

Chapter Ten

Commonwealth Coercion and Cooperation

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In recent years, and particularly since the election of the Rudd Government in November 2007, the architecture of Australia's federal system has undertaken a significant transformation. This paper discusses some of these key changes, being the establishment of the Council for the Australian Federation, the COAG Reform Council, the Rudd Government COAG reforms and the reform of fiscal federalism in Australia. It concludes by considering the extent to which these changes have resulted in effective cooperative reform or retain the taint of Commonwealth coercion.

The Council for the Australian Federation

The Council for the Australian Federation, known as "CAF", was formed in October 2006. It comprises the Premiers and Chief Ministers of the States and Territories. Previously, meetings of this group had been held on an *ad hoc* basis, usually prior to the meetings of the Council of Australian Governments (COAG), under the title of the "Leaders' Forum". The meetings, however, were often rushed; their timing was dictated by the Commonwealth, which controlled the convening of COAG, upon which the Leaders' Forum piggy-backed; and the Commonwealth ensured that crucial information was only provided to the States at the last minute, to ensure that they did not have sufficient time to caucus and develop an agreed position. CAF, in contrast, is a formal body with its own secretariat and agenda which meets on a more regular basis, as determined by the States. It fulfils a number of purposes, such as allowing the States to reach agreed positions prior to negotiations with the Commonwealth, as well as providing a forum for States to contract their own inter-governmental business, in which the Commonwealth has no interest or involvement.

There were three strong influences on the establishment of CAF. The first was the Canadian Council of the Federation. This body was established in 2003 to promote inter-governmental cooperation, and to allow the Provinces to exercise leadership on national issues. In 2005, after meeting with the Governor of Manitoba at a Convention in the United States, the South Australian Premier, Mike Rann, proposed that a similar body be established in Australia.¹ Some of the States were sceptical about its value, fearing it would be seen as a politically partisan body. On 12 April, 2006 a number of State Premiers or their representatives, including Steve Bracks, Mike Rann and Anna Bligh held a joint meeting with the Canadian Council of the Federation in Montreal. The Canadians explained how their new Council operated, and how it had greatly improved the effectiveness of inter-governmental relations in Canada. Not long after their return, all the States accepted the value of such a body, and the proposal to establish CAF was announced on 21 July, 2006. The relationship with the Canadian Council of the Federation continues, with a Canadian delegation joining a CAF meeting in Adelaide in February 2008, and a further joint meeting proposed for 2010.

The second influence on the establishment of CAF was the increasingly dysfunctional relationship between the Commonwealth and the States. By 2005 the States were concerned that the impetus behind the national competition policy reforms of the 1990s was running out, and that a new wave of major economic reforms was needed to increase Australia's competitiveness in the global market. Victoria prepared the economic and policy basis for a national reform agenda which would not only take up reforms in the areas of competition and regulation which had dropped off the agenda, but which would place a new emphasis on better utilising Australia's human capital, by increasing workforce participation through improved education, training and health (for example, by tackling and preventing chronic disease and moving people from disability pensions into work).²

COAG agreed to the National Reform Agenda (NRA) at its meeting on 10 February, 2006. Despite the fact that COAG twice reaffirmed its commitment to the National Reform Agenda,³ the Commonwealth

did not appear to be truly committed to it. In the first instance, it was a State initiative. Secondly, while the States insisted that the dividends of these reforms should be shared amongst the Commonwealth and the States, rather than simply accrue to the Commonwealth through increased tax revenue, the Commonwealth was reluctant to transfer any benefits to the States. It had already unilaterally suspended payments to the States under the National Competition Policy.⁴ With respect to the National Reform Agenda, it merely committed to providing funding to the States and Territories on a case-by-case basis, if needed.⁵ Thirdly, as the Commonwealth election approached, the electoral strategy adopted by the Commonwealth government was to demonise the States and intervene in State matters whenever there was a political point to be scored, rather than on any constructive or principled basis. This strategy was encapsulated in Prime Minister Howard's Address to the Millennium Forum on 20 August 2007, where he outlined his policy of "aspirational nationalism", which involved the Commonwealth interfering in any aspects of policy and administration at any level of government, if it considered it in the "public interest" to do so.⁶ In doing so, the federal system was disregarded.

This approach had not reached its zenith in October 2006 when CAF was formed, but it was still a driving factor behind its establishment. The first CAF Communiqué notes that CAF "expressed concern at the Commonwealth's approach of unilateral announcements of specific initiatives in important areas of NRA reform, without consultation with States and Territories about these policies and how they would be implemented."⁷ CAF pointed to the Commonwealth's unilateral announcement of a "Skills Package", which it argued did not address Australia's most pressing skills issues. It contended that the Commonwealth needed to work with the States "to ensure that Australia's training system is properly resourced to meet the skills shortage crisis". It was also critical of the National Water Initiative and the National Water Commission, which it noted were originally intended to be cooperative exercises, but where there had been "difficulties in the implementation of this cooperative spirit under the current regime". Finally, it expressed concern that the Commonwealth was continuing "to play politics with education", and that it was considering imposing a "centrally mandated school curriculum upon States and Territories" rather than pursuing the existing cooperative approach under the *Adelaide Declaration on National Goals for Schooling in the Twenty-First Century*.⁸

The third important influence on the establishment of CAF was a concern that there were matters of national importance that the Commonwealth was ignoring or not adequately dealing with, and that the States needed to take the lead to get them on the national agenda. Primary amongst these areas was climate change and the need for an emissions trading scheme. Prior to the establishment of CAF, the States had already established a "National Emissions Trading Taskforce" in 2004. It undertook much of the policy spadework in Australia in the absence of Commonwealth involvement. At its meeting in February 2007, CAF reiterated its request that the Prime Minister place the development of a national emissions trading scheme on the COAG agenda. It also stated that "if the Commonwealth refuses to commit [to an emissions trading scheme] at this time, the States and Territories will introduce an emissions trading scheme by the end of 2010".⁹ The fact that the States were prepared and capable of implementing their own scheme, even if the Commonwealth declined to participate, forced the issue onto the national agenda.

What CAF does

CAF fulfils a number of different functions. First, it commissions expert reports as a means of supporting its agenda. So far it has commissioned a paper on the future of federalism,¹⁰ a review of education,¹¹ and the Garnaut report on climate change and the policies needed to improve the prospects of sustainable prosperity.¹² CAF is not simply a body that responds to events of the day. It has its own work-plan and is capable of undertaking significant policy development.

Secondly, it addresses the need to harmonise laws on particular subjects or to establish agreed standards or administrative mechanisms. For example, at its first meeting, in October 2006, Premiers and Chief Ministers signed an agreement on the "Harmonisation of Workers' Compensation and Occupational Health and Safety Arrangements", and agreed to the development of proposals to further harmonise teacher registration and the administration of payroll tax. At its second meeting, in February 2007, it agreed to extend mutual recognition laws to deal with occupational licences in 22 occupations. At its third meeting, in April 2007, it agreed to undertake work on the feasibility of the mutual recognition of drivers' licences and vehicle registration, as well

as cutting red tape on product safety regulation across jurisdictions. At its fourth meeting, in February 2008, CAF committed itself to the improvement of vehicle safety standards and to harmonise travel concessions for Senior Card holders. It also achieved agreement on the same start and end dates for daylight saving in Victoria, New South Wales, South Australia, Tasmania and the Australian Capital Territory.

A third function of CAF is reaching an agreed State and Territory position on matters prior to their consideration by COAG. For example, at its meeting on 12 April 2007, CAF agreed on policy positions to take to COAG on the National Reform Agenda, climate change and the health workforce. This limits the Commonwealth's ability to "divide and rule" as it has done so successfully in the past.

The migration of matters from CAF to COAG

CAF has been particularly successful at placing matters of importance on the national agenda by giving them prominence and commencing action in relation to them. While climate change and emissions trading is an obvious example, many other parts of CAF's agenda have migrated from CAF to COAG.

For example, in 2006 CAF focused upon the harmonisation of occupational health and safety standards and regulation. On 13 April 2007, COAG agreed upon a "timetable for achieving national occupational health and safety standards and harmonising elements in principal [occupational health and safety] Acts", and on 3 July 2008 an agreement was signed to implement uniform legislation on occupational health and safety "complemented by consistent compliance and enforcement".

CAF's efforts to extend mutual recognition to 22 further trades and occupations in 2007 has now migrated into a commitment by COAG to develop a national trade licensing system.¹³ CAF's commitment in 2006 to "begin work on national planning for infrastructure" became a commitment by COAG in 2008 to a "more nationally-coordinated approach to further infrastructure reform".¹⁴ CAF's agreement to harmonise payroll tax administration in 2006 was reported by COAG in 2008 as having been implemented.¹⁵ CAF's proposal to cut red tape on product safety regulation in 2007 was transformed into COAG's agreement in 2008 for the Commonwealth to take responsibility for permanent product bans and standards.¹⁶

It is not always clear how much this migration is a mark of the success of the States in pushing matters onto the national agenda, or is a result of the Commonwealth muscling in on State matters or claiming the credit for State successes. It is clear, however, that many matters that have been initiated by CAF have now been taken up by the Commonwealth through the COAG process.

The future of CAF

The fact that at the time CAF was created all State Premiers and Territory Chief Ministers came from the same political party has been both a benefit and a curse for CAF. It has meant that its birth was relatively easy but its life remains precarious if it is perceived as a party-political forum rather than a forum for State cooperation.¹⁷ The States have similar interests in their dealings with the Commonwealth, regardless of the political flavour of their governments. A lone Coalition State Government is likely to need the support of State solidarity in dealing with a national Labor Government. It would be more likely to be effective in influencing the States, through CAF, than simply being a lone voice in COAG.

The economic benefits of cooperative federalism and the harmonisation of State laws are such that there would be huge pressure on any Coalition State or Territory government from the business community to join in the cooperative endeavours that will relieve burdens on business and advance national productivity. The few political points gained from acting as a spoiler and destroying CAF would be completely overwhelmed by the loss of the economic benefits derived from cooperative reform.

Finally, it should be remembered that the Canadian Council of the Federation and its United States counterpart, the National Governors' Association, both operate very effectively despite the fact that their participants come from different parties. Indeed, COAG has previously been very successful when comprised of governments from different political parties, such as when it agreed to the national competition policy despite the political pressures to take the easier route and object.

The COAG Reform Council

In February 2006, COAG agreed to the creation of a COAG Reform Council at the same time that it agreed to implement the National Reform Agenda. The COAG Reform Council was intended to be an independent body that would replace the National Competition Council. Its functions were to report to COAG on progress in achieving milestones in the implementation of the National Reform Agenda by the States and Territories as well as the Commonwealth, and also to take up the functions of the National Competition Council under Part IIIA of the *Trade Practices Act* 1974 with respect to third-party access to infrastructure.¹⁸ COAG later decided, in April 2007, that this third party access function should remain with the National Competition Council, which continues to exist.

In July 2006, the structure of the COAG Reform Council was agreed upon. It was to comprise up to six members, including a Chairman appointed by the Commonwealth, a Deputy Chairman appointed by the States and Territories, and four members agreed upon by COAG. At the same meeting the COAG Reform Council was given the additional function by COAG of completing an independent assessment of each specific reform proposal endorsed by COAG under the National Reform Agenda, which would assess the relative costs and benefits of the reform proposals, taking into account the “economic, demographic, geographic and other differences between jurisdictions”.¹⁹ It was to be on the basis of such reports that the Commonwealth would consider any “fair-sharing” payments to the States, given the relative costs and benefits of these reforms.²⁰

Despite all the talk about the COAG Reform Council and its functions, there was a significant delay in establishing the body. In October 2006, the States and Territories, through CAF, expressed their frustration and called for the establishment of the Council “as quickly as possible”.

More matters were referred by COAG to the COAG Reform Council for “monitoring of progress and subsequently for assessment” in April 2007. They included infrastructure regulation, transport pricing reform, a new National Energy Market Operator and a national system of trade measurement. Despite collecting such a swag of functions, the COAG Reform Council did not start meeting until August 2007, when it considered its role and functions. In March 2008 it presented its first report to COAG, which provided a “snapshot” of the progress of reform in the seven areas referred to it in April 2007.²¹

At the same COAG meeting in March 2008 the COAG Reform Council was given significant new roles. The first was to publish “performance information for all jurisdictions” that is measured against the outcomes and progress measures set for specific purpose payments. These reports are to be made to the Prime Minister as Chair of COAG and are to be made public.²² The COAG Reform Council was also asked to produce an analytical overview of this performance information for each specific purpose payment.

The second role given to the COAG Reform Council in March 2008 was to assess whether “predetermined milestones and performance benchmarks” have been achieved in order for jurisdictions to receive national performance payments, which are a form of reward for achieving reforms, similar to the national competition payments of the past. These reports are to be provided to COAG²³ and will not necessarily be made public.

In making its assessments in relation to both national performance payments and specific purpose payments, the COAG Reform Council is obliged to consult with relevant jurisdictions for one month before releasing its reports, and may consider whether to include in its reports any feedback from a jurisdiction.²⁴

The COAG Reform Council was also asked in March 2008 to highlight examples of good practice and performance, but it was made clear that this would not extend to a policy-advising role. It cannot create references for itself. It can only deal with matters referred to it by COAG. Its role in monitoring the progression of the National Reform Agenda, remains. In this context it monitors the performance of the Commonwealth as well as the States and Territories.

In March 2008, COAG also removed from the COAG Reform Council the role it had previously given it in April 2007 of “*ex post* assessment of the costs and benefits of reforms”. This function was instead passed to the Productivity Commission. The Productivity Commission also provides the secretariat for the “Steering Committee for the Review of Government Service Provision”. This body, which was first established in 1994, develops “national performance indicators” for government services, and collects and publishes data from the Commonwealth, States and Territories to “enable ongoing comparisons of the efficiency and effectiveness of Commonwealth and State government services, including intra-government services”.²⁵ It publishes this data in the annual *Report on Government Services*. The Steering Committee is required to provide agreed performance information to the COAG Reform Council to allow it to undertake its own “assessment, analytical and

reporting responsibilities". The COAG Reform Council is empowered to request improvements in specific areas of data provided by the Steering Committee.²⁶

The new regime

Since the November 2007 election of the Rudd Government there have been substantive changes in both the form and practice of intergovernmental relations.

First, the agenda is far more ambitious. A great number of areas are now the subject of extensive reform negotiations and agreements. Some of these have migrated from CAF's agenda to COAG. Others formed part of the Rudd Government's election commitments. Others still are new additions to national reform, or have been resurrected after being lost in the interstices of Ministerial Councils.

Secondly, the pace at which reform is being driven has increased dramatically. COAG is meeting more frequently, having agreed to meet four times in 2008. At each of its meetings it lays down timetables that frequently require reports back to COAG at the next meeting in three months time. Gone are the days of the Howard Government, when Ministerial Councils were graveyards for proposals, and negotiations proceeded at a leisurely pace over years, if not decades. The reforms currently being pushed by COAG and its working groups have placed significant strains upon the policy areas of the States, especially the smaller States, which have been struggling to keep up with the demands for information, analysis, policy reform and legislation. The COAG Reform Council noted in its first report that:

"[T]he limited resources available to all jurisdictions is one of the most significant factors in the failure to meet a high proportion of timetables laid down by COAG, and all Governments will need to substantially increase both policy and legislative drafting capabilities if the new and more ambitious reform agenda being considered by COAG has any chance of timely and successful implementation".²⁷

Thirdly, the participation in COAG has expanded, with Commonwealth, State and Territory Treasurers attending the COAG meetings in December 2007, March 2008 and July 2008.²⁸ This has reflected the fact that reforms in fiscal federalism are being used to drive policy reforms. This closer relationship between the money and the desired policy outcomes is reflected by Treasury involvement in COAG, ensuring that a whole of government approach is achieved at Commonwealth, State and Territory levels.

Fourthly, COAG has established a new intergovernmental structure. In December 2007, at its first meeting after the change in Commonwealth government, COAG agreed to create seven Working Groups, covering the areas of health and ageing; productivity (including education, skills, training and early childhood); climate change and water; infrastructure; business regulation and competition; housing; and Indigenous reform.²⁹ Each Working Group is chaired by a Commonwealth Minister, with a deputy chair who is a senior State official. The rest of the group is comprised of Commonwealth and State officials. This creates an interesting and very different power dynamic. On the one hand, it allows Commonwealth Ministers to hear about problems directly from State officials, without the usual filter of Commonwealth bureaucrats. This might create a better understanding of the issues. On the other hand, the power and accountability of the different participants of the Working Groups is mixed. Commonwealth officials who participate in the Working Groups are subject to the authority of the Commonwealth Minister, while State officials must account back to and seek authority from their own State Ministers. State officials may find it more difficult to dispute matters with a Commonwealth Minister rather than a Commonwealth official. The effectiveness of these groups rather depends upon the personality of the Commonwealth Minister, and whether he or she tries to dominate or seeks to act in a consensual manner.

At its meeting in December 2007, COAG set out objectives and indicative forward working plans for each of the Working Groups, and described the nature of the implementation plans that the Working Groups were required to prepare and present to COAG in March 2008. In some cases the Working Groups were to be involved in the establishment of separate ongoing bodies established to fulfil particular policy roles, such as the National Health and Hospitals Reform Commission, the National Curriculum Board, the Infrastructure Australia Council and the National Housing Supply Research Council. The seven Working Groups produced 26 implementation plans to COAG for its approval in March 2008.

The COAG Working Groups have temporarily trumped Ministerial Councils in their exercise of power, but more significantly they have provided competition to Ministerial Councils that now feel the need to produce outcomes rather than more reports. The Standing Committee of Attorneys-General (SCAG) is one Ministerial Council that has recognised the need to lift its game. It has renegotiated and reprioritised its agenda, and started funding a permanent secretariat which can pursue its work between meetings and give extra policy support to those smaller jurisdictions that have been struggling to keep up with the policy reform demands.³⁰ It now has its own web-site, and since July 2007 it has been publicly reporting the outcome of its meetings.

The COAG Working Groups were originally established as a temporary measure to negotiate the new specific purpose payments and start the reform process moving. It will be interesting to see whether they disappear once the new system of fiscal federalism is finalised at the end of 2008, or whether they continue to exist in competition with Ministerial Councils.

The final difference under the new regime is not structural, but it is none the less significant. It is the different experience of those participating in the COAG process and intergovernmental relations at a senior level. First, it is very important that the Prime Minister has had significant COAG experience from a State perspective. For five years he represented Queensland on the national secretariat of the Special Premiers' Conferences (which later became COAG).³¹ The Prime Minister is more likely than any of his predecessors to understand State concerns and the frustrations and possibilities of the process. This is not necessarily an advantage for the States, as the Prime Minister will be well aware of their weaknesses and how to exploit them. However, greater understanding is always helpful in achieving an outcome acceptable to all parties.

Secondly, there has been a significant migration of personnel from the State public sector to senior levels in the Commonwealth bureaucracy. Terry Moran, the Secretary of the Department of Prime Minister and Cabinet, came directly from the position of Secretary of the Victorian Department of Premier and Cabinet. There, he was instrumental in the operation of CAF and closely involved in COAG negotiations and the development of the NRA. Roger Wilkins, who has recently been appointed as Secretary of the Commonwealth Attorney-General's Department, is the former Director-General of the Cabinet Office of New South Wales. Rod Glover, who is Prime Minister Rudd's adviser on intergovernmental relations, and Wayne Swan's Chief of Staff, Chris Barrett, both came from the Victorian Department of Premier and Cabinet.³² There are many others who have also made the journey from the States to the Commonwealth. The Berlin Wall between the Commonwealth and the States has, at least temporarily, been breached. The consequence is a better informed Commonwealth government and far more nuanced and sophisticated intergovernmental negotiations.

The new architecture of fiscal federalism

Prior to the 2007 election, the use of specific purpose payments ("SPPs") in Australia's Commonwealth-State fiscal arrangements was the subject of major criticism from a number of sources. For example, Access Economics, in a report to the Business Council of Australia in 2006, argued that where there is joint Commonwealth-State responsibility for a subject, "funding should go to pools that extend to all related programs, rather than being earmarked to specific programs" in order to allow "some discretion as to the allocation within funding pools". It also pointed out that SPPs have previously imposed "excessively detailed and distorting conditions on how the States exercise" their functions, "resulting in overlap, duplication and other inefficiencies".³³ It recommended that the Commonwealth focus on specifying policy objectives rather than inputs and give the States "greater freedom in designing program delivery". It deplored existing SPPs which imposed disincentives to efficiency and inhibited innovation.³⁴

A report on SPPs prepared by the Allen Consulting Group in June 2006 also complained that SPPs:

- tend to focus on inputs and processes rather than outcomes;
- inhibit efficient achievement of desired outcomes;
- give rise to inadequate coordination across related programs;
- involve micro-management and impose excessive administrative burdens at both State and Commonwealth levels;
- compartmentalise Commonwealth funding into narrow uses, preventing the States from adopting the best mix of services to meet the needs of their communities;

- lack incentives for pursuing improvements;
- deny flexibility and inhibit diversity of responses; and
- expose States to disproportionate financial risk and uncertainties about the continuity of funding.³⁵

Even the Commonwealth's own National Commission of Audit, set up by the Howard Government after its 1996 election, recommended that where grants deal with areas of State responsibility they should be general purpose grants, and where they deal with areas of joint Commonwealth/State responsibility, they should be allocated to pools that cover related programs, to allow the States some allocative discretion within funding pools. It also recommended that specific purpose payments should focus on policy objectives and improved accountability frameworks that give the States greater freedom in designing program delivery.³⁶

A report prepared for the Council for the Australian Federation in April 2007 noted that options to improve the operation of SPPs include reforming their operation so that they:

- support the achievement of outcomes agreed by the States and the Commonwealth;
- permit flexibility by focusing on those outcomes rather than on inputs and processes, and by not compartmentalising funding into narrow subjects;
- include incentives to find more efficient ways to achieve the desired outcomes;
- complement and coordinate with other existing State policies to avoid overlap and confusion amongst those who seek to use government services;
- avoid micro-management and the imposition of costly reporting and administration requirements; and
- balance obligations, contributions and risk-sharing.³⁷

Reform of SPPs

Most of these criticisms and reform suggestions have been addressed by the Rudd Government's reforms to fiscal federalism. Its first major reform of SPPs will be to reduce the existing number of 92 SPPs, directed at narrowly defined subjects, to five SPPs that cover the broad areas of health, early childhood education and schools, vocational education, disabilities and housing.³⁸ This will give the States far more flexibility to spend the allocated funds where they are most needed within these broad areas, and averts the inefficiencies of the previous system that compartmentalised funds. It will permit the States to coordinate services better and will reduce the problem of cost-shifting. Some existing SPPs will be turned into general revenue assistance grants "where there are no compelling national objectives associated with the payment".³⁹

Secondly, instead of focusing on inputs and processes, the SPPs will be directed at outcomes agreed with the States and Territories. This is likely to have the effect of supporting innovation and greater efficiency at the State level, as States will have both the flexibility and the incentive to find better ways of achieving the specified outcome. Previously, SPPs were often tied to State inputs, such as a requirement that States make matching grants. The effect of these conditions was to tie up approximately 33 per cent of State budget outlays.⁴⁰ The removal of "matching grant" conditions will give the States greater control over their budgets and the capacity to prioritise their spending commitments in a more rational fashion. The removal of input requirements will also remove much of the administrative burden at the Commonwealth and State level in accounting for inputs and reporting on detail.

The third change is that once the new SPPs are negotiated and adopted, which is anticipated to take place in December 2008, they will have a continuing status. This is in contrast to the previous system under which SPPs expired after five years and States were faced with "take it or leave it" offers for new SPPs. Under the new system States will have greater financial certainty. They will also have better centralised control over grants, with payments being made from the Commonwealth Treasury to State Treasuries in a lump sum each month, rather than the existing system where payments are made under each of 92 SPPs to the different State departments involved.⁴¹ The risk, however, is that the SPPs might not be adequately adjusted to meet changing needs. The Commonwealth has stated that SPPs will be subject to periodic reviews by the Commonwealth and the States to ensure that funding levels remain adequate.⁴² The level of control States have over this review system remains to be seen.

The fourth change is that rather than being forced to comply with Commonwealth conditions at the input stage, States will be accountable to the public for achieving agreed outcomes by way of greater transparency

and the public reporting of State performance. The COAG Reform Council will play a crucial role here in independently assessing the States against agreed performance indicators and reporting the results not only to COAG but also to the public. The States will continue to receive specific purpose payments, even if they don't achieve the specified outcomes. The pressure on the States to perform in the case of SPPs will come from public comparisons and performance assessments which will place electoral pressure on badly performing governments.

Finally, it has been claimed that one of the other aims of the new SPPs is agreement upon "clearly defined roles and responsibilities" to avoid existing problems concerning duplication and the blurring of responsibilities.⁴³ It is not yet clear, however, how this is to come about. As with most of these announced reforms, it remains to be seen whether the new SPPs, once made public, live up to their advance publicity.

COAG's Working Groups are currently negotiating the form of these five new SPPs and a new "Intergovernmental Agreement on Commonwealth-State Financial Arrangements", which will formalise the announced framework and set out the outcomes, performance indicators and funding arrangements.⁴⁴ The draft agreement and draft SPPs will be considered by COAG in October 2008, with finalised arrangements to be adopted in December 2008 and commence on 1 January 2009.⁴⁵

National partnership payments

In addition to the SPPs, which tend to be focused on areas of core State responsibility, the Commonwealth announced a new system of national partnerships in areas which COAG described in March 2008 as "joint responsibility, such as transport, regulation, environment, water and early childhood". This will involve the making of national partnership payments (NPPs). In contrast to the SPPs, the NPPs will be focused more narrowly on particular reforms that the Commonwealth wishes to achieve, including its election promises where they cross into State fields of responsibility, such as the promise of computers in secondary schools.

There are three types of national partnership payments. The first type is the project payment, which will be used to assist the States in delivering specific projects, such as the construction of a highway through AusLink or some other form of infrastructure. This will involve the making of capital payments, in contrast to the SPPs which are largely focused on recurrent costs. Three funds have been established for capital investment, being the Building Australia Fund, the Education Investment Fund and the Health and Hospitals Fund. These funds are to be financed from budget surpluses for capital investment. The States will be able to tap into these funds through national partnership payments.⁴⁶

The second type of payment is the "facilitation payment" which is intended to assist a State to lift its standards of service delivery.⁴⁷ This may involve the payment of capital, where infrastructure is needed to support service delivery, or it may involve payments to support reforms in the way services are delivered.

The main type of NPP, however, will be the "reward payment" which is intended to support the States in achieving reform targets by rewarding States that meet agreed "milestones and performance benchmarks".⁴⁸ For example, there will be a national partnership to fulfil the needs of "low socio-economic status school communities",⁴⁹ and a national partnership to address the needs of indigenous children in their early years.⁵⁰ Success will be measured by the COAG Reform Council against agreed criteria, and the rewards will be paid from a newly established COAG Reform Fund.⁵¹ If a State fails to meet a milestone, its payment may be withheld or commensurately reduced to the level of achievement. The States therefore will have economic incentives to meet the policy outcomes that are being driven by the Commonwealth.

Commonwealth coercion and cooperation

The new intergovernmental regime is certainly more cooperative than the previous regime in some ways. The promised form of SPPs, if given effect, will be less coercive in their nature. They will allow the States greater flexibility to achieve better outcomes for their citizens. The "stick" will be the bad publicity given to poorly performing governments and the electoral consequences that attach, rather than the loss of Commonwealth funding. However, the Commonwealth has maintained its capacity to use its greater financial resources to coerce the States through national partnerships, where "incentive payments" will only be paid if certain "milestones" and "performance benchmarks" are met by the States. If the Commonwealth had truly wanted to relinquish coercion, however, it would have given the States as general payments a sufficient share of

Commonwealth tax revenue to fund their responsibilities adequately. It has chosen not to do so.

The structure of COAG Working Groups also suggests that the Commonwealth seeks to maintain the whip hand in inter-governmental relations. However, it is at least trying to achieve reform through intergovernmental cooperation, rather than making unilateral forays into areas of State responsibility by taking over a hospital here or setting up its own technical colleges there. The focus on structured cooperative reform, while it might still be driven by coercive Commonwealth policy, is still an improvement on the *ad hoc* unilateral exercises of brute Commonwealth legislative and financial power which was the hallmark of the dying days of the Howard Government.

Finally, the total payments made by the Commonwealth to the States, as a percentage of GDP, are projected by the Commonwealth Treasury to be 6.4 per cent in 2008-9,⁵² below the average of 6.8 per cent during the Howard Government, which itself had been criticised as being extremely low. Indeed, once one takes into account the State taxes foregone by the States as part of the GST agreement, the States will be receiving significantly less financial support from the Commonwealth, measured as a percentage of GDP, than they did prior to the GST. Although the States will potentially have greater access to capital funds through the COAG Reform Fund, overall the Commonwealth will retain control of the public purse while the States remain the beggars of the Federation. This result is not beneficial for Australia as a whole. While the Commonwealth has made significant advances, through co-operative means, to alleviate some of the problems that beset the Federation, it still needs to do much more to rebalance the Federation and restore the role of the States to make them true partners in a balanced, effective and productive Federation.

Endnotes:

1. Anne Tiernan, *The Council for the Australian Federation: A New Structure of Australian Federalism* (2008) 67(2) *Australian Journal of Public Administration* 122, 125.
2. Victoria, Department of Premier and Cabinet, *A Third Wave of National Reform – A New National Reform Initiative for COAG*, August 2005.
3. COAG Communiqués, 14 July 2006 and 13 April 2007.
4. This suspension was lifted on 13 September 2007: Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 67.
5. COAG Communiqués, 10 February 2006 and 14 July 2006.
6. John Howard, *Making Australia Stronger*, Address to the Millennium Forum, 20 August 2007, <http://www.liberal.org.au/info/features/economicmanagement.php> [viewed 8 August 2008].
7. Council for the Australian Federation Communiqué, 13 October 2006.
8. *Ibid.*
9. Council for the Australian Federation Communiqué, 9 February 2007.
10. A Twomey and G Withers, *Australia's Federal Future*, Federalist Paper No 1, April 2007.
11. P Dawkins, *The Future of Schooling in Australia*, Federalist Paper No 2, September 2007.
12. A draft report by Ross Garnaut was issued in June 2008, with the final report to be issued in September 2008.
13. COAG Communiqué, 3 July 2008.
14. Council for the Australian Federation Communiqué, 13 October 2006; and COAG Communiqué, 3 July 2008.
15. *Ibid.*
16. Council for the Australian Federation Communiqué, 9 February 2007; and COAG Communiqué, 3 July 2008.
17. The change of government in Western Australia in September 2008 will prove a test for CAF. The new Western Australian Coalition Government could choose to spurn it, but it would appear to be contrary to its interests to do so.
18. COAG Communiqué, 10 February 2006.
19. COAG Communiqué, 14 July 2006.
20. COAG Communiqué, 13 April 2007.

21. COAG Reform Council, *Report to the Council of Australian Governments*, March 2008.
22. COAG Communiqué, 3 July 2008, Attachment A.
23. *Ibid.*
24. *Ibid.*
25. Steering Committee for the Review of Government Service Provision, Terms of Reference, <http://www.pc.gov.au/gsp/tor>.
26. COAG Communiqué, 3 July 2008, Attachment A.
27. Council of Australian Governments Reform Council, *Report to the Council of Australian Governments*, March 2008, p. 2.
28. This is apparently the first time in more than a decade that Treasurers have attended COAG: Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 11.
29. COAG Communiqué, 20 December 2007.
30. Standing Committee of Attorneys-General, Communiqué, 25 July 2008.
31. Geoff Gallop, *The Federation*, in Robert Manne (ed) *Dear Mr Rudd – Ideas for a Better Australia* (Black Inc Agenda, Melbourne, 2008), 42 at 46.
32. Rick Wallace, *Familiar faces solve longstanding problems*, *The Australian*, 28 March 2008.
33. Business Council of Australia, *Reshaping Australia's Federation – A New Contract for Federal-State Relations* (2006), Appendix 2, pp 16 and 18.
34. *Ibid.*, pp 17 and 33.
35. The Allen Consulting Group, *Governments Working Together? Assessing Specific Purpose Payment Arrangements* (Department of Premier and Cabinet, Victoria, June 2006). The points listed above are drawn from statements throughout this report. See also similar points made in: Ross Garnaut and Vince FitzGerald, *Review of Commonwealth-State Funding – Final Report*, (August 2002), pp 70-5.
36. National Commission of Audit, *Report to the Commonwealth Government* (AGPS, Canberra, June 1996), p. 48.
37. Anne Twomey and Glenn Withers, *op. cit.*, pp 48-9.
38. COAG Communiqué, 26 March 2008. See also Wayne Swan, *Modern Federalism and Our National Future*, Address to the 2008 Social Outlook Conference, Melbourne, 27 March 2008.
39. Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 6.
40. Neil Warren, *Benchmarking Australia's Intergovernmental Fiscal Arrangements* (Final Report, May 2006), p. xxxix.
41. Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 16.
42. Wayne Swan, *Modern Federalism for Australia's Economic Future*, Press Release No 17, 26 March 2008.
43. Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, pp 4-5.
44. COAG Communiqué, 26 March 2008.
45. Note, however, that the new healthcare payments are to be implemented by 1 July 2009: Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 6.
46. NPPs will be funneled from these three capital funds through the COAG Reform Fund to the States: Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 18.
47. *Ibid.*, p. 17.
48. COAG Communiqué, 26 March 2008.
49. *Ibid.*
50. COAG Communiqué, 3 July 2008.
51. Commonwealth, *Australia's Federal Relations*, Budget Paper No 3, 2008-9, p. 17.
52. *Ibid.*, p. 9.