

Chapter 3

Intergovernmental relations

3.1 A key issue in Australia's model of federation is its capacity to respond to the jurisdictional difficulties that arise when issues affect the powers and interests of the different levels of government.

3.2 Relationships between federal, state and territory governments have fluctuated over time as indicated by Hollander and Patapan.

Menzies' emphasis on the individual and his suspicion of 'big government' inclined him towards a federalist position that was articulated in the party's platform. On the other hand, the Menzies government's adherence to federalist principles in practice was patchy. It never considered handing back the income taxing powers it had inherited, and was happy to expand the Commonwealth's role in a range of policy areas such as education and infrastructure. This weak centralism of the 1950s and early 1960s contrasted with Prime Minister Gorton's enthusiasm for a more definite centralist approach in the late 1960s...The Fraser government's New Federalism...explored the potential for reinvigorating Australian federalism. While the plan to hand some taxing powers back to the states was never realised, Fraser did cut back on the use of tied grants that had ballooned under Whitlam.¹

3.3 More recently, federalism continues to be characterised as suffering from conflict and buck passing between different levels of government. Whilst some aspects of Australian federalism are subject to quite legitimate criticism in this regard, Twomey and Withers emphasise that the extent of cooperation which is achieved every day in the Australian federal system is immense, but that it is 'just not sufficiently newsworthy.'² They argue that conflict is not necessarily bad, as it can lead to vigorous debates about, and greater public scrutiny of, policy.

3.4 The issue for Twomey and Withers is the 'poor implementation of federalism in Australia, rather than the existence of the federal system itself.'³ Co-operative federalism as it currently operates is not always effective because its processes can be

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- 1 Robyn Hollander, Haig Patapan, *Pragmatic Federalism: Australian Federalism from Hawke to Howard*, Australian Journal of Public Administration, Vol 66, Issue 3, p. 283 September 2007.
 - 2 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 24.
 - 3 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 24.

'bogged down by delay and neglect.' The capacity of the current system for continuing economic reform has been run down which is why 'competition remains important.'⁴

3.5 There are vertical and horizontal mechanisms currently in place which are intended to foster co-operation between levels of government.

Vertical mechanisms

The Council of Australian Governments

3.6 The creation of the Council of Australian Governments (COAG) had its origins in 1990 in a 'new federalism' initiative designed to promote national cooperation in relation to microeconomic reform built on four principles:

The first recognised Australia's nationhood and the importance of working co-operatively to ensure that national interests are resolved in the interests of Australia as a whole. The second was the subsidiarity principle, that 'responsibilities for regulation and for allocation of public goods and services should be devolved to the maximum extent possible consistent with the national interest, so that government is accessible and accountable to those affected by its decisions'. The third principle concerned structural efficiency and the need for increased flexibility and competitiveness in the Australian economy, and the fourth concerned the accountability of government to the electorate.⁵

3.7 Since its creation in 1992, COAG has been the peak intergovernmental forum in Australia. The Council comprises the Prime Minister, state premiers, territory chief ministers and the president of the Australian Local Government Association (ALGA).⁶ Over the years, a wide range of issues has been discussed at COAG, including events such as the Bali bombings and the global financial crisis. All these discussions have highlighted the need for effective intergovernmental operations and they have strengthened the role of COAG.⁷

4 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 24.

5 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 28.

6 COAG, *About COAG*, http://www.coag.gov.au/about_coag/index.cfm (accessed 26 May 2011).

7 Gareth Griffith, *Managerial federalism: COAG and the states*, (December 2009), NSW Parliamentary Library Research Service Briefing Paper No. 10/09.

3.8 COAG's function is to:

initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments⁸

3.9 Issues considered by COAG may be drawn from such things as Ministerial Councils, international treaties that impact on States and Territories, or initiatives of one government (particularly the Commonwealth Government) which impact on other governments or require the cooperation of other governments.⁹ COAG meets on an as needed basis, and can operate out-of-session via correspondence. The outcomes of COAG meetings are contained in communiqués released at the end of each meeting. Where formal agreements are reached, these may be embodied in Intergovernmental Agreements.¹⁰ (Intergovernmental agreements and the issues they present are discussed in more detail in the next chapter.) The COAG mechanism has been characterised as follows:

[L]egally and administratively the COAG process involves complex arrangements, founded on intergovernmental agreements, and delivered by new legislative initiatives and bureaucratic structures.¹¹

COAG Working Groups

3.10 In December 2007, COAG established seven working groups led by ministers and comprising senior officials. Each of the working groups was charged with developing Commonwealth-State implementation plans for the COAG reform agenda agreed in February 2006. Therefore they reflect that agenda. They were the:

- Working Group on Health and Ageing;
- Working Group on Productivity Agenda: Education, Skills, Training and Early Childhood Development;
- Working Group on Climate Change and Water;
- Infrastructure Working Group;
- Business Regulation and Competition Working Group;
- Housing Working Group; and the
- Working Group on Indigenous Reform.¹²

8 COAG, *About COAG*, http://www.coag.gov.au/about_coag/index.cfm (accessed 26 May 2011).

9 COAG, *About COAG*, http://www.coag.gov.au/about_coag/index.cfm (accessed 26 May 2011).

10 COAG, *About COAG*, http://www.coag.gov.au/about_coag/index.cfm (accessed 26 May 2011).

11 Gareth Griffith, *Managerial federalism: COAG and the states*, (December 2009), NSW Parliamentary Library Research Service Briefing Paper No. 10/09, p. 16.

3.11 Of these, only the working groups on Business Regulation and Competition, Infrastructure and Indigenous Reform are still operating. The remainder were disbanded when their planning task was completed, and responsibility for monitoring the implementation of those plans now falls to the COAG Reform Council (see below). Of the three operating working groups, the Infrastructure working group is expected to be wound up in the next year or two, the Business Regulation and Competition working group is being reassessed in 2012, and the Indigenous Reform working group is ongoing.¹³

3.12 The most significant of COAG's decisions in 2008 was to implement the new Intergovernmental Agreement on Federal Financial Relations. The new financial framework commenced on 1 January 2009.

COAG Reform Council

3.13 Independent monitoring and reporting of progress against the agreement is undertaken by the COAG Reform Council, established in February 2006. The Council is independent of individual governments. It reports directly to COAG on, amongst other matters, the performance of the Commonwealth and states and territories in fulfilling their obligations relating to the financial framework including Specific Purpose Payments (SPPs) and National Partnership (NP) payments.

3.14 The new financial framework is based on five elements:

1. Rationalisation of SPPs: Under the reform plan, the 90 or more current SPPs have been rationalised into five new SPPs supported by new national agreements in the areas of health; schools; skills; disabilities services; and affordable housing.

2. Greater flexibility: the Commonwealth committed to removing the prescriptive conditions contained in SPPs which inhibited State and Territory service delivery and priority setting. The States and Territories now have greater flexibility to direct resources to areas they believe will produce the best results. The focus has shifted from inputs to the achievement of outcomes...

3. Funding: funding under the new SPPs is ongoing, subject to periodic reviews...In a significant departure, the SPP agreements and new National Partnership (NP) payments have been negotiated (and funding provided) as a single package and paid directly to the Treasury Departments of each jurisdiction (rather than to line agencies). This should reduce administrative costs and aims to encourage line agencies to focus on service delivery and policy development rather than on securing funding.

12 COAG Website, 'Council of Australian Governments Meeting, 20 December 2007', http://www.coag.gov.au/coag_meeting_outcomes/2007-12-20/index.cfm (accessed 26 May 2011).

13 Advice received from the COAG Secretariat in phone discussion, 26 May 2011.

4. Accountability: performance accountability is the bedrock of the new framework, granting the States and Territories greater flexibility in policy and spending decisions, in return for open scrutiny of their performance...

5. National Partnership Payments: a new form of payment, NPs are now available to States and Territories, over and above existing funding through SPPs, to support specific projects and to facilitate and reward reform. The NPs are of three types:

- First, some existing payments for specific purposes will become National Partnership project payments to support the delivery of specific projects.
- Second, National Partnership facilitation payments may be used to assist a State to undertake policy reform in an area of national priority...
- Third, National Partnership reward payments are provided to those States and Territories which deliver reform progress, as measured by the achievement of performance benchmarks. Achievement of benchmarks is assessed by the independent COAG Reform Council in order to provide transparency and enhance accountability in the performance assessment process.¹⁴

3.15 The Council has published a number of reports, including its *2010 COAG Reform Council Report: Report to the Council of Australian Governments on the COAG Reform Agenda*¹⁵; and other reports for individual National Agreements.¹⁶

Ministerial Councils

3.16 A Ministerial Council is:

a formal meeting of Ministers of the Crown from more than four jurisdictions, usually including the Commonwealth, the States and Territories of the Australian Federation, which meets on a regular basis.¹⁷

3.17 The work of Ministerial Councils underpins COAG. There are presently over 40 Ministerial Councils and forums coordinating government activity on specific policy areas. In addition to resolving jurisdictional service delivery and policy issues,

14 Professor John Wanna, Professor John Phillimore, Professor Alan Fenna, Dr Jeffrey Harwood, *Common Cause: Strengthening Australia's Cooperative Federalism*, Final Report to the Council for the Australian Federation, May 2009, p. 27.

15 COAG Reform Council, *2010 COAG Reform Council Report: Report to the Council of Australian Governments on the COAG Reform Agenda*, <http://www.coagreformcouncil.gov.au/reports/progress.cfm> (accessed 26 May 2011).

16 The reports are available at: COAG Reform Council, 'Reports', <http://www.coagreformcouncil.gov.au/> (accessed 26 May 2011).

17 COAG, *Commonwealth-State Ministerial Councils Compendium (July 2010)*, Foreword, http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf (accessed 1 June 2011).

councils develop policy reforms for consideration by COAG, and oversee the implementation of COAG policy reforms.¹⁸

3.18 Individual Ministerial Councils make the decision whether to include the Australian Local Government Association, except in cases where ALGA membership is required by statute or agreement.¹⁹ In October 2009, local government was represented on ten Ministerial Councils, though only as a voting member on four. Such facts confirm inconsistencies in the treatment of local government as already noted in respect to funding.²⁰

3.19 At its meeting on 13 February 2011, COAG agreed to make significant reforms to the ministerial council system by 30 June 2011.²¹ The reforms are intended:

to focus on strategic national priorities and new ways for COAG and its councils to identify and address issues of national significance.

Under the new system, enduring issues of national significance will be addressed through Standing Councils, while critical and complex issues will be addressed through limited life Select Councils.²²

Treaties Council

3.20 The Treaties Council was established in 1996 to consider treaties or other sensitive international instruments which may impact on states and territories. The council has published an agreed set of principles and procedures for Commonwealth-State consultation on treaties.²³ The council is comprised of the Prime Minister, premiers and chief ministers and, where appropriate, the foreign minister. The council normally convenes in conjunction with COAG meetings, and has only met once in its own right, in November 1997.²⁴

18 For a full list of Ministerial Councils, including objectives, membership and meeting arrangements, see *Commonwealth-State Ministerial Councils Compendium* (Updated, July 2010), http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf

19 COAG, *Commonwealth-State Ministerial Councils Compendium* (July 2010) p. 3. http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf (accessed 1 June 2011).

20 See Chapter 1, par. 1.53.

21 COAG, *Reform of Ministerial Councils*, http://www.coag.gov.au/ministerial_councils/index.cfm (accessed 26 May 2011).

22 COAG, *COAG Communiqué: 13 Feb 2011, Attachment C – More Effective Ministerial Councils* http://www.coag.gov.au/coag_meeting_outcomes/2011-02-13/index.cfm?CFID=1532&CFTOKEN=88180711 (accessed 26 May 2011).

23 COAG, *Treaties Council*, http://www.coag.gov.au/about_coag/treaties_council.cfm (accessed 26 May 2011).

24 COAG, *Commonwealth-State Ministerial Councils Compendium* (July 2010), p. 10, http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf (accessed 29 June 2011)

Australian Loan Council

3.21 The Australian Loan Council was established in 1927 to coordinate Commonwealth and state borrowing. All governments submit their estimated borrowing requirements for the coming financial year, and the council ensures that they are 'consistent with sound macroeconomic policy', and that borrowing plans by each government are 'consistent with a sustainable fiscal strategy'.²⁵ In addition to scrutinising and regulating government borrowing practices, the council is increasingly concerned with improving the transparency and accountability of public finances.²⁶

3.22 Membership of the Australian Loan Council is nominally the Prime Minister, premiers and chief ministers, though in practice representation is usually delegated to treasurers.²⁷

The Intergovernmental Agreement on local government matters

3.23 A common criticism of Australian Federalism is that local government is not formally recognised in the Australian Constitution. There has been some debate about the extent to which the Commonwealth is able to provide funding directly to local governments under s. 96 of the Constitution, or whether it must make payments via State and Territory governments. As well, it is argued that local governments are being asked by other levels of government to take on greater responsibility for service delivery and regulation, but that these functions are not adequately funded.²⁸ (Matters relating to local government are discussed in more detail in Chapter 6.)

3.24 In April 2006 the *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* was signed by the Commonwealth, State and Territory ministers with responsibility for local government, and the president of the Australian Local Government Association. This agreement attempts to address the concerns of local governments by requiring

25 COAG, *Commonwealth-State Ministerial Councils Compendium* (July 2010) p. 10. http://www.coag.gov.au/ministerial_councils/docs/compendium.pdf (accessed 29 June 2011)

26 Australian Government Online Directory, <http://www.directory.gov.au/index.php>, (accessed 26 May 2011).

27 Australian Government Online Directory, <http://www.directory.gov.au/index.php>, (accessed 26 May 2011).

28 Professor A.J. Brown, *In pursuit of the 'genuine partnership': local government and federal constitutional reform in Australia*, University of New South Wales Law Journal, vol. 3, no. 2, p. 439.

adequate consultation prior to making decisions on service delivery, and by setting standards for financial management and accountability.²⁹

The Australian Council of Local Government

3.25 The Australian Council of Local Government (ACLG) was established in September 2008 to 'forge a new cooperative engagement between the Commonwealth and local governments', and give local governments a forum to talk directly with the Commonwealth Government on local government issues.³⁰

3.26 The ACLG comprises representatives from local, state and territory levels of government and from the Commonwealth Government. The council has met only twice in its life, most recently on 18 June 2010. The meeting took the form of a community cabinet discussion where a panel of ministers and parliamentary secretaries took questions from the floor.³¹ The Australian Local Government Association takes a coordination and leadership role for the ACLG on behalf of local governments.³²

Other Local-State government forums

3.27 There are a myriad of forums in States and Territories which aim to facilitate cooperation between local and State governments. These are discussed in more detail in Chapter 6 (Local Government) of this report.

Horizontal mechanisms

3.28 While there are a range of mechanisms that promote cooperation within each level of government, the evidence to the committee was that these mechanisms are a relatively underdeveloped aspect of the Australian Federation.

Council for the Australian Federation

3.29 The Council for the Australian Federation (CAF) is 'an institutional forum for state and territory leaders', comprising premiers and chief ministers. The CAF

29 The Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters can be viewed at http://www.lgpmcouncil.gov.au/publications/files/Booklet_with_parties_signatures.pdf (accessed 26 May 2011).

30 Australian Council of Local Government, *About the ACLG*, <http://www.aclg.gov.au/> (accessed 26 May 2011).

31 Australian Council of Local Government, *About the ACLG*, <http://www.aclg.gov.au/> (accessed 26 May 2011).

32 Australian Local Government Association, *Australian Council of Local Government Background Fact Sheets*, <http://www.alga.asn.au/policy/ACLG/> (accessed 26 May 2011).

emerged in October 2006 out of the Leaders' Forum, which was the previous forum for meetings of state and territory leaders.³³

3.30 CAF has its own administrative support structures, and provides regular opportunities for state and territory leaders to discuss issues of mutual interest related to the COAG agenda, but also to inter-jurisdictional issues which may have little or no relevance to the Commonwealth.³⁴ CAF has met seven times in the three and a half years since its inauguration, most recently in November 2009. The group issues communiqués from each of its meetings which detail the issues discussed and decisions taken by the participants.³⁵

The Australian Local Government Association

3.31 The Australian Local Government Association (ALGA) is a federation of 560 Australian local government bodies (including, since 2001, the ACT). ALGA represents the interests of local government to other levels of government through such forums as COAG and Ministerial Councils, and pursues a policy agenda for improving local government practice across a range of areas, including governance, finance, regional development and infrastructure.³⁶ ALGA was founded in 1947, and has a permanent secretariat based in Canberra. ALGA policies are determined by the ALGA Board, comprising two members from each of its member associations.³⁷

Regional Organisations of Councils

3.32 Regional Organisations of Councils (ROCs) are voluntary collaborations between local government bodies which come together on matters of common interest. There are 59 ROCs in Australia. They vary greatly but essentially are voluntary bodies which make a formal commitment to each other to advance their common interests. Chapter 7 will more fully explain their functions.

33 Gareth Griffith, *Managerial federalism: COAG and the states*, (December 2009), NSW Parliamentary Library Research Service Briefing Paper No. 10/09, pp 4–5.

34 Professor John Wanna, Professor John Phillimore, Professor Alan Fenna with Dr Jeffrey Harwood, *Common cause: Strengthening Australia's cooperative federalism*. Final report to the Council for the Australian Federation, May 2009, p. 13.

35 Council for the Australian Federation, *Meetings*, <http://www.caf.gov.au/meetings.aspx> (accessed 26 May 2011).

36 Australian Local Government Association, *About ALGA*, <http://www.alga.asn.au/about/> (accessed 26 May 2011).

37 Australian Local Government Association, *About ALGA*, <http://www.alga.asn.au/about/> (accessed 26 May 2011).

Submitter views on intergovernmental mechanisms

3.33 The establishment of COAG was part of an evolutionary process through which the Commonwealth and state and territory governments could find ways to work together more effectively to address complex policy issues.

3.34 Twomey and Withers endorse the Keating and Wanna view of the COAG process 'as developing a more co-operative institutional relationship.'

Under the COAG process, there was recognition of the need to facilitate agreement on policy frameworks of joint interest. Not only were the states recognised as significant players whose policy input was crucial, but the Commonwealth also accepted that policy by unilateral decree was ineffective and that it had to work through the states to achieve many of its policy goals.³⁸

3.35 COAG has been largely successful in promoting national cooperation amongst governments.³⁹ The most notable COAG success has been implementing the National Competition Policy, described as a 'landmark achievement in nationally coordinated economic reform.'⁴⁰

3.36 In discussions with the Committee, representatives of the Department of the Prime Minister and Cabinet, where the secretariat for COAG is currently located, indicated how some of the COAG processes functioned. They confirmed that the Prime Minister, as Chair of COAG, determines the timing and agenda of meetings after consultation with states and territories. The officers noted that these and other COAG processes do have the advantage of ensuring 'that COAG's work is inherently connected across the business of government and across the priorities of the Prime Minister in her domestic agenda.' The officer went on to add that:

The experience of the 20 or 30 years of this brand of federalism we have been under suggests that you have a structure that evolves with the priorities facing COAG, and that works pretty well.⁴¹

3.37 COAG was described as 'nimble footed':

38 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 29.

39 Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 28.

40 J Pincus, Productivity Commission, *Productive Reform in a Federal System* (Roundtable proceedings, Canberra, 2006), cited in Dr Anne Twomey & Dr Glenn Withers, *Federalist Paper 1: Australia's federal future. Delivering growth and prosperity*. A Report for the Council of the Australian Federation, April, 2007, p. 29.

41 Mr Dominic English, First assistant secretary, Department of the Prime Minister and Cabinet, *Committee Hansard*, 5 May 2011, p. 49.

When we encountered the global financial crisis, at several days notice we brought on a COAG meeting in February of 2009 to consider the Nation Building and Jobs Plan. Then after the London transport bombings in 2005 it was the Victorian government that actually suggested to the then Prime Minister that we should have a COAG meeting to reconsider our counterterrorism arrangements and, again, that was brought on at very short notice.⁴²

3.38 Whilst COAG has served an important purpose, many submitters pointed to the need for reform. As Premier of Victoria, John Brumby, spoke enthusiastically of COAG's potential but also pointed out the potential for change:

COAG is an increasingly important decision-making body that drives the reform process, makes collective decisions and resolves deadlocks. The fact that COAG has ceased the practice of always sitting in Canberra has changed the dynamic. But Australia needs COAG to become an enduring institution that rises above the ebb and flow of governments.⁴³

3.39 There are also significant concerns around the way COAG operates. Dr Zimmermann and Mrs Finlay argue that:

While there have been some significant reforms delivered through COAG, its achievements have been “sporadic and unreliable” and “its effectiveness has waxed and waned depending upon personalities and political events” There is, however, a clear need for better co-operative mechanisms both to deal with areas of shared responsibility in the federal system and to encourage a co-operative form of federalism.⁴⁴

3.40 The Business Council of Australia has criticised COAG for meeting infrequently, for being seen as a creature of the Commonwealth, and for not being more able to “anticipate emerging reform issues, to identify and analyse potential policy responses and to monitor progress in implementing the preferred response.”⁴⁵

3.41 This report has already noted concerns such as that of Civil Liberties Australia. The CLA view is supported by comments such as those of the Gilbert and Tobin Centre of Public Law. They argue that:

[COAG] was established by agreement between the Prime Minister, Premiers and Chief Ministers in 1992 but enjoys legal recognition neither in the Constitution nor by statute...its existence necessarily remains tenuous.

42 Mr Ron Perry, Assistant secretary, COAG Unit, Department of the Prime Minister and Cabinet, *Committee Hansard*, 5 May 2011, p. 49.

43 The Hon John Brumby MP, Premier of Victoria, *Does Federalism Work?* (Speech to Australian New Zealand School of Government, 11 September 2008), p. 17, <http://epress.anu.edu.au/anzsog/critical/pdf/ch02.pdf> (accessed 24 June 2011).

44 Dr Augusto Zimmermann and Mrs Lorraine Finlay, *Submission 17*, p. 42.

45 Business Council of Australia, *Modernising the Australian Federation, A Discussion Paper*, June 2006, p. 8.

Statutory recognition would give COAG a more secure place in the Australian federal framework...[G]iving COAG a statutory basis would instil COAG with a stronger democratic legitimacy.⁴⁶

Committee view

3.42 The committee recognises that the establishment and subsequent evolution of COAG represents a significant step forward in managing the challenges posed by the need for cooperation in Australia's modern federation.

3.43 The committee believes, however, that several reforms and improvements can be made to COAG and the Ministerial Councils which would enhance its efficiency, encourage greater transparency and strengthen COAG's institutional standing. These improvements would focus on three areas: agenda setting, accountability and administration.

3.44 State governments should have an equal stake with the Commonwealth in COAG. This could begin with a formal, transparent intergovernmental agreement to underpin COAG. For some years now stakeholders, including the Business Council of Australia, have been arguing for a stronger institutional structure for COAG.⁴⁷ Through CAF, state and territory governments, have argued that there should be an intergovernmental agreement to underpin COAG's operations, and that the agreement should include several principles:

- recognition that COAG is an equal partnership between all spheres of government which should extend to agenda setting within COAG
- set out COAG's vision and objectives, including reform priorities
- have a strong emphasis on joint accountability
- provide flexibility for COAG to adapt and evolve
- make COAG transparent to the community and stakeholders through better communication of its decisions.⁴⁸

3.45 This argument was also put by individual governments, such as NSW, WA and Tasmania. The reform should also extend to ensuring states have an equitable capacity to place items on the agenda.⁴⁹

46 The Gilbert and Tobin Centre of Public Law, *Submission 7*, p. 2

47 Business Council of Australia, 2006, *Reshaping Australia's federation: A new contract for federal-state relations*, Melbourne, BCA, www.bca.com.au/Content/100802.aspx (accessed 1 June 2011).

48 CAF, *Submission 38*, pp 6–7.

49 NSW Government, *Submission 39*, p. 1; West Australian Government, *Submission 44*, p. 3; Tasmanian government, *Submission 40*, p. 10–11.

3.46 The committee is also of the view that there is a need for greater transparency of COAG processes, particularly in areas such as the public availability of agendas prior to meetings and the publication of meeting schedules. As the Business Council of Australia has noted:

[a]ccountability can be increased by more frequent meetings of COAG...as well as a Secretariat...which will ensure that there is a continued dialogue and agenda that the participants must address and cannot avoid.

The preparation of agendas for COAG meetings should link the meetings together – creating an ongoing accountability of ideas. The transparency of discussions, agreements and outcomes of COAG – with clearly allocated lines of responsibility – may also increase accountability.⁵⁰

3.47 An equally important reform is the need to locate the administration of COAG on a more independent foundation, placing it at arm's length from the Commonwealth Government. This is currently the case with staffing of the COAG Reform Council, which is 'located in Sydney and jointly funded by the Commonwealth and the States and Territories.'⁵¹

3.48 Australia's federation would operate more successfully if most states and territories could develop and coordinate their policy positions on a range of issues independently of the Commonwealth. Currently, the institutional architecture necessary to facilitate this objective is almost non-existent.

3.49 Some capacity for coordination exists in the Council for the Australian Federation, which comprises the heads of state and territory governments. In 2009, the Council released an important discussion paper on inter-governmental reforms, *Common cause: Strengthening Australia's cooperative federalism*. The paper proposed three key principles to underpin modern federal systems.

Subsidiarity: proximity of government to the community

Alignment of responsibilities: the allocation of roles and responsibilities to the level of government with the corresponding geographical scale (also referred to as the logic of assignment)

Cooperation: engagement and cooperation between the levels of government, including the comity principle.

Subsidiarity provides the fundamental rationale of federalism; however, it is less informative about how functions should be arranged between the levels of government in a federal system. The logic of assignment of responsibilities provides the basis for arranging functions, however, in the modern world there are few policy areas where clear lines of division can

50 Business Council of Australia, 2006, *Reshaping Australia's federation: A new contract for federal-state relations*, Melbourne, BCA, p. 36, www.bca.com.au/Content/100802.aspx (accessed 1 June 2011).

51 COAG Reform Council, *About us – the secretariat*, <http://www.coagreformcouncil.gov.au/about.cfm>, (accessed 12 April 2011).

be drawn. This gives the third principle, that of cooperation, a particular significance...the reality is that modern conditions of overlapping responsibility increasingly place a premium on effective engagement and cooperation between national and sub-national levels of government in federal systems. This need for engagement and cooperation has received the least attention to date and is the ripest for change in the current climate of Australian intergovernmental relations.⁵²

3.50 The paper went on to outline changes to the architecture of cooperative federalism as well as ways to improve supporting collaborative cultural practices. However, the Council was only recently formed, and it seems to have a precarious existence and few resources.

3.51 The committee believes that the interests of closer federal state cooperation would be served if the states and territories were to meet more regularly through a more institutionalised CAF process along the lines of arrangements in place in Canada, through its Canadian Intergovernmental Conference Secretariat.⁵³ Established in 1973, the CICS is a public sector agency:

The secretariat being truly intergovernmental in nature, both the federal and provincial governments share in its direction, finance and staffing; thus, making it an impartial agency at the service of 14 governments (federal, provincial and territorial).

In addition to acting as the permanent secretariat of the First Ministers Meetings (FMM), CICS offers its services to other meetings of First Ministers, Ministers and Deputy Ministers both at the federal-provincial-territorial and provincial-territorial levels. The agency is available to any federal, provincial and territorial governments' departments which may be called upon to organize and chair such meetings.⁵⁴

3.52 The committee believes that formalisation of the Council would strengthen cooperation amongst states and territories on policy issues that have little or no federal government dimension, as well as giving states a more formal forum in which to develop policy ideas that may ultimately be brought to COAG.

52 Professor John Wanna, Professor John Phillimore, Professor Alan Fenna with Dr Jeffrey Harwood, *Common cause: Strengthening Australia's cooperative federalism*. Final report to the Council for the Australian Federation, May 2009, p. 9.

53 Business Council of Australia, 2006, *Reshaping Australia's Federation: A New Contract for Federal-State Relations*, Melbourne, BCA, p. 28, www.bca.com.au/Content/100802.aspx

54 CISC, Our Organisation, <http://www.scics.gc.ca/english/view.asp?x=176> (accessed 12 April 2011).

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.

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.

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.

Recommendation 8

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