68] Pending the outcome of this inquiry, the committee recommends that mechanisms other than constitutional amendment, perhaps by way of agreement through COAG, be explored to place Commonwealth funding of local government on a more reliable long term foundation.

Response

The Government notes the recommendation.

Stakeholders who made submissions to the committee on the issue of constitutional recognition of local government may also wish to make submissions to the consultation that is being undertaken by the Expert Panel established by the Government and referred to in the response to Recommendation 12. The Government does not consider it would be appropriate to comment in advance of the Expert Panel's report.

RECOMMENDATION 14

[7.44] The committee recommends that the each state give consideration to strengthening existing regional governance frameworks to improve the delivery of essential services and take into account the needs of local government. In particular, it encourages state governments to review the boundaries of regions created for the administration and delivery of state services such as health and education to ensure their closer alignment with each other.

Response

This recommendation relates to matters that are the responsibility of the states and territories.

RECOMMENDATION 15

[7.45] The committee recommends that the Commonwealth Government review the Regional Development Australia program after three years operation, to ensure the program effectively contributes to the long-term sustainability of Australia's regions.

Response

The Government agrees in principle with the recommendation.

The 2011-12 Budget provided a significant investment of \$20.3 million over four years to strengthen the Regional Development Australia network. The additional funding will support the national network of 55 Regional Development Australia committees to engage with their communities and provide advice to all levels of government. The investment in the Regional Development Australia committees is an addition to the \$15 million provided annually to the regional network. Given this investment, the Government will review the Regional Development Australia Program by 2015.

RECOMMENDATION 16

[8.31] The committee recommends that propositions for change to the Constitution be referred for consideration to a constitutional convention and that responsibility for the agenda and organisation of the convention be the responsibility of a newly institutionalised COAG.

Response

The Government does not agree with the recommendation.

The Government, however, is committed to holding referenda during the 43rd Parliament or at the next election on recognition of Indigenous Australians and recognition of local government in the Australian Constitution, and has established Expert Panels to consult with the Australian community on both issues.

RECOMMENDATION 17

[8.41] The committee recommends the establishment of a Joint Standing Committee of the federal parliament to be administered by the senate and with a senator as its chair. The committee should have a mandate to conduct its own inquiries and be assigned a range of oversight responsibilities that would enable it to assume a significant and integral role in helping to manage Australia's modern federation. This should include the responsibility to provide regular oversight of COAG.

Response

The Government notes the recommendation.

While the establishment of the Joint Standing Committee is ultimately a matter for the Parliament of Australia, the Government notes that a Committee along the lines envisioned in the report would in its activities need to ensure the capacity of the executive to discharge its responsibilities in the field of intergovernmental relations is in no way fettered.

The Government further notes that any consideration of COAG agreements and/or processes by the Parliament of Australia, should take as its point of departure the fact that COAG is not a Commonwealth entity, but a forum for First Ministers and the President of the Australian Local Government Association to address issues at the intersection of jurisdictional responsibilities.

RECOMMENDATION 18

[8.42] The committee recommends that the Senate Foreign Affairs, Defence and Trade References Committee undertake an inquiry into the merits of Professor Uhr's proposal that Australia sponsors an ongoing regional dialogue among elected representatives and parliamentary bodies in the Asia Pacific on the political management of decentralised and devolved national governance.

Response

The Government notes the recommendation.

The Government considers that the proposal is ultimately a matter for the Senate Foreign Affairs, Defence and Trade References Committee.

RECOMMENDATION 19

[8.54] The committee recommends that funding be made available by the federal, state and territory governments for the establishment within an Australian university of a centre for

the study and dissemination of ideas relating to federalism and Australia's federal system of government.

Response

The Government notes the recommendation.

Universities can seek funding for research relating to federalism under existing state government and Australian Government programs including, for example, the Australian Research Council's National Competitive Grants Program. Any large scale investment in a national centre or centre of excellence would require substantial evidence of capacity to build large-scale national research programs involving collaboration across institutions.

The body of the report notes that an application made under the recent ARC Centres of Excellence selection round was unsuccessful. The Australian Research Council reports that the selection round in which the application was made was very competitive, with 13 proposals funded out of 101 expressions of interest initially received.

RECOMMENDATION 20

[8.55] While the committee acknowledges the important work done by organisations such as the Museum of Australian Democracy and the Parliamentary Education Office in improving Australians' knowledge and understanding of Australian federalism, the committee nevertheless considers there is a need to promote a deeper understanding of federalism in the wider post-school community. The committee recommends that enhanced funding be made available by the federal, state and territory governments to appropriate institutions to promote this deeper understanding.

Response

The Government notes the recommendation.

In addition to work done by the Museum of Australian Democracy and the Parliamentary Education Office, a number of key Australian institutions undertake activities and/or hold resources that promote Australians' understanding and knowledge of Australian federalism, including the Australian Electoral Commission, the National Archives of Australia, the National Gallery of Australia, the National Film and Sound Archive, the National Library of Australia and the National Museum of Australia.

Any proposals for new funding would be subject to normal budget processes.

RECOMMENDATION 21

[8.56] The committee recommends that the Australian Research Council identify Australian federalism as a priority area for research funding.

Response

The Government does not agree with the recommendation.

The Australian Research Council (ARC) administers a range of funding schemes under the National Competitive Grants Program (NCGP) to support research excellence and build Australia's research capacity. Funding under the NCGP is allocated on the basis of research excellence through rigorous peer review processes.

The NCGP provides funding for research in all disciplines. Research funded by the ARC includes research into Policy and Political Sciences, including Australian federalism.

Under the Future Fellowships scheme for proposals commencing in 2010 and 2011 several targeted research and discipline areas have been identified to encourage the submission of proposals. For the selection round for funding commencing in 2011 the targeted research areas include Political Science.

Since 2005 the ARC has provided \$3.2 million for research into Australian federalism. Examples of ARC-funded research projects in this area include:

- a 2010 Future Fellowship awarded to the University of Queensland for a research project titled *Reconceiving Australian Federalism: Fundamental Values, Comparative Models and Constitutional Interpretation*; and
- a 2009 Discovery Projects grant awarded to the University of New South Wales for a research project titled *Federalism for the 21st Century: A Framework for Achieving Reform and Change*.

