2. Does federalism work?¹

The Hon John Brumby MP, Premier of Victoria

Does a system of government drawn up at the end of the nineteenth century and activated at the dawn of the twentieth century still have currency in the twenty-first century?

In a word: yes. Federalism does work. It is a robust and flexible system that has stood the test of time and made us one of the world's most stable democracies. It is an efficient system that, according to analysis done for the Withers and Twomey report *Australia's Federal Future*, boosts our per capita GDP by 10.5 per cent—or \$11 402 per household—through the greater efficiencies of political and fiscal decentralisation.

But, it needs to be said, there is room for improvement. Given the size and scope of challenges Australia faces—such as climate change, the rise of the BRIC economies (Brazil, Russia, India and China) and our ageing and growing population—we need to make federalism work better.

Federalism needs to change to adapt to our changing circumstances and benefit the community. For instance, Withers and Twomey found that if Australia went further with fiscal decentralisation—in line with the best federal practice of Canada, Germany and Switzerland—average annual incomes would increase by \$4188.

However, in changing, we must resist the temptation to go back to the future—and re-litigate the old arguments of state versus Commonwealth. For instance, the question of who holds the financial levers is well and truly settled.

As our second Prime Minister, Alfred Deakin, accurately predicted in 1902, 'The rights of self-government of the states have been fondly supposed to be safeguarded by the Constitution. It has left them legally free, but financially chained to the chariot wheels of the Commonwealth.'

Equally, it would be a mistake to confuse the Commonwealth's fiscal power with constitutional power. As Sir Henry Winneke, the former Governor and Chief Justice of the Supreme Court of Victoria, said in 1965:

As a consequence of our federal way of life, based as it is upon a division of powers between Commonwealth and state, there is no absolute sovereignty in Australia. Citizens who value their individual liberties may see in this an effective safeguard against the development of...a new despotism.

In other words, no Australian government operates in isolation. Every Australian government—be they state or territory or Commonwealth—has an equal share in our federation. And that egalitarian and quintessentially Australian approach to federalism is the best way to deliver the policies and investments we need to meet the challenges of our time, secure Australia's productivity, sustainability and liveability and deliver the Australian people the opportunities they deserve.

Victoria's reform record

I have spoken many times about what needs to be done to make federalism work better. For instance, in April 2005, I delivered a speech to the Melbourne Institute that laid out the framework for what became the National Reform Agenda. I said Australia needed:

- a new model of cooperative federalism
- a national effort to improve competition and regulation
- greater investment in world-class infrastructure
- a national target for boosting workforce participation
- a national approach to Australia's growing population.

The last time I addressed ANZSOG—in February last year—I spoke about how cooperative Commonwealth–state relations were crucial to meet the reform challenges. The quote from me that features on today's program is taken from that speech: 'New solutions, new reforms and a recommitment to co-operative federalism are crucial to meeting the challenges facing our country.'

More importantly, those words have been backed with action. Victoria has not just developed the National Reform Agenda, we've:

- quadrupled infrastructure spending
- led the nation in regulatory reform
- and led the nation in skills training and jobs creation.

In the past month, we've launched a major innovation statement to drive new economic growth, and a major skills statement to boost jobs training. Securing Jobs for Your Future is a \$316 million reform package that will give 172 000 Victorians the opportunity to train, retrain or boost their qualifications, as well as transforming the skills base of our workforce and boosting productivity and labour-force participation.

We will shortly release a manufacturing statement to drive innovation and investment across the sector. And, at the end of 2008, we will release a landmark transport statement that sets out how we will expand Victoria's transport network.

We understand the importance of innovation and reform. That's why—despite a two-tiered economy and a global economic slowdown—Victoria is, according

to *The Age's* reading of the latest National Accounts figures, the 'surprise engine room of the Australian economy', contributing almost half of the nation's growth in domestic demand.

However, the size and scope of the challenges we face are too great for any one level of government to tackle on their own. That's why we need cooperative federalism.

Cooperative federalism

The past 10 months demonstrate what can be achieved if all the stakeholders work together. Since the election of the Rudd Government, COAG has met three times: in December 2007, then in March and July 2008.

The December 2007 COAG meeting saw the Prime Minister, premiers and chief ministers commit to:

- a blitz on elective surgery waiting times
- a national partnership to close the gap in life expectancy that exists between Indigenous and non-Indigenous Australians.

The March 2008 COAG saw the Prime Minister, premiers and chief ministers:

- agree to draw up a new model for federal financial relations—with the priority being modernising Special Purpose Payments and developing National Partnership Payments
- agree for the first time on a common framework for the reform of education—including early childhood development, schooling, skills and workforce development
- sign a historic memorandum of understanding for the reform of the Murray-Darling Basin to restore the environment and ensure sustainable agriculture in the future.

The July 2008 COAG meeting agreed to a major overhaul of overlapping and inconsistent regulations that will make life easier for business and consumers and usher in a seamless national economy. And we have—in July and September 2008—seen the release of draft and supplementary draft reports by the landmark Garnaut Climate Change Review, with the final report to be released on 30 September 2008.

The Garnaut Review was initiated by the states and territories through the Council for the Australian Federation in February 2007. The Council for the Australian Federation complements COAG by providing a forum for new policy innovations such as committing to improve vehicle safety standards to ensure new vehicles are safer and that the benefits of new technologies are realised.

Of these COAG reforms the one with the highest profile was the agreement on the Murray-Darling Basin. This was a reform first discussed in 1901, and

earmarked again for reform by Paul Keating in 1996 and John Howard in 2006. It was only when the issue was approached as an exercise in cooperative federalism that real progress was made—with an agreement reached in less than six months.

There's another point about the Murray-Darling that needs to be made. There was a perception that the magic solution for the Murray-Darling was to give the Commonwealth total control over the Murray-Darling Basin. Not only was this scenario constitutionally impossible, it was environmentally nonsensical.

The fact is that federalism can't make it rain—and only rain will make the Murray-Darling Basin bloom. If the Commonwealth had been running the Murray-Darling before the drought, the basin would still be in dire straits.

The new agreement is a good outcome for the Murray-Darling and demonstrates what can be achieved when governments work together. And the year's still not over.

COAG will meet again in October and December 2008, with major discussions on the agenda for the new Carbon Pollution Reduction Scheme and a complete rewriting of federal–state financial relations, with 90 former Special Purpose Payment agreements collapsed down to five and a set of new National Partnerships to deliver incentives for agreed reform outcomes.

The COAG working groups are also developing a substantial agenda for reform, including 27 areas for rationalisation of regulation. I can honestly say that, in 25 years of public life as a federal and state parliamentarian, I have never seen the Commonwealth, states and territories work together with such focus and with such positive outcomes. Put it this way:

- with the Keating Government, COAG's first five meetings were held over a period of three-and-a-half years
- with the Howard Government, its first five COAGs were held over five years—and its last five over two years
- with the Rudd Government, by December 2008, the past five meetings will have been held over 12 months.

Since the last federal election, the COAG process has doubled in frequency—and intensity. But we need to do more.

Making federalism work better

As I said earlier, Australia is facing enormous challenges. Our global economy is changing rapidly, with the emergence of Brazil, Russia, India and China. Our environment is changing rapidly, with the drought and climate change. And our community is changing rapidly, with our rapidly growing and ageing population.

Not only that, the challenges we face are all interrelated. That's one of the lessons of climate change: the way we live and work has an impact on the world in which we live. Everything is connected.

The great challenge we face as a nation is to change the way we live and work for the better—to improve our sustainability and productivity and create a fairer and more liveable community. And the best way we can do that is for governments of all jurisdictions—no matter where they sit in the electoral cycle, no matter what their political persuasion—to take decisive action and take that decisive action in a coordinated manner.

We need to turn what's been a year of action by COAG into a decade of action and national reform. And, to do so, we need to elevate the status of and clarify the agenda of COAG. COAG has always been a forum for national progress. Its purpose—when first established in 1992 by the Keating Government—was to coordinate and focus the authority of the heads of governments, improve intergovernmental relations and drive microeconomic reform.

But COAG has no constitutional or legislative standing, and its secretariat is an appendix of the Department of Prime Minister and Cabinet. And the COAG Reform Council operates based on an intergovernmental agreement that sets out broad objectives and functions, but with no clear powers or independence. The current status and structure of COAG is outmoded. Just as we are modernising federal finances, we need to modernise what is, in effect, federation's cabinet of first ministers.

With that in mind, I am here calling for COAG to be underpinned by a new intergovernmental agreement—with the role and governance of the COAG Secretariat formalised. This agreement should require:

- regular meetings of COAG
- an effective and independent secretariat
- the right for states to place items on the agenda.

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.

A new intergovernmental agreement would:

- reflect that COAG is an equal partnership between all levels of government
- set out COAG's vision and objectives
- have a strong emphasis on joint accountability and direct all Australian governments to meet high performance benchmarks
- provide flexibility for COAG to adapt and evolve

- make COAG transparent to the community—using plain language that all Australians can understand
- drive the cultural change required to support a mature federalism.

I am also calling for the drawing up of a comprehensive forward plan for action by COAG—tackling key social and environmental challenges and the tighter global economy with short, medium and long-term targets.

Australia faces serious challenges to its diverse economic foundations—particularly in the area of manufacturing skills and self-reliance. We need to find new opportunities for export markets, import replacements and to expand into the growth markets of the future.

Over the next decade, it's likely that Australian governments will spend more than \$10 billion buying new trains to provide for the significant shift back to public transport as petrol prices rise. There is an opportunity for COAG to show leadership in procurement and industry development by coordinating the purchase and assembly of new rolling stock and maximising the benefits for Australia from this massive investment.

Australian manufacturing already makes everything from family sedans to naval frigates. There's no reason why we shouldn't be also involved in the manufacturing and assembly of trains.

And when it comes to equipping the next generation of Australians with the skills and education they need to make their way in the world, we need to look to the value of a place-based approach to education.

In areas of disadvantage and underperformance, this will mean breaking down the barriers between state and federal government funding arrangements, as well as between government and non-government schools.

Such an approach could deliver stronger partnerships with clear goals, so that all children in a targeted area—whether in a government or non-government school—could experience an even better education.

This approach is being driven in Victoria through the Education Blueprint our government released in September 2008, which is based on our solid belief that every Victorian child deserves every opportunity in life.

Reform of ministerial councils

Another area for significant reform is the plethora of ministerial councils. We need to look at ways to rationalise their number in order to foster interaction between areas—such as natural resources and primary industries, early childhood development and school education. And we also need to strengthen their effectiveness so that they retain a clear focus on resolving issues within deadlines.

Currently, there are 31 separate ministerial councils. Those councils are expensive to run, often have overlapping responsibilities and consume too much time for too little outcome. Different jurisdictions have different portfolio arrangements, sometimes leading to confusion and large entourages at council meetings. Some ministerial councils now have statutory functions or decision-making powers that can create ambiguities.

Over the past year, the reform task has been given to a small group of COAG working groups, chaired by federal ministers, and these have achieved a great deal. However, the accountability of COAG working groups could be improved and there is a mismatch, with the states represented at an officer level and the Commonwealth at a ministerial level.

The review of the COAG working groups due at the end of 2008 is an opportunity to simplify the system. That review should also extend to a consideration of the relationship between the working groups and our 31 ministerial councils. In my view, the review should focus on the merger of the working groups and ministerial councils and a net reduction in the number of councils—perhaps to less than a dozen covering major portfolio groups.

It should also consider the relationship of the ministerial councils to COAG—including clarifying the role of COAG in being the final arbiter of disputes, with power to cut through deadlocks that have repeatedly arisen to slow the pace of reform.

The outcome of the review should be reflected in the intergovernmental agreement. In short, we need to foster a federal culture that encourages harmonisation and innovation without imposing uniformity.

Clarifying overlapping responsibilities

There have also been recent calls for the transferral of various state responsibilities holus-bolus to the Commonwealth, with unsubstantiated claims about potential savings. Those claims don't stand up to scrutiny. As the Withers and Twomey report found, the federal system of government is more efficient and flexible than the unitary system, with more transparency and less corruption.

Unitary states in 21 OECD countries employ nearly 11 per cent more public servants than federations. Public spending as a proportion of GDP is also 13 per cent higher in those OECD countries with a unitary system of government.

That's why, internationally, the trend is towards developing a more federal style of government that is able to juggle the competing demands of globalisation and local communities.

Yet, in Australia, federalism seems to be a scapegoat. The Withers Twomey report found that many of the arguments against federalism were based on misconceptions and false assumptions, such as that it was incompatible with

globalisation, too costly, had one tier of government too many and promoted buck-passing and conflict.

As the Withers Twomey report says: ‘There are many popular myths in Australia concerning federalism that are not borne out by the evidence...Australian attitudes towards federalism are out of step with those in the rest of the world.’

In this hyper-critical climate, it is easy to lose perspective. There is a double standard when it comes to measuring the relative performance of state and federal governments. Why is it that whenever a state government is perceived to have failed it is, inevitably, seen as proof that the states should be abolished? That’s like arguing that the Commonwealth should be abolished and Canberra turned back into a sheep paddock because the Howard Government mishandled the \$1 billion Seasprite helicopter project.

Historically, many reform initiatives were first proposed and trialled by state governments. For example, new approaches to social and environmental policy were trialled by the Dunstan and Hamer Governments and public sector reform was introduced by the Cain Government and adopted Australia-wide.

The states also ensure the voices of regional communities are heard and their interests represented in Canberra.

The point I am driving at is that we need to set aside our myths and preconceptions of federalism and focus on the reality, such as sorting out overlapping responsibilities. Clarifying responsibilities is one of the most practical actions we can take to make federalism work better, but there are no easy solutions. Recent discussions have highlighted how hard reform within a federal system can be at the practical, day-to-day level.

Let me be clear: I am not an advocate of a grand exchange of responsibilities. Instead, I want to see governments work together on areas where there are strong overlaps in responsibilities so that we can present a seamless service to the public. Four areas where we could start—as part of the new funding agreements currently under negotiation—are:

- aged-care services and disability services
- universities, TAFE and apprenticeships
- early childhood development services and child care
- hospitals and Medicare-funded primary health services.

Conclusion

In conclusion, let me leave you with a thought. Right now, most federations are working towards subsidiarity—shifting the focus of government decision making to a more local level. Globally, Australia is an exception to that rule: rather than becoming more localised, we are becoming more centralised.

The new Chief Justice of the High Court of Australia, Robert French, characterised the trend somewhat fatalistically in a speech in August 2008 when he said:

Despite the benefits of co-operative federalism the wide range of its application may have an overall tendency to define as national that which was once local. A shrinking federation will continue to shrink. The logical outcome is the singular state of a unitary federation. That is the federation you have when you do not have a federation.

It is in our national interest to resist a slide into a 'Clayton's' federation—because cooperative federalism is the system best able to juggle the competing global and local demands of the future.

The challenge ahead of us is not to make federalism work—but work better.

Over the past nine months we have seen what can be achieved through cooperative federalism, with the states and the Commonwealth working together to:

- target elective surgery waiting times
- create a seamless national economy
- secure a historic agreement on the Murray-Darling Basin
- close the gap in life expectancy between Indigenous and non-Indigenous Australians
- draw up a new model for federal financial relations
- agree to a common framework for education reform
- establish the building blocks of an emissions trading scheme.

The new actions I have suggested here propose an even broader vision for cooperative federalism, with the prospect of further real and tangible gains for the nation. At this time of economic, social and environmental challenges, we need to take the next step and ensure that the performance of our federation is up there with the very best in the world.

ENDNOTES

¹ This essay was originally presented as a keynote address at the ANZSOG Annual Conference on 11 September 2008.