Australian Federalism: Rescue and Reform

Over a century later, this summary records some of the major conclusions that emerged in response to important, and often urgent questions about how our system of government can and should continue to adapt—both to the challenges of the present day, and those of the decades to come.

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This summary of the discussion and conclusions was kindly put together by Andrew Podger AO and Dr A J Brown. The Australian Federalism: Rescue and Reform took place at Sir Henry Parkes School of Arts Museum Tenterfield NSW on 23-25 October 2008.

INTRODUCTION

Australian Federalism: Rescue and Reform was a discussion that took place at an important place and an important time in Australian history. Many Australians —and their governments—are asking what can be done in fundamental ways to improve the workings of the nation's systems of governance, not just tomorrow but many years down the track.

The meeting examined some of imperatives for reform of Australia's federal system, from a wide range of different policy and political perspectives. It used this examination to inform a roundtable discussion about how processes for more effectively charting the reform of the federal system can be taken forward.

The event took place in the venue, and coincided with the anniversary, of the famous Tenterfield Oration by Sir Henry Parkes, Premier of New South Wales, on 24 October 1889.

On that date, fresh from a meeting with Queensland Premier Sir Samuel Griffith, Parkes had just changed trains at Wallangarra Railway Station on the Queensland-NSW border. Back in NSW, Parkes took the opportunity of the local reception in Tenterfield—one of his former constituencies—to call for the political cooperation that led to the first successful Australian federation conference in 1890, and the convention that largely drafted the present federal Constitution, in 1891.

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PRIOR MEETINGS & DEVELOPMENTS

The discussion had as its background, important insights from the previous Institute of Public Administration Australia roundtable on federal reform in May 2007. These included the description of Australia's federal system, by Haig Patapan and Robyn Hollander, as 'pragmatic'.

Our present system was established at a particular time in a particular context, but with some explicit consideration of lessons from overseas and from history that might ensure our federal arrangements could continue and adapt to changing circumstances. Australia's federal system has indeed evolved over time, not so much through constitutional change but changing political imperatives and High Court interpretations in the face of new challenges.

However the federal system now has serious problems with responding adequately to internationalisation and changing community expectations, driven by modern communication and technology, while also meeting different needs and preferences of different communities.

Some important ideas emerged from the May 2007 roundtable for better managing current processes of intergovernmental relations, and for reviewing aspects of the roles and responsibilities of existing spheres of government. The then Opposition spokesman on federalism, Bob McMullan MP, announced at the roundtable the establishment of a committee to advise the Opposition on reform.

In April 2008, the Australia 2020 Summit confirmed the importance of improving federal arrangements in order to meet both economic and social policy imperatives. It recorded a wide range of views about the long-term direction of the federal system, but also a substantial degree of consensus about the need to develop new ways of doing government business, particularly through better cooperation, widening the national agenda, and addressing community-level concerns and interests.

There was broad recognition that two broad but opposite directions of reform needed to be included and managed – both increasing power at the centre, and increasing power at the level of community.

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Before and since the Summit, the new national Government has been engaging with the States and Territories to improve cooperation, and some important measures were foreshadowed by the Federal Treasurer and the Secretary of the Department of Prime Minister and Cabinet at the ANZSOG National Conference, 'Making Federalism Work', in September 2008.

TENTERFIELD CONFERENCE

In this Tenterfield conference, on Friday 24th October, Cheryl Saunders borrowed from international literature to suggest that federal reform, whatever shape it might take, should also enhance five characteristics of a good, contemporary democracy:

1. More active participation in public decision-making by all citizens, including women and young people
2. Minimisation of unaccountable bureaucratic power
3. Open and free information about public affair
4. A greater measure of deliberation in public decision-making that seeks mutual justifiability, as an end result; and
5. Maintenance of an open institutional system to enable continued experimentation with political forms.

Throughout much of the day, there was acknowledgement of continuing accretion of power to the national government, driven both by international forces and growing national identity.

However there was also recognition of the need to balance carefully the risks of uniformity, with the ability to meet different needs and preferences of different communities. There was recognition also that Australians often still identify with their State, even if they increasingly identify with the nation. Local and regional identity is also important to many, in some cases having renewed significance. The benefits of increased national involvement in a range of areas including the economy, environmental management and health were confirmed.

Like the 2020 Summit, the conference heard a full range of voices in favour of different forms of federal reform. While most views and discussion focused on the potential for immediate and medium-term improvement, others also supported options—such as abolition and replacement of the States, or the creation of new States—that would require more substantial rethinking of many more aspects of Australian governance.

Those with a preference for fundamental and radical reform acknowledged that, even if this was ever to happen, it was a long-term process that did *not* mean not also working to improve the current federal system in the nearer term.

Across the conference, there was recognition that notwithstanding its expanding roles, there were limitations on the performance and expertise of the national government. However dissatisfaction with the performance of the States was particularly widespread, with strong views that they need to address their capability and democratic systems in a range of areas—including their policy capacity, and capacity to contribute to national agendas.

An even stronger theme was the need to address the resources and capability of local government, and to look to the way all three spheres of government work together to address regional issues—both rural and urban—across fields as diverse as environmental management, human services and health, and economic development.

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TENTERFIELD ROUNDTABLE

The roundtable on Saturday 25th October addressed three major questions:

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- How can collaboration between all levels of government be made effective?
- Beyond collaboration – is there need to review and/or renew the basic framework of Australian governance?
- What are the right processes for achieving and sustaining the necessary reform?

1) COLLABORATION

The roundtable discussed the importance of collaboration between the different spheres of government, and the sustainability—or otherwise—of Australia's current initiatives for federal-state cooperation, under existing institutional arrangements.

The need to improve and institutionalise collaboration amongst Australian governments has been increasingly accepted over recent years, but the arrangements for this need further strengthening.

Participants canvassed what might be done to systematise and increase the accountability and effectiveness of the Council of Australian Governments (COAG) and other intergovernmental processes; and the 2020 Summit idea of a National Cooperation Commission.

While there are underlying forces requiring a stronger national approach to many public issues, a national approach is not necessarily the sole responsibility of the national government. Subnational governments—whether state or local or something in between—can usefully contribute to many national issues and, in many cases, must do so if a balanced, effective and sustainable approach is to be taken to many of the nation's pressing priorities.

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The Council for Australian Federation has helped cooperation amongst state governments and helped to contribute substantially to national policies across a diverse range of issues.

Some additional mechanism is needed, however, to support COAG.

While various models were canvassed, certain functions of this institutional support to COAG were identified:

- an ongoing secretariat
- an open process for developing a transparent forward agenda for the work of intergovernmental bodies
- a repository for Intergovernmental Agreements
- a capacity to help increase the transparency and accountability of intergovernmental meetings and processes
- a capacity for reviewing good practice in intergovernmental forums and agreements
- a capacity for monitoring and comparing performance across jurisdictions.

A structure to address these elements could take considerable advantage of existing bodies, particularly those recognised as 'honest brokers' such as the Productivity Commission.

There is also a need for processes for ongoing engagement with local government. The Prime Minister's agreement to establish the Australian Council of Local Government (ACLG) represents a start. But a practical, manageable apparatus is still needed, which brings collaboration with local government into an integrated national framework with COAG.

An example of this would be to organise the work of the new ACLG through a system of representatives of different types of local governments or regions, identified by local government (akin to a G20 perhaps), sitting behind the work of COAG (akin to a G8 group).

Such structures on their own will not be effective, however. There is a need for leadership at the political and bureaucratic levels, and principles of engagement which involve developing a common sense of purpose around practical agendas, including both consultation with civil society and stronger capacity for quality executive decision-making.

2) BEYOND COLLABORATION – RENEWING THE FRAMEWORK

Collaborating on everything, with everyone, all of the time, is neither achievable nor sufficient to meet the pressures on Australian federalism.

A real need remains to address the roles, responsibilities and structures of the different spheres of governance.

While some would prefer radical restructuring, such as through the abolition of the states, there was widespread agreement that we need to be able to put the 'wheat in the truck', and address some of the more pressing concerns quickly.

(a) Local Government

High on the list of priorities is reform to strengthen the roles, authority, resourcing and accountability of local government.

This would be facilitated by recognition of local government in the Commonwealth Constitution.

Australian Federalism: Rescue and Reform Roundtable participants at Wallangarra Railway Station

However it also requires action to review and redress problems of vertical and horizontal funding arrangements, including the rapidly developing crisis of infrastructure, as well as mechanisms for ensuring performance reporting and better accountability.

Strengthening local government need not involve replacing state-based legislation and oversight.

Reviewing Commonwealth-State roles and responsibilities is also a priority . . .

(b) Regional Arrangements

This local government agenda needs to be pursued in a way which also helps to improve regional planning and management, not only by local governments but also by State and Commonwealth governments.

While the idea of new state governments was supported by a number of participants, there was widespread support for early action to rationalise and strengthen the current, ad hoc and messy approach to regionalism, including reconsidering the importance of place management in the planning and delivery of all government services, particularly environmental and human services.

In consultation with local and regional communities, State governments should more clearly define regions that are useful for most planning processes, while Commonwealth agencies should work more closely within such regional planning frameworks, and local governments should collaborate on this basis also.

(c) Commonwealth-State Responsibilities

Reviewing Commonwealth-State roles and responsibilities is also a priority – even though there are many benefits in shared and contested responsibilities, if well managed.

The discussion recognised the strength of the call for a review of roles, responsibilities, finances and structures at all levels of governance, from the 2020 Summit. Many participants felt there was indeed a pressing need for a broad reappraisal of the state of the federal system, including the relevance of and need for each sector of government at each level.

More research, study and public discussion are needed on a case-by-case basis to determine appropriate shifts in responsibilities (as discussed below). However there was broad support for the principle of 'subsidiarity' to be used to drive a more informed distribution of responsibilities between all spheres of government.

A clearer, broad understanding of the core roles of the three levels of government would assist accountability, and limit short-term political grandstanding and blaming between governments.

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Sir Henry Parkes School of Arts Museum

This process of reappraisal should recognise the likelihood of further increases in national responsibilities, some of which should be made more firmly the responsibility of the federal government. Such a shift would be consistent with the subsidiarity principle, recognising the increasingly national nature of community interests in a number of economic, environmental and social matters.

Areas within which changes are most likely to be required include economic regulation, natural resource and environmental management—in particular, issues such as the Murray-Darling Basin—and the health system. In some areas, the need for reform is urgent.

A first step—consistent with the reform processes discussed below—would be for COAG to issue a paper which describes in broad terms the current distribution of roles and responsibilities, across all levels of governance including local and regional levels, to inform public debate and to better identify problem areas.

3) PROCESSES FOR REFORM

Pending clarification of the nature and scale of the reform agenda, it is not possible to determine the detailed process for achieving the necessary reforms.

However a two-track process is needed to ensure early action in priority areas, while also facilitating development and implementation of a longer term agenda for reforming Australia's systems of democracy and public administration.

Both tracks will require some 'institutional grunt' if worthwhile and lasting reform is to be achieved.

The First Track

The first track requires some form of National Cooperation Commission—perhaps a reasonably lean organisation to support COAG, but with capacity to also deliver the other institutional needs identified earlier.

Such a body would augment existing bodies such as the COAG Reform Council, with its primarily *ex post facto* performance monitoring role, by helping strengthen the capacity for and quality of intergovernmental cooperation itself. It would also draw on the Productivity Commission and other bodies to provide the evidence-base to permit informed debate within COAG and amongst the public about areas in which greater collaboration is needed.

The first track should also involve some substantial moves to formalise and empower local government, including to support regional governance, by:

- recognising and enhancing the role of local government, both in the federal Constitution and in national intergovernmental arrangements; and
- better coordinating governance capacity-building and strengthening cooperation at the regional level, in most States.

The Second Track

The second track requires initiatives to address more systemic, structural improvement of the federal system—in a manner consistent with strengthening Australian democracy.

The discussion noted the varying ideas for reform processes and institutions put forward by different streams from the 2020 Summit—including the idea of a Federation Commission to conduct a two-year audit of roles and responsibilities, or a multi-step process of an expert commission, people's convention, and implementation via intergovernmental collaboration and constitutional change.

A more refined, and perhaps more feasible approach to this task would involve four stages:

1. A stocktake, perhaps sector by sector, describing the current arrangements under the federal system, and identifying the strengths and weaknesses of these arrangements.

   Many of the methods or techniques needed for such analyses are already proven, through the work of long-standing bodies such as the Productivity Commission or more recent bodies like the Health and Hospitals Reform Commission. However a more comprehensive stocktake, conducted systematically across a range of policy areas, requires additional, ongoing institutional support.
2. Exposure of the results of the stocktake to a 'limited convention' of governmental, business and community stakeholders, to assess the adequacy of current arrangements and identify broad directions for reform. This would form the basis for subsequent broader public participation and processes of deliberative democracy.
3. On the basis of (1), modified by feedback through (2), the development of options for reform—especially options for improvement to roles and responsibilities.
4. Exposure of the options to a convention of the people, for variation and adoption, followed by implementation through a mixture of legislative, administrative and collaborative processes—and where necessary, through constitutional reform.

For these reform processes to work, on both tracks, it was recognised that political bipartisanship is required.

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CONCLUSION

Participants at the Roundtable were keen to see the report of their deliberations delivered to all sides of politics, to all spheres of government and made available publicly, in order to help maintain the momentum for reform.

Notwithstanding some important differences of view, there was broad agreement on many substantial issues that could complement the current COAG agenda and lead to sustained improvements in Australian governance and the delivery of efficient and effective public services.