

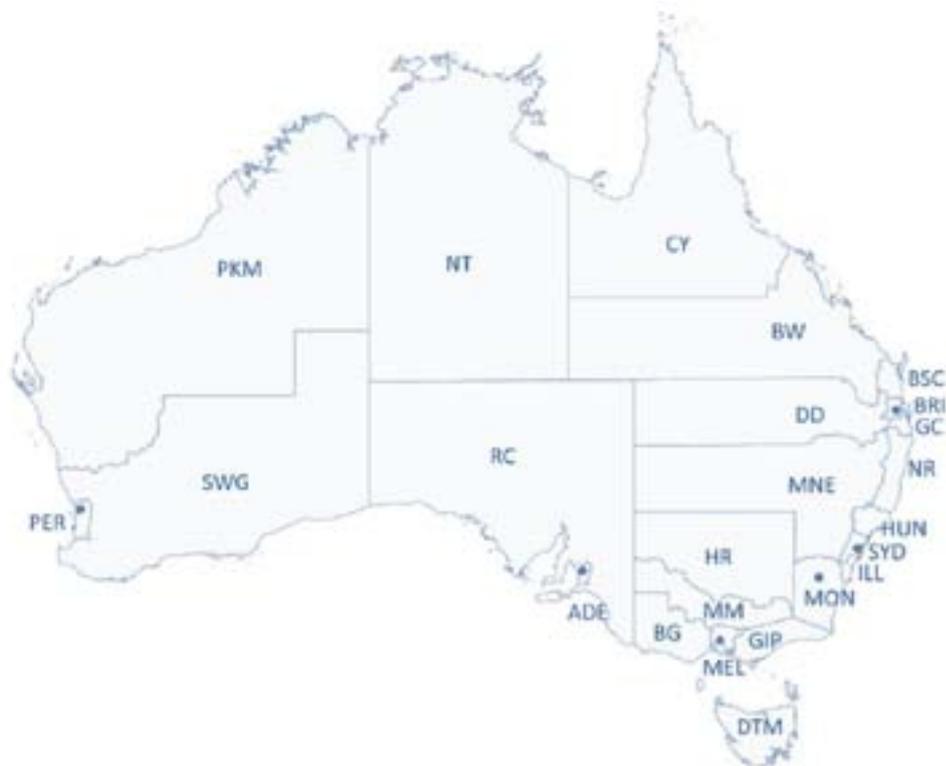


A New Federation with a Cities and Regional Approach

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A controversial contribution to the ongoing
debate about changing Australia's political
structures, identifying the projected benefits
to our economic wellbeing.



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I dedicate this paper to my wife and soul mate, Judith, our children, Sarah, Jeremy and Simon, and our grandchildren, Ethan and Rose Abigail. Without the love, support, balance and stability of my wonderful family, my APS career just would not have happened.

After 41 years as a member of the Australian Public Service (APS), most of it in the Australian Treasury, I have written this paper entitled *A New Federation with a Cities and Regional Approach*, with the objective of adding to the overall debate over the future of the Federation that remains at the heart of the democratic governance of our great nation.

In writing this paper, I have tried to take a longer term view, and to bring to bear the knowledge and experience accumulated during my APS career. In this regard, I want to give special thanks to the former Secretary to the Treasury, Ken Henry, whose inspirational leadership encouraged me to think with vision about our nation, in order to enhance the wellbeing of the Australian people.

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In writing this paper I have been inspired by the words of the late Robert Kennedy, Senator from New York, former US Attorney General, and slain 1968 candidate for the Democratic nomination for the US Presidency, who often said "*Some men see things as they are and say why? I dream things that never were, and say why not.*"

Richard Murray
February 2012

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a new federation with a cities and regional approach

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CHAPTER ONE: INTRODUCTION

The Federation is the cornerstone of the Australian nation and at the very heart of our constitutional democracy, both historically and culturally. However, it is increasingly not working well and needs updating and modernising. The balance of power within the Federation has shifted increasingly to the centre, with an accompanying degree of resentment and distrust by the States and Territories. The roles and responsibilities of the tiers of government have become confused and unclear, and the co-operation and collaboration of recent decades is badly faltering. Importantly, the delivery of policy outcomes to local communities is sadly lacking, and becoming increasingly characterised by duplication, confusion and ineffectiveness. Moreover, the States and local governments no longer have the wherewithal, especially revenue sources, to deliver on the tasks assigned to them. Out of all of this, the period of great economic reforms is now under serious threat of grounding to a halt, with a lack of political and community purpose to progress efficiency and productivity in order to enhance the wellbeing of all Australians.

This paper sets out to address these multiple, overlapping and interacting problems by proposing a complete restructuring of the Australian Federation to a new governance model, based on two tiers of government rather than three, and with clearly designated roles and responsibilities between these tiers.

- The Federal Government would concentrate on designing, negotiating and legislating strategic national policy and the overall financing frameworks of that policy.
- The cities and regional governments would concentrate on delivering the programs and services emanating from those national policies to citizens and communities at the local level, whilst also retaining full responsibility for their own policy and administration of urban, regional and local issues.

The restructuring of the Federation, as proposed in the paper, would bring a feasible and more efficient balance between the tiers of government, that recognises the realities of Australia in a globalised world and that could lay the foundation for significant economic, social and environmental reforms.

Chapter Two of the paper sets out the need for constitutional redesign, the details of the proposed restructuring of the Federation and the likely reforms required of the Constitution. It includes inserting provisions that would set out the structures and incentives for a more cohesive and workable Federation, including having clearly defined roles and responsibilities for the two tiers of government. It also articulates the roles and objectives of the Council of Australian Governments (COAG), as the platform for linking the two layers of government to achieve a significant reform agenda. The proposed Constitutional model articulates a workable basis for a new Federation by seeking a balance between the principles of nationhood and co-operation, subsidiarity, structural efficiency, and accountability and fiscal equivalence.

Chapter Three sets out the framework that could be built as an integral part of the constitutional reforms to ensure a credible and comprehensive fiscal framework on which to base the new Federation, including the framework for a national fiscal strategy and significant reforms to the revenue sharing powers between the two tiers of government, as well as the necessary reaffirmation of the role of monetary policy and financial sector supervision in this overall framework.

Chapter Four makes proposals for the structure, roles and responsibilities, and incentives that would be conducive to attaining an ambitious microeconomic reform agenda across the whole spectrum of structural policy issues. As such, the paper seeks to make the case for constitutional reform and a new Federal governance system on the basis that such changes would present enhanced opportunities for Australia to achieve the sorts of economic, social and environmental reforms necessary to maintain and enhance our place in a rapidly changing and globalising world.

Finally, Chapter Five sets out the conclusions reached from the proposals and analysis contained in the paper and highlights the seven fundamental drivers for change where the proposed new Federation and its constitutional underpinnings could be conducive to capturing the benefits of productivity, efficiency and growth, as well as co-operation, accountability, sustainability and service delivery, that would enhance the overall wellbeing of the Australian people and that could endure over the longer term.

In proposing such a radical constitutional restructuring, this paper clearly acknowledges in Box 2.2 that achieving such a restructuring may take some time and much persuasion, particularly to gain bipartisan support at both Federal and State levels. The major issue would be to address seriously the possibility of abolishing the States. Some would view the proposals in this paper to move from three tiers of government to two tiers as being almost impossible to achieve, even over the longer term. However, using the constitutional model as set out in this paper as the benchmark, it is possible to work through various alternatives to the full implementation of the two-tiered governance approach, that still seek to achieve significant elements of both constitutional and economic reform on a cities and regional basis. One such alternative of maintaining three tiers but having twelve States and a significant consolidation of local government, is set out in the Addendum to this paper. It is hoped that the Addendum will serve to engender a lively debate on the range of possible reforms that could be achieved as part of a more near to medium term agenda.

CHAPTER TWO: CONSTITUTIONAL REFORM

This chapter sets out the need to undertake comprehensive constitutional reform, as well as the details of the proposed restructuring of the Federation and the likely reforms required of the Constitution. It includes inserting provisions that would outline the structures and incentives for a more cohesive and workable Federation, including having clearly defined roles and responsibilities for the two tiers of government, and articulating the roles and objectives of the COAG, as the platform for linking the two layers of government for achieving a significant reform agenda. The Chapter also sets out the details of the delineation of the proposed cities and regional areas of the second tier of government. There is also included an outline for a National Judicial System that would be needed, as the third pillar of governance for the new Federation, alongside the other two pillars — the Executive and the Legislature. The constitutional model, as proposed, seeks a workable balance between various principles of federation as the basis for a new Federation.

THE NEED FOR CHANGE

The Federation has served Australia well for the past 110 years. It has great attributes that should be preserved. It has brought unity while preserving diversity. It has brought political and social stability and democratic vitality with nine competitive but collaborating jurisdictions. It has brought economic progress and financial stability. The alternatives of a unitary State or a loose confederation are not even worth contemplating especially given our culture, traditions and historical context.

While the Federation isn't broken, it is increasingly not working well and needs updating and modernising. It has shortcomings probably not contemplated by the founding fathers and certainly not conducive to the 21st century. The balance of power within the Federation has shifted increasingly to the centre, and that is probably the reality of Australia as a modern globalised economy and society. The roles and responsibilities of the tiers of government are confused and unclear, and the delivery of policy outcomes to local communities is sadly lacking. Economic reforms are faltering, despite the best efforts at collaboration, and the States and local government no longer have the wherewithal, especially revenue sources, to deliver on the tasks assigned to them.

In looking at how to address these problems through constitutional reform, an overarching objective should be to seek to open up opportunities for Australia to embed a new set of institutions, processes and incentive structures for policy making that would be conducive to capturing the benefits of productivity, efficiency and growth, as well as co-operation, accountability, sustainability and service delivery. This would enhance the overall wellbeing of the Australian people. In particular, constitutional reform needs to address:

- How to equip the nation with a federated governance structure that would best suit Australia as a highly developed nation competing in a globalised world, with a need to move as soon as possible to a single market economy covering the whole Australian continent.
- How to recognise in any reformed Constitution the realities of increased centralised power in modern Australia while preserving decentralised elements that keep in check concentrated power, and preserve choice, diversity and competition as vital elements of the Federation.
- How to decide on the number of layers of government Australia needs as a sparsely populated, but highly urbanised, nation continent, that would best deliver services to

urban, regional and local communities, and bring major efficiencies to public administration.

- How to allocate clearly defined roles and responsibilities between the tiers of government while holding each tier fully and transparently accountable for their performance in carrying out their designated tasks, even where it is judged best to have shared responsibilities.
- How to build structures, processes and incentives into the Federation that will maximise collaboration amongst diverse and competing interests on major economic, social and environmental reforms, in the national interest.
- How best to allocate taxation powers that will significantly reduce vertical fiscal imbalances and equip the subsidiary layers with the resources they need to carry out their constitutional role in the reformed Federation.

PROPOSED CONSTITUTIONAL REFORM MODEL

In an attempt to address these issues, this paper argues that the proposed restructuring of the Federation to a cities and regional basis would bring a more efficient balance between the tiers of government, that recognises the realities of Australia in a globalised world. The paper doesn't argue for a dismantling of the Federation, and recognises the clear benefits that the Federation has delivered to the nation. However, it argues that the Federation needs to be revamped and repaired. There needs to be injected into the Constitution factors that would result in a rebalancing of the powers between the tiers of government and address the trade-offs to bring that rebalancing about. This would include moving the Federation towards a more centralised model, but at the same time strengthening the decentralisation elements of the Federation under the second tier of government so that it can deliver appropriately to the citizens and communities of our cities and regions.

The Australian Constitution covers important provisions on the role of the Governor-General, the Commonwealth Parliament and its powers, the Executive Government, the Judiciary and the States. Most of these provisions would need to be substantially revamped in order to move to a two-tiered constitutional model.

Under the proposed redrafting of the Constitution, the Federation would be redesigned, with the States and Territories, and local government, abolished and a new two tier system of government established, as follows:

- **The Federal Government** would have defined powers over major areas of national significance and importance. Any residual powers would also reside with the Federal Government.
- **At the cities and regional government** level, there would be five City Councils and nineteen Regional Councils with powers, as delegated from the Federal jurisdiction, over the delivery of significant national policy programs and services to local communities. In addition, they would have prime constitutional responsibility for their own policies and programs relating specifically to urban, regional and local issues.

The respective roles between the Federal Government and the City and Regional Councils would be clearly defined under the new Constitution. Constitutional powers would still be set out under major 'subject' headings. Under the constitutional model as proposed in this paper, the allocation of these powers between the Federal jurisdiction and the cities and regional jurisdictions would be determined against the following two principles:

1. Powers of national strategic significance should be allocated to the Federal jurisdiction: national strategic significance would include powers central to the good governance and security of Australia as a sovereign nation, such as foreign affairs and defence; powers over issues relating to our place in the globalised world such as national economic management; powers over areas of national strategic policy importance that need to be applied on a nationwide basis, such as education, health and social welfare; and powers over issues that have multi-jurisdictional implications, such as water and the environment.
2. Powers of urban, regional and local relevance should be allocated to the city and regional jurisdictions: these powers would essentially relate to issues that are contained within these jurisdictions with no multi-jurisdictional spillover effects, or they are issues that are contained within the relationships between neighbouring jurisdictions only, such as public transport, urban infrastructure, and town planning.

Within these ‘subject’ powers, roles and responsibilities could then be allocated on a ‘functional’ basis. The Federal Government would be tasked to concentrate on national policy design, legislative frameworks and financing regimes. The City and Regional Councils would be tasked with implementing and delivering these national policies and programs, as well as their own policies and programs, at the urban, regional and local levels.

To give effect to this constitutional model, roles and responsibilities would be defined under one of the following three categories, as tabulated in Attachment A.

- **Federal Powers:** over major areas of national policy where both policy and administrative delivery would clearly rest with the Federal Government, such as foreign affairs and defence, national economic management, business and financial regulation, industrial relations, resources, energy, water, postal services and communications.
- **City and Regional Council Powers:** particularly covering urban, regional and local issues such as public transport, urban infrastructure, town and regional planning, urban development, and community and municipal services.
- **Shared Powers:** where policy and legislation would constitutionally rest with the Federal Government but where flexibility provisions under the Constitution would require periodic agreements to be made between the two tiers of government for program and service delivery as delegated to the City and Regional Councils, with funding shared where appropriate. Important powers here could include education, health, social welfare, immigration, land use management and the environment. How such delegated arrangements would work in practice would be left to negotiation in the particular circumstances. Even though responsibilities would be shared, the negotiated arrangements would obviously need to build in accountability and performance mechanisms for each level of government.

With any changes to the Constitution, there can be no guarantee that the roles allocated to each tier of government will remain relevant forever. However, in the current circumstances, and the likely circumstances unfolding for the 21st century, the allocation of powers as proposed above would be far more workable and relevant for Australia as a modern nation than the division as handed to us by the founding fathers. Clearly, however, defining roles and responsibilities isn’t meant to be a magic cure-all, but just one element of the needed constitutional reform package. The proposed allocation of powers between the two tiers of government would assist in avoiding disputes, but it wouldn’t end the need for High Court

interpretations, which after all have an important fundamental role to play in the living evolution of the Federation.

Revenue powers would also be clearly divided between the two tiers of government. The Federal Government would have direct constitutional power for raising personal and business income taxes, customs and excise duties, and resource taxes. The City and Regional Councils would be constitutionally empowered to raise consumption taxes, land taxes and congestion taxes under nationally agreed regimes covering these taxes.

BOX 2.1: POSSIBLE WIDER CONSTITUTIONAL REFORM

Any constitutional amendment process would be a major and lengthy event, and may or may not coincide with any future move to an Australian Republic. Whether or not we move to being a Republic, the head of state, not being the head of government, would presumably continue to have the vested powers of Executive Government, but to act, in the main, on the advice of his/her Ministers in Executive Council. Any constitutional revamping could usefully clarify the reserve powers of the head of state currently defined by convention. It is clear that the Governor-General has important reserve powers: namely, the power to appoint as Prime Minister the person whom the head of state concludes could most feasibly form government based on that person being able to command a majority in the House of Representatives, including in the circumstances of a hung Parliament; and the power to dismiss a Prime Minister where the House of Representatives has passed a no confidence motion against the Prime Minister. However, there are doubtful reserve powers where clarification would be helpful including the power to refuse a double dissolution; the power to withhold assent to (that is, veto) Bills passed by the Parliament; the power to select a new Prime Minister where the outgoing Prime Minister has resigned after defeat in the House of Representatives; and the power to dismiss a Prime Minister and effectively prorogue the Parliament and order fresh elections in the event of a political crisis such as a deadlock between the two Houses of Parliament.

Parliament could also be reformed to run on a fixed term electoral basis. For instance, on a fixed day in November or December every third year, the entire House and half the Senate could go to the polls, thus giving Members of the House three full year terms and Senators six full year terms. Both the House and the Senate could then sit as immediately as practicable, and certainly before Christmas, after each election. This electoral reform would ensure that Parliaments run their full term (without running excessively long terms such as fixed four year terms) and the House and Senate terms would be synchronised. The fixed term arrangements would presumably have to contain flexibility provisions to accommodate the rare occasions where the head of state would be called upon to invoke reserve powers to prorogue the Parliament and order early elections. These provisions would probably need to adjust the length of the resulting fixed term of the subsequent Parliament so as to maintain the synchronicity between the House of Representatives and the Senate.

It is proposed that, in order to adequately represent electors nationally where a two-tiered system is replacing the current three-tiered system, the House of Representatives be expanded from its current 150 members to 200 members.

- The constitutional provisions that determine the number of electorates per State could be replaced with a new provision that the number of electorates in each city or regional area would be determined on a per capita basis, under a simple formula based on the actual number of members in the House allocated by the population shares of each city or regional area. In addition, the existing legislative provisions on the allowable variance for electorate sizes, of 10 per cent variation either side of the average size for that particular State, could also remain in place, but again be simplified to be 10 per cent of the average-sized electorate on a national not State basis.

- Increasing the House to 200 members would result in a reduction in the average electorate size from the current 93,970 electors per electorate to 70,440. This could facilitate additional legislative provisions that would require all city-based electorates to be contained within the five City Council boundaries. As well, the overwhelming majority of regional electorates could be required to be contained within Regional Council boundaries, but for a small minority where that might not be possible, there could be up to, say, a 25-30 per cent allowance for those electorates to spill over into a neighbouring region.
- The Senate would also be increased in size from 76 to 110 Senators, so that the five Cities each have seven Senators, all large regions (over 500,000 people) have five Senators and the remaining small regions have three Senators. Senators would still serve six year terms, to be achieved by only half the cities and regions at a time going to each Federal election. If the NSW/WA/SA based cities and regions went in one cycle and the Vic/Qld/Tas/NT based cities and regions went in the other, the aggregate number of electors at each 'half' Senate election would be almost even.
- With an increase in size of the House of Representatives to 200 members, and with 110 Senators, the existing constitutional provisions that require the House to be, as nearly as practicable, twice the size of the Senate could be retained.

CITIES AND REGIONS

In moving to a cities and regional basis for a new Constitution, the aim would be to take advantage of the diversity of Australia as a nation continent while at the same time reinforcing and enhancing the flexibility, dynamism and competitive environment inherently built into the existing three-tiered Federation. There are various reasons for moving from our current three-tiered governance structure to a two-tiered structure, and for choosing the cities and regional level as the most appropriate point at which to condense State and local government into a single layer.

- With responsibility for major policies shifting increasingly upwards to the Federal tier of government, a two-tiered governance structure would appear to be a sensible and feasible basis for allocating constitutional powers and setting up institutions, processes and incentives that best focus on the delivery of national programs and services directly to citizens and communities.
- At the same time, city and regional government could effectively and efficiently take full responsibility for both policy and administration of urban, regional and local issues such as public transport, town planning and urban infrastructure, and community services.
- It would recognise the demographic reality that the vast majority of Australians reside in our major cities, but with a sizeable minority living across the nation in a patchwork of diverse and vibrant regional communities of varying population and land area.
- It would fully capture the decentralised elements that would keep in check concentrated power, and preserve choice, diversity and competition as vital elements of the Federation.
- It would open up the opportunity to deliver significant efficiencies in public administration.

Admittedly, the move to a two-tiered based constitutional model for the Federation would shift the balance of power further towards central government, but this would be counter-balanced by a delegation of authority to a new and consolidated second layer of government, thus empowering the cities and regions in a way that currently doesn't exist. We need to address head-on the reality that constitutional powers are increasingly moving to Commonwealth control, with the development of greater tensions between the centre and the

lower levels of government, and the increasing faltering of many economic, social and environmental reforms necessary to safeguard the wellbeing of the Australian people.

The **five major cities** — Sydney, Melbourne, Brisbane, Adelaide and Perth — would be governed by single consolidated councils in each city. This would achieve a very long overdue reform where most cities are fractured by a myriad of local councils. At the same time, it would give the second tier of city government the wherewithal to deliver on the major city strategic plans as well as implementing major policies at the urban level. The five City Councils would cover around 13 ½ million (or 60 per cent of) residents and have extended boundaries to recognise current expanding conurbations and to allow for future expansion. Sydney would cover the whole of the greater Sydney basin (but not the Central Coast). Melbourne would extend to the area limits of current long term strategic planning. Brisbane would extend west to encompass Ipswich, Adelaide north to cover Gawler, and Perth south to cover Mandurah.

The **nineteen regions** would bring together the commonalities of interest within regional areas, on which to base viable administrative and governance structures to deliver important national programs such as health and education networks as well as local infrastructure and utilities, community policing and emergency services, and town and regional planning. Commonality factors taken into account would include locational and geographic continuity, population settlement and social identity and cohesion, agricultural, resource and/or industrial base, transport and other infrastructure linkages, and environmental integrity. Given the historical and culture foundations of our Federation, the proposed Regional Council boundaries could be contained within the existing six State boundaries and the NT boundaries, except that the ACT would be subsumed into the surrounding Monaro Region of south-eastern NSW. Moreover, Albury-Wodonga and Coolangatta-Tweed are major existing population centres that straddle existing State boundaries, and they would each be combined and rolled into the proposed Riverina-Hume and Gold Coast regions respectively. The nineteen proposed Regional Councils would cover approximately 8 ½ million (or 40 per cent of) residents, with varying population sizes, as follows:

- Large regions with major urban centres: Hunter (676,000), Monaro (569,000), Gold Coast (582,000), Burnett-Sunshine Coast (610,000), and Barwon-Grampians (598,000).
- Medium sized regions based on major regional towns and industrial, resource and/or rural industries: Illawarra (431,000), Northern Rivers (485,000), Murray-Mallee (539,000), Cape York (531,000), Bowen-Whitsundays (406,000), and Derwent-Tamar-Mersey (503,000).
- More traditional medium to smaller, rural-based, regions: New England-Macquarie (510,000), Riverina-Hume (325,000), Gippsland (262,000), Darling Downs (358,000), Riverlands-Central (437,000) and South West-Goldfields (356,000).
- Small regions by population, but large in land area: the Northern Territory (226,000) and Kimberley-Pilbara-MidWest (148,000), that have much potential for the development of resources, tourism, agriculture and indigenous enterprises.

The average population size in proposed regions in NSW would be 502,000, in Victoria 482,000, in Queensland 484,000, in SA/NT 332,000, in WA 252,000 and in Tasmania 503,000. Full details of the proposed Regional Councils are set out in Attachments B and C, and depicted in the map at Attachment D.

BOX 2.2: ACHIEVING AND IMPLEMENTING CONSTITUTIONAL REFORMS

Achieving a major rewriting of the Constitution, along the lines of a two-tier based constitutional model as proposed in this paper, would no doubt be a difficult, and possibly protracted, task especially in garnering support and achieving consensus at various stages of the process. That task would be made all the harder, given the vested interests of the States and their historic, cultural and political heritage as founders of the Commonwealth in the first place, and given the central role they have played over the past 110 years in the development of Australia as a federated, democratic and modern sovereign nation. To be feasible and achievable, a sequenced process of constitutional reform could possibly involve:

Step 1: Garnering support

A new movement for constitutional reform could emerge through the advocacy of the intellectual and practical merits of a new two-tiered constitutional model by a coalition of constitutional academics; economic and political reform advocates; leading State figures disaffected by the breakdown of good State governance, and the consequential failure to deliver high quality outcomes in areas such as health and education; and various stakeholders seeking a new direction on urban and regional development that could connect strategic planning, transport and infrastructure, and urban development.

Step 2: Constitutional Convention

The main task during this phase would be to seek political support for a First Constitutional Convention that would meet over, say, a three month period, to redraft the constitution, followed by a six to twelve month period of detailed public consultation with stakeholders across the nation. This could then lead to a Second Constitutional Convention to finalise the new Constitution.

Step 3: Referendum

In this phase, constitutional convention leaders would need to lobby and negotiate actively with both sides of politics on the terms of the referendum to be put to the people. These leaders, together with 'eminent persons' and leading supporters from both sides of politics, could form a bipartisan coalition to prosecute the YES case for the subsequent referendum. The key, however, would be to rally the support of both the Prime Minister and Leader of the Opposition, as well as the State Premiers and other leaders, politicians and stakeholders, to actively support the YES case. Gaining such support would be difficult and may take some time and persuasion; however the support from such political leadership would be essential in achieving a YES vote at the referendum.

Step 4: Implementation

The transition to the new two tier governance system would likely take time and energy, and it could entail a phased implementation period over, say, 10 years. Central to the transition would be the reallocation of legal powers and the sorting out of a new judicial and legal framework, and the reworking of laws and regulations. Moreover, new City and Regional Councils would have to be elected, as well as Federal administration reorganised and streamlined; State bureaucracies dismantled; and city and regional administrative infrastructure and resourcing put in place. As well, the COAG, on advice from the Ministerial Council for Federal Financial Relations, made up of Federal, State and Territory Treasurers, would need to settle the details of the new city and regional fiscal and tax regimes necessary to underpin the new second tier of government, as provided for in the new Constitution.

COUNCIL OF AUSTRALIAN GOVERNMENTS

The new Constitution would also formally establish a revamped ***Council of Australian Governments*** (COAG) made up of the Prime Minister, the five City Council Lord Mayors, and four representative Mayors of the Regional Councils (one each representing the NSW regions, combined Victorian/Tasmanian regions, Queensland regions, and combined WA/SA/NT regions). The COAG would serve as the main forum through which the design of national policy reform would be integrated with best practice program implementation and service delivery, and would be a fundamental institution for a united and consolidated Federation. Further details are set out in Chapter Four below.

The COAG would analyse, debate and negotiate major areas of policy to implement significant economic, social and environmental reform. The COAG would also determine the most appropriate financing mechanisms and the optimal cost sharing between the two tiers of government. If agreed by the COAG, proposed reforms would be recommended to the Federal Parliament and, if ratified by both Houses of the Federal Parliament, with mirroring City and Regional Council legislation as required, the COAG reforms would be delivered, as agreed by the City and Regional Councils, across the nation. Further details are set out in Chapter Four below.

NATIONAL JUDICIAL SYSTEM

The current constitutional provisions in relation to the judiciary would need to be preserved under any revamped Constitution. Currently under the Constitution, the judicial powers of the Commonwealth are vested in the High Court and other Federal courts created by the Federal Parliament, or State courts vested with Federal jurisdiction by the Parliament. The High Court has original jurisdiction over various matters, including any matters conferred on it by the Parliament arising under the Constitution or involving its interpretation. As well, the High Court has jurisdiction to hear appeals from judgements of any justice, or any Federal court or relevant State court, and judgements in such cases are final and conclusive. The current provisions that safeguard the independence of the High Court and Federal courts, relating specially to the appointment and dismissal of justices, would also need to be preserved.

Upon abolition of the States, the revamped Constitution would create a relatively large number of City and Regional Councils with defined roles and responsibilities under powers specified under the two-tiered constitutional model. In these circumstances, it would probably be impractical to continue with separate Commonwealth, State and Territory judicial systems, thus necessitating an amalgamation of the existing judicial and legal system into one national system — high court, supreme courts, courts of appeal, specialist courts (for example, family law, planning & environment), district courts, and local magistrate courts. Significant administrative efficiencies are likely to be achieved by the amalgamation.

A reconstituted Standing Committee of Attorneys-General would need to go through a lengthy and complex transitional exercise to allocate, consolidate and streamline the legal frameworks of the two layers of government in a harmonious and preferably uniform manner, with the documentation of a national criminal code and national civilian code, as well as the allocation and streamlining of property laws and other legislation and regulation. Most legislation would be enacted through the Federal Parliament, but the City and Regional Councils would need to have legislation covering areas of their own urban, regional and local issues, including property and water rights in designated urban areas.

Law enforcement, which mainly involves delivery of services at the local level, could retain a similar structure as now. This would mean the AFP retaining its national role including existing organised crime and national security responsibilities, with each city and region retaining its own police force. Small regions, however, should have the option of contracting out this function to a City or larger regional police force, or under contract to the AFP as currently occurs in the ACT.

BOX 2.3: SATISFYING PRINCIPLES OF FEDERALISM

The two-tiered constitutional model, as proposed in this paper, articulates a workable basis for a new Federation by seeking a balance between the principles of nationhood and cooperation, subsidiarity, structural efficiency, and accountability and fiscal equivalence.

Nationhood and Cooperation: Under this principle, the new Federation would need to be constructed in a way that recognises that cooperation is fundamental to a well-functioning Federal system and that the national interest is paramount in achieving policies that build the nation. In this context, the model in this paper seeks to present a more realistic balancing of powers between the tiers of government, and adequate trade-offs between centralised and decentralised factors. Fundamental to this are proposed new constitutional provisions that would embed the structures and incentives for a more cohesive and workable Federation, including having clearly defined roles and responsibilities for the two tiers of government, and articulating the roles and objectives of the COAG, as the platform for linking the two layers of government for achieving significant reforms.

Subsidiarity: Under this principle, responsibility for every function should reside with the lowest tier of government as practicable. In this sense, the model in this paper seeks initially to divide functions according to two principles of national strategic significance, and urban regional and local relevance, and then allocating various roles and responsibilities on a 'functional' basis, with the Federal tier concentrating on national policy and the city and regional tier tasked with determining local policies and delivering programs and services to citizens and communities. This is the basis of the application of the subsidiarity principle in deciding upon Federal, city/regional and shared powers under the proposed new Constitution.

Structural Efficiency: Under this principle, the proposed Federal structure needs to address issues of flexibility and competitiveness within the Australian economy. In this regard, as set out below, this paper seeks to outline a model of a new Federal governance system that would embed a new set of institutions, processes and incentive structures that would present to Australia greatly enhanced opportunities for achieving significant economic, social and environmental reforms. Moreover, the model is structured in order to underpin the diversity, flexibility, dynamism and competitiveness of the revamped Federation.

Accountability and Fiscal Equivalence: Under this principle, governments within the Federal structure need to remain accountable to the electorate and, in order to be held fully accountable, each tier of government should have an appropriate matching of its expenditure responsibilities and its revenue raising powers. As set out below, the model in this paper is soundly mindful of this principle, by proposing that the new Intergovernmental Agreement on Federal Financial Relations be implemented fully so that the Federal government desists from seeking to control inputs under federally funded programs and Cities and Regional Councils are given full autonomy, and are held accountable for delivering outcomes, under a robust performance monitoring system. Moreover, the new Councils would be supplied with new, enhanced and more stable sources of revenues that would give them the wherewithal to carry out their functions properly.

CHAPTER THREE: MACROECONOMIC FRAMEWORK

In order to facilitate the move to a new Federation, this chapter sets out the framework that it would probably be necessary to build as an integral part of the constitutional reforms to ensure a credible and comprehensive macroeconomic architecture on which to base the new Federation. This would include negotiating an improved and widened framework for a national fiscal strategy encompassing both tiers of government, as well as significant reforms to the revenue sharing powers between the tiers of government along the lines of the recommendations from the recent Report on Australia's Future Tax System. It would also be appropriate to reaffirm the role of monetary policy under the Reserve Bank of Australia (RBA) and financial sector supervision and regulation under the guidance of the Council of Australian Financial Regulators (CAFR).

NATIONAL FISCAL STRATEGY

Moving to a new constitutional model raises significant issues for fiscal strategy and underlying frameworks on a nationwide basis. Under the current Constitution, the second tier of government, that is, the States and Territories, are of limited number and most have balance sheets of substance. The ability for the States and Territories to handle fiscal risks both through the cycle and in the longer term is substantial. This is reflected in their credit ratings. On the other hand, under a new, two-tier based, constitutional model, the power structure would shift towards the Federal Government. The second tier of government, especially at the regional level, would be far more decentralised; would need to deliver best practice state-like services but from a city or regional administrative platform and infrastructure; and wouldn't carry the underlying balance sheet strength of the current arrangements.

Thus, any move to such a new constitutional model would probably need to be accompanied by a new national fiscal framework where the fiscal risks are mainly borne by the Federal Government, both in managing the economy through the cycle via the automatic stabilisers and discretionary measures, and in dealing with the longer term fiscal pressures. This means, in particular, dealing with demographic ageing and its effects on the national fiscal balance, and dealing significantly with health expenditures that are likely to continue to grow as a percentage of nominal GDP both as Australians grow richer and the ageing of the population progresses. The Federal Government would also need to cope more effectively with the growing importance and the increasing uncertainties of maintaining and enhancing the defence and national security capability, and with delivering overall efficiencies in defence and related expenditures. As well, the allocation of revenue sources under future tax reform would need to allocate to the Federal Government those sources that are particularly sensitive to the business cycle and to commodity prices, such as income and company taxes, and resource taxation (details explored below).

In moving to a new city and regional constitutional federation, the framework for the national fiscal strategy could be required under the new Constitution, and be encapsulated in a revamped **Charter of Budget Honesty**, which would be legislated by, and applied to, both tiers of government. As now, the Charter of Budget Honesty would require the Federal Government to spell out its fiscal strategy with its annual Budget. The revamped Charter should continue to require that the strategy specify long term objectives within which shorter-term fiscal policy will be framed and based on principles of sound fiscal management. Such principles currently include: managing risks; ensuring fiscal policy contributes to achieving adequate national savings and to moderating cyclical fluctuations in economic

activity; pursuing spending and taxing policies that are consistent with a reasonable degree of predictability and stability of the tax burden; maintaining the integrity of the tax system; and ensuring there is regard to the financial effects on future generations. Importantly, the current provision should also be retained that requires specification of fiscal policy actions that are temporary in nature for the purpose of moderating the cycle as well as indicating the process for their reversal. The Charter could also include a principle that government intervention should only occur where government fiscal action is the most efficient instrument available compared with non-fiscal instruments and that this action would involve value for money. In addition, the Charter could require that medium to longer term scenarios be built into annual budget papers.

Given the weakened balance sheet position of the proposed new second tier of government, it would be imperative that the revamped Charter also set out provisions for a disciplined set of fiscal rules for the City and Regional Councils that could require them, over the cycle, to deliver balanced budgets on an operating balance basis, that is, balance between revenues and operating expenditures (including depreciation). While borrowings to fund longer term infrastructure could be permissible, net worth in City and Regional Council balance sheets would need to be preserved taking into account intergenerational equity considerations. Moreover, each of these Councils should be required to have their own individual credit ratings and to borrow in their own name. Pragmatically, either the Australian Office of Financial Management or the existing State financial asset and debt management offices (reconstituted as jointly owned offices of the City and Regional Councils within their current State boundaries) could carry out the borrowing operations of each City and Regional Council concerned, on a fee for service basis.

At least every three years, the Charter could require the Heads of Federal, City and Regional Treasuries to produce an independent ***Intergenerational Report***, that would cover economic and fiscal sustainability, as an integrated package and on both a disaggregated and consolidated basis for the Federal and city/regional jurisdictions. The analysis should be required to look at projected fiscal gaps, and net debt and net worth analysis, over the following 40 years and to suggest possible medium to longer term corrective actions needed on problematic areas of expenditures and revenues, and/or medium to longer term reforms to increase potential growth to counter the fiscal gap through addressing population, participation and productivity issues.

Under the Charter, various provisions that currently apply only to the Federal Government could also be required to be carried out by all of the City Councils, given their size and financial importance and their adequate resources to fulfil such provisions. This could include the provisions relating to publishing medium term fiscal strategies and pre-election material during caretaker periods (see Box 3.1 below). There would be no mandatory requirements for Regional Councils to also meet these provisions of the Charter, though they should have the option to do so if they so wished and were prepared to adequately resource such requirements.

The details of any revamped Charter (and any subsequent amendments) would need to be agreed upon by the COAG and passed into law by the Federal Parliament, with harmonised enabling laws by the City and Regional Councils.

BOX 3.1: OPPORTUNITIES FOR GREATER FISCAL TRANSPARENCY AND ACCOUNTABILITY

Given the need to revamp the Charter of Budget Honesty to accommodate a targeted, more disciplined national fiscal framework to better suit the proposed new constitutional model, opportunities could also be taken in the process to revamp other areas of the fiscal landscape to enhance accountability, transparency and the fiscal policy debate.

For example, during the caretaker period prior to each Federal election, Treasury and Finance should remain responsible for the independent production of the *Pre-election Economic and Fiscal Outlook* document. But it could be made mandatory for the Government and Opposition to submit their election commitments for independent costings by Treasury and Finance. Also, in advance of each election, protocols for election costings could be scrutinised and approved by the Auditor-General on behalf of the Federal Parliament, and the Auditor-General could report back to the Parliament post-election to verify the independence and effectiveness of the costings process.

Moreover, the current Federal Parliament is moving towards the establishment of a *Parliamentary Budget Office* (PBO). The Joint Select Committee on the Parliamentary Budget Office has recommended that the PBO be established with a mandate to support and inform the Parliament by providing independent, non-partisan and policy neutral analysis on the annual Budget, government expenditure, fiscal policy and the financial implications of proposals. Its key functions would be to prepare responses to the requests of individual MPs and parliamentary committees, initiate its own work in anticipation of the interests of the Parliament, and prepare costings of election commitments of both major and minor parties and independent members that they may request during the election caretaker period. The PBO would be able to access information under MOUs with Treasury, Finance and other relevant departments. It wouldn't, however, be required to produce its own fiscal forecasts or projections, given their resource intensity and the need to minimise duplication of work produced elsewhere. The Parliamentary Budget Officer would be established as an independent officer of the Parliament similar to the Auditor-General, with the PBO being provided with staff comparable in attributes to those in the Treasury, Finance and the Productivity Commission.

To be effective, the proposed PBO would need to be well resourced and should be available particularly to the Opposition, minor parties and independents, to undertake fiscal policy analysis and costings independently of the Treasury and Finance Departments. Moreover, during the caretaker period, the PBO could also provide verification of Treasury/Finance election commitment costings where requested by the relevant party.

The Charter should continue to be based on international accounting standards as set out under the IMF *Government Financial Statistics* (GFS). A well-resourced and independent Australian Bureau of Statistics (ABS) should continue to be the standard setter and adjudicator of the GFS here in Australia. The ABS would also need to continue at world's best practice to ensure that policy design and implementation in this country remains underpinned by reliable and timely economic, social and environmental statistics.

REVENUE RAISING POWERS UNDER TAX REFORM

The new Federal Constitution would also set out clearly the division of revenue raising powers between the two tiers of government. The negotiations of the new Constitution could include a series of Tax Summits to seek agreement on the major tax reforms.

Importantly, tax reform is an ongoing task and, in this context, the recommendations of the recent Henry review (2009) on *Australia's Future Tax System* (AFTS) could be viewed as

just one set of reform proposals in that ongoing task. However, the AFTS report is far more significant than that. Indeed, the AFTS recommendations set out a visionary blueprint for a tax and transfer system for Australia to meet the challenges and opportunities that the nation will likely face for the 21st century. Integral to all broad themes of the AFTS reforms are proposals for a more efficient, accountable and transparent delineation of roles and responsibilities between the various tiers of government in the Federation.

In sorting out a new Constitution, the proposed series of Tax Summits would therefore need to take an integrated approach that sought not just to achieve substantial tax reform but also to agree on the assignment of appropriately matched revenue raising powers under the new Constitution.

Under the proposed Tax Summits, it could be envisaged that revenue raising powers under the new Constitution would result in Federal taxes being based on income and company tax, capital gains tax, customs and excise, and a comprehensive resource rent tax applying to all offshore and onshore petroleum and mineral operations, but with existing State royalties abolished. Thus, revenue risks through the business and commodity price cycles would be mainly carried at the Federal level. Cities and regional taxes could be based on a broad based consumption tax that utilises appropriate technology to properly capture private final consumption without bringing business-to-business transactions into the tax net. Such a tax could deliver significant efficiencies and cost saving for governments, businesses and citizens as it could replace the administratively cumbersome GST as well as many inefficient State taxes. As well, land taxes could replace both existing State stamp duties and general local council rates, and congestion charges should be introduced in the major cities.

An overarching objective of tax reform should be to seek a significant reduction in the vertical fiscal imbalances (VFI) embedded in the current constitutional arrangements. Such a reduction in VFI would have the positive effect of building in incentives for City and Regional Councils to embrace reforms that enhance economic growth and thus increase their own source revenues (without having to negotiate with the Federal Government to share in such revenue growth dividends a majority of which currently accrue to the Federal Budget).

As set out above, the Federal Government would have direct constitutional power for raising personal and business taxes, customs and excise duties, and resource taxes. City and Regional Councils would be constitutionally empowered to raise consumption taxes and land taxes but it is proposed that they would come under nationally agreed regimes covering these taxes. City and regional taxes (and any subsequent amendments) could be designed on a nationwide basis by the Council of Financial Ministers (comprised of Federal, City and Regional Treasurers). The Constitution could require that such tax regimes would need to be agreed upon by the COAG and legislated by the City and Regional Councils as agreed. This would maximise the possibility that the tax design, particularly the scope and tax base, would conform to best practice as agreed in the Tax Summits, have a certain degree of national uniformity and avoid the ongoing undermining of the bases of efficient taxes as currently happens at the State level. Fiscal efficiencies generated by certain jurisdictions could still enable them to set more 'competitive' taxing regimes than other jurisdictions as they should still remain free to set their own rate of the tax.

City and Regional Councils should apply user charges to all municipal services as happens currently but reformed to cover all fixed and variable costs and depreciation of underlying infrastructure. City Councils could introduce congestion charges to the five major cities. In

addition, road charges should be introduced for all vehicles across the nation by the Federal Government using the latest GPS tracking technology.

BOX 3.2: MAJOR REFORM RECOMMENDATIONS FROM THE HENRY REVIEW

The AFTS recommendations represent a comprehensive and visionary set of tax reform proposals organised around the following nine broad themes:

1. Revenue raising would be concentrated on four robust and efficient tax bases, namely, personal income, business income, private consumption and economic rents from natural resources and land. Inefficient taxes including property transfer taxes, payroll tax and resource royalties would be abolished.
2. The tax and transfer architecture would be redesigned to promote higher participation and productivity, including empowering higher private investment and capital deepening. Proposals could include clear work incentives in transfer payments, lower company tax, (but noting that a business-level expenditure tax could suit Australia in the future), enhanced capital allowances, a common discount for interest, net residential rents and capital gains, and greater use of road user and congestion charges.
3. An equitable, transparent and simplified personal income tax system, and the use of 21st century technologies to make the system fairer, easier to comply with and more robust.
4. A work supportive transfer system with three levels of primary support — pensions for the aged, disabled and carers; lower-rated participation allowances for those of working age; and assistance payments for young people and students — each with means tests and withdrawal rates reflecting different work expectations.
5. Integration of consumption tax compliance with business systems, including replacing the current narrow State tax bases (including a redundant payroll tax) with a low-rate, broad cash flow tax that more effectively utilises the consumption base, and is based on automated business systems.
6. Introduction of efficient resource and land taxation, with existing royalties replaced by a uniform resource rent tax and existing stamp duties on land transfers replaced by land tax.
7. Completion of retirement income reform and aged care security including a proposal for the current tax on superannuation contributions to be abolished and all contributions to attract a uniform percentage tax offset payable to contributors.
8. Progression towards more affordable housing, through changes to the tax and transfer system to complement any policy changes to better match aggregate housing supply and demand. Changes could include a substantial increase in the maximum rate of Rent Assistance and replacing public housing rent concessions with Rent Assistance, to improve equity and work incentives; replacing land transfer taxes with a land tax applying to all land whether owner-occupied or investor owned; and a 40 per cent discount on all net residential rental income, losses and capital gains for a more neutral personal tax treatment of residential investments.
9. A more open, understandable and responsive tax system, with citizens able to access comprehensive and timely information on their tax and transfer affairs, and be able to interpret how their tax and transfer outcomes have arisen and how they may affect them. Also recommended was an enhanced role for the Board of Taxation, as well as ensuring that the Inspector-General of Taxation, the Auditor-General and the Commonwealth Ombudsman, would be sufficiently resourced. As well, it was recommended that there be a new Board to advise the Commissioner of Taxation on the general organisation and management of the Australian Taxation Office.

The Australian Taxation Office (ATO) and the existing State and Territory Revenue Offices would be merged to form a single entity to deliver tax administration on behalf of both tiers of government in accordance with the new constitutional provisions, on a fee for service basis. This reform would offer the prospect of significant administrative efficiencies and cost savings. The ATO would be held accountable for its performance by the Council of Financial Ministers which would report to the Federal Parliament and the City and Regional Councils on the ATO's efficiency, transparency and responsiveness to legitimate stakeholder concerns.

FEDERAL FINANCIAL RELATIONS

Future financial relations between the Federal Government and the City and Regional Councils could be governed by an expanded version of the recently introduced ***Intergovernmental Agreement (IGA) on Federal Financial Relations***. This agreement represents a landmark reform that has simplified the system, laid down a clearer specification of roles and responsibilities between each level of government, introduced centralised Treasury-to-Treasury payment arrangements, and sets out the ambition to transition to an 'outcomes' basis for performance monitoring. The main issues for transitioning the IGA to a new two-tier based constitutional model would revolve around implementation, such as how to expand the payment system in a secure and reliable way from the current 8 to the proposed 24 recipient Treasuries, and how to ensure that performance indicator data can be properly collected, collated and analysed on a city and regional basis.

Under the new constitutional model, issues of equity would be emphasised given the high degree of economic and social diversity and disparity that would become patently clear between the various city and regional areas. To address such equity issues, it would be fundamentally important to deliver to all the new Councils adequate revenue raising powers as outlined above to enable them to do their job properly. In addition, horizontal fiscal equalisation (HFE) principles would need to be preserved although they could be made simpler, as well as more efficient, transparent and fairer as between donor and recipient jurisdictions than under the current Grants Commission processes. Current processes are being reviewed by a Panel appointed by the Federal Government taking into account the principles of efficiency, equity, simplicity, predictability and stability. The Panel is due to present its final report by September 2012. A major issue for resolution is how to address the problem that, under the present system, States can be penalised for economic growth and rewarded for economic underperformance, whereas the processes should be encouraging economic reform and better delivery of services.

Under a new constitutional model for the Federation, the proposed new cash flow consumption tax collected by the ATO on behalf of the cities and regions could be distributed on the basis of a much simplified formula, taking into account a limited number of variables for determining revenue raising capacity and expenditure needs for each city/region. Revenue variables could be limited to population, incomes and land values. Expenditure variables could be limited to population ageing and indigenous demographics, income distribution, urbanisation and land mass per capita. The Grants Commission could be downsized to a division of the Productivity Commission (PC) to undertake five yearly updates of the HFE formula and to determine annual distributions to the cities and regions. This proposal would deliver administrative savings at both levels of government.

A major issue for resource rich States is that significant portions of their increased revenues from mining royalties are effectively being redistributed to other (non-resource rich) States under current HFE processes. Resource rich States see this as an unfair redistribution of their new revenue wealth and that they are being asked to carry an unfair and disproportionate burden of supporting the recipient States. However, non-resource rich States equally see this as an equitable outcome of the HFE processes in ensuring that all jurisdictions within the Federation have equal capacity and opportunities to provide infrastructure and services to their citizens.

Under the proposed new Federation model, this issue could be substantially resolved, though it would still require careful negotiations for the transition to a new federal system by the Federal Government. As set out in Chapter Four below, under the new Federation all responsibilities for resource development would transfer to the Federal Government and all royalties would be abolished and be replaced by a comprehensive resources rent tax. Moreover, all City and Regional Councils would be provided with enhanced and possibly new, more efficient and predictable revenue sources which would give them all adequate and equal capacity and opportunities to supply infrastructure and services to their citizens. From a pragmatic political view, however, there would probably need to be negotiated transitional compensation to the resource rich cities and regions for the loss of royalty income, and appropriate mechanisms for ensuring that infrastructure to support and enhance the resources sector is provided on an efficient, ongoing basis into the future. Over the longer term, the issues could be 'internalised' federally, through the new tax system and by the efficient delivery of infrastructure funding by the Federal Government to support resources development on a national basis.

BOX 3.3: INTERGOVERNMENTAL AGREEMENT (IGA) ON FEDERAL FINANCIAL RELATIONS

The main features of the new IGA that was agreed upon by the COAG in November 2008 and came into operation on 1 January 2009, are as follows:

- A significant, landmark reform covering general purpose payments (GPPs) funded mainly by the GST, National Specific Purpose Payments (SPPs) and National Partnership (NP) payments, and with clearer specification of the roles and responsibilities, and the accountabilities, of each level of government.
- SPPs have been reduced in number from 90 to 5, with six associated National Agreements having been agreed by the COAG on healthcare, education, skills and workforce participation, disabilities, housing affordability and indigenous reform.
- NP payments have been introduced as a new form of payment to fund specific projects and to reward jurisdictions that deliver on nationally significant reforms.
- Performance of all governments will require them to achieve mutually-agreed 'outcomes and performance benchmarks' specified in each National Agreement, and will be assessed by the independent COAG Reform Council (CRC) and reported publicly on an annual basis.
- The Productivity Commission will also be reporting back to the COAG every two to three years on the economic impact and benefits of the IGA reforms.

MONETARY STABILITY AND FINANCIAL REGULATION

Monetary policy, as the main demand management tool for the national economy, would remain the responsibility of the RBA. The *Reserve Bank Act 1959* makes provision for achieving the RBA's dual mandate to preserve price stability, and to keep the economy growing as closely as possible to potential, and to full employment (in the context of a freely

floating exchange rate regime). As currently happens, parameter targets for achieving price stability through the cycle would be set out periodically in a memorandum of understanding between the Federal Treasurer and the RBA Governor. The independence of the RBA would need to be preserved as a foundation for maintaining policy credibility, subject to the current provisions in the RBA Act that enables the Governor-General on advice of the Federal Executive Council to determine the policy to be adopted by the Bank on the rare occasions of a dispute between the Government and the Bank over the stance of policy, and for a statement of this determination to be tabled in both Houses of the Federal Parliament. RBA accountability would continue to dictate that the Bank makes public its reasons for its policy decisions, as well as publishing RBA Board minutes. In addition, it would continue to publish regular statements on monetary policy, and the Governor should continue to appear twice a year before the relevant economic committee of the Federal Parliament.

Given financial stability is fundamental to the sustainability of the overall economy, financial market regulation would be retained within the existing regulatory framework at the Federal level, with the Australian Prudential Regulation Authority (APRA) responsible for prudential regulation, the Australian Securities and Investments Commission (ASIC) responsible for market supervision and investor conduct, and the RBA responsible for the overall stability of the financial system and operation of the payment system, and as the lender of last resort to financial markets in the event of financial crises. An increasingly important role will probably continue to emerge for the **Council of Australian Financial Regulators** (CAFR) made up of the heads of the RBA, APRA, ASIC and the Federal Treasury. The role of the CAFR is to contribute to the efficiency and effectiveness of financial regulation by providing a forum for co-operation and collaboration amongst its members. Its members are able to share information and views, discuss regulatory reforms or issues where responsibilities overlap and, if the need arises, co-ordinate responses to potential threats to financial stability. The Council also has a role in advising the Federal Government on the adequacy of Australia's financial system architecture in light of ongoing developments. In the future, functions of the CAFR will probably need to continue to expand in the areas of regulatory co-ordination and the application of the Basel III principles to Australian institutions, as well as areas of policy design on major issues such as banking stability, financial sector competition and deposit insurance, and the stance that Australia should be taking at international negotiations, especially at G20, on the international financial regulatory framework.

CHAPTER FOUR: MICROECONOMIC REFORM

This Chapter makes proposals for the structure, roles and responsibilities, and incentives that could be conducive to attaining an ambitious microeconomic reform agenda across the spectrum of structural policy issues. As such, the Chapter seeks to make the case for constitutional reform and a new Federal governance system on the basis that such changes would present Australia with enhanced opportunities for achieving the sorts of economic, social and environmental reforms necessary to maintain and enhance our place in a rapidly changing and globalising world.

The Chapter sets out detailed discussion of the various areas of major national policy concern, where the powers between the two tiers of government would need to be redefined or clarified as part of the constitutional reform process. In doing so, it is argued in the Chapter that:

- 1 the redefinition and clarification of various powers between the two tiers of government would of itself result in major reforms. The act of abolition of the States, and the reassignment of their powers, is central to this process. Examples here relate to resources development, national energy and water reform, land transport, and city and town planning;
- 2 the defining of various powers for allocation between the two tiers of government on a functional basis (that is, between national policy frameworks and service delivery to local communities) would facilitate the opportunity for the full implementation of some major areas of reform, particularly in health and education; and
- 3 the new structures and incentives built into the constitutional framework for the new Federation, including through the enhanced COAG model, would greatly improve the chances of achieving major reforms, right across the whole policy spectrum, and be fundamental to the ongoing process of reform that would endure on a longer term basis.

STALLING OF THE REFORM AGENDA

The COAG is the main Commonwealth-State mechanism for seeking co-operative solutions to difficult national issues that require a national outcome, but involve many State responsibilities under the current constitutional arrangements within the Federation. The problem is that it is proving increasingly difficult to achieve transformational and timely reforms. The COAG is currently dealing with a range of difficult and complex issues involving social, economic and environmental dimensions including health and hospitals, disability care and support, business deregulation for a seamless national economy, national energy and water reforms, climate change and energy efficiency, environmental regulation, homelessness and indigenous disadvantage.

The problem is that the Federation was born at a time when we had six colonies and six markets. The founding fathers' objective was to have a cohesive Federation, but divisive arguments were had between protectionists who wanted to preserve the six markets and free trade federationists who wanted a common market Federation. So the constitutional provisions to achieve a common market were probably too weak, put few obligations on the States and for some time were narrowly interpreted. However, particularly over recent decades, there have been significant advances in economic reforms that have progressed us

towards a single market, although much work still needs to be done. Often reforms have been accompanied by an accelerated use of Commonwealth powers, including the external, corporations, trade and commerce, industrial disputation, taxation, and customs and excise powers, that have increasingly encroached on traditional areas of States' rights. The outcome has been that, under current arrangements, States' rights and parochial political interests have often clashed at the COAG with those purporting to seek national objectives and the meeting of international obligations. In most instances, there remains a fine, but fragile, balance in the sharing of powers. While the Commonwealth has the advantage of revenue raising powers and financial strength, and has financed much of the encroachment on what was previously an exclusive State domain, the States ultimately hold the constitutional powers that are necessary to achieve most reforms in the national interest.

ROLE OF THE COUNCIL OF AUSTRALIAN GOVERNMENTS

A revamped Constitution on a city and regional basis, would bring a fresh start to how we address important economic, social and environmental reforms in the national interest. Admittedly, under this new, federated structure, power would shift further to the Federal Government. With a less balanced power sharing, there would be a need for a fundamental institution in which the two tiers of government could come together to forge a partnership between policy design and legislation (Federal responsibility), and the consequential delivery of programs and services flowing from those policy reforms (city/regional responsibility).

As stated above, the COAG could appropriately serve as the vehicle for achieving a wide ranging reform agenda on a consensual basis, and would thus be a fundamental institution for a united and consolidated federation. The COAG would analyse, debate and negotiate major areas of policy to implement significant reforms and would determine the most appropriate financing mechanisms and the optimal cost sharing between the two tiers of government. Unlike the current COAG, it would have legal standing as provided for under the new Constitution, and reform packages agreed by the COAG and passed into law by the Federal Parliament, and City and Regional Councils as required, would be implemented and delivered nationwide.

Institutional arrangements that currently support the COAG should be retained. In particular, the CRC should continue to play its pivotal role of monitoring and reporting on the implementation of the COAG reform agenda. Such reporting should be made directly and transparently to the Federal Parliament and the City and Regional Councils, and the CRC should appear before an appropriate parliamentary committee at least once a year, similar to the RBA arrangements.

In addition, the COAG should have its own secretariat adequately resourced to carry out policy analysis support, as well as administrative support and co-ordination for the COAG.

Overall reporting on the whole gambit of reform, and the undertaking of extensive, public and transparent inquiries into specific reform proposals, should continue to be carried out by the Productivity Commission (PC). However, the PC is now increasingly expected to cover areas of reform far removed from the more traditional microeconomic reform agenda. This involves public sector, rather than private sector, issues covering social policy and its delivery and/or issues of environmental protection. Much of the debate involves the interface and trade-offs between economic, social and environmental sustainability. Accordingly, the PC charter should be strengthened and clarified to reflect these points.

Every three years, interspersed with the proposed release by the Federal and City and Regional Council Treasuries of the Intergenerational Report that focuses on economic and fiscal sustainability, the PC could be required to release its own independent and complementary report that would focus on social and environmental sustainability over the next 40 years, and its interface with the likely evolutionary trajectory of the economy.

BOX 4.1: COAG REFORM COUNCIL PROPOSALS FOR REFORMING THE COAG

On 9 February 2011, in a speech to CEDA in Sydney, chairman of the COAG Reform Council (CRC), Paul McClintock, pointed out the growing importance of the COAG as one of the premier executive governance structures in Australian public life, with raised expectations concerning the COAG despite its lack of a constitutional basis. He also noted that the national issues before the COAG have a Federal dimension of growing importance, and that nearly all the tough decisions require a significant level of Federal co-operation. He also pointed out that the main purpose of the IGA on Federal Financial Relations, as agreed to by the COAG, was to bring to each sphere of government clear roles and responsibilities to deliver national reforms and to improve accountability of all governments. Mr McClintock then outlined five specific points to strengthen and reform the COAG, as follows:

- With the current influx of new membership to the COAG forum, leaders should state whether they are committed to the COAG reform agenda and its new style of governance under the IGA framework. A reaffirmation of the agenda and its key governance features of clear roles and responsibilities matched by strong accountability and transparency is required if the reform agenda is to be implemented effectively.
- There needs to be a considerably greater political investment by all the COAG governments to sell the new system of roles and accountabilities, and that not enough is being done by leaders and key Ministers to promote the agenda and the new governance approach.
- There is a need for a greater commitment to effective and timely accountability and that the IGA approach depends crucially on the development of robust performance indicators and benchmarks.
- There should be a review of the COAG's structures and operations, which are currently based on its original role of an occasional summit meeting with no set meeting timetable, an agenda set by the Commonwealth, and no permanent resources to support the COAG.
- There needs to be an emphasis on sorting out who is responsible for what and who is leading on each process. With significant vertical fiscal imbalance, the government who collects the taxes now expects to be the one who makes all the calls, as distinct from the level of government with the skills to realistically do the job, bringing an inevitable confusion on accountability.

At its subsequent meeting on 13 February 2011, the COAG adopted a streamlined agenda built around five themes of strategic importance at the intersection of jurisdictional responsibilities, namely:

- a long term strategy for economic and social participation;
- a national economy driven by our competitive advantages;
- a more sustainable and liveable Australia;
- better health services and a more sustainable health system; and
- closing the gap on indigenous disadvantage.

The COAG also renewed its commitment to strong ongoing monitoring and reporting of important initiatives, and to prioritising the passage of legislation to give effect to agreements reached by the COAG. The COAG has also set ambitious goals to improve outcomes with the review of the performance frameworks of National Agreements providing an opportunity to ensure that progress is measured and that all jurisdictions are clearly accountable to the public and the COAG.

BUILDING A DIVERSE AND COMPETITIVE FEDERATION

A great strength of Australia being a nation-continent is the demographic, social, economic, geographic and environmental diversity right across the country. Moving to a cities and regional approach for a new Constitution would aim to take advantage of that strength. Under a two tier based constitutional model, the balance of power would shift further towards central government. However, counter-balancing this would be a delegation of authority to a new and consolidated second layer of government, that would empower communities in the cities and regions in a way that currently doesn't exist.

Under a new constitutional model, cities and regions would have clearly defined responsibilities, and accompanying financial and taxation resources, to deliver programs and services to their communities, effectively and efficiently, and without the dead hand of bloated State bureaucracies. This, of itself, would facilitate the opportunity to deliver on some major areas of reform, particularly in health and education, and finally to consolidate strategic planning, the provision of urban infrastructure and public transport, and urban design and development, within a single jurisdictional layer.

While the shift of power could increase the suspicions that may exist towards the central government, equally cities and regions are currently much disadvantaged under State Governments that have poorly delivered on outcomes in health, education, public transport, and urban and regional development.

With the COAG as the forum for advancing much of the future reform initiatives, it could be argued that its proposed larger, and more diverse, membership would make governance of the country more difficult. On the other hand, it could equally be argued that policy design and formulation by the re-constituted COAG would be greatly enhanced by feedback from cities and regions about what can be practically and efficiently delivered at the local level. This important feedback loop would arise because the revamped constitutional arrangements would aim to assign the task of program and service delivery to that layer of government judged best suited to undertake the task.

It could also be argued that greater centralisation of powers, and the development of harmonised reforms through the COAG would undermine the flexibility, dynamism and competitive environment that exists under the current three-tiered Federation. However, such strengths need not be lost under the two tier based Constitutional model and, indeed, may well be enhanced. The PC has pointed out that competition between jurisdictions is driven by underlying factors such as transport and energy costs, infrastructure quality and reliability, regulatory requirements, workforce skills, proximity to markets, and political and social stability. Most of these factors can be positively influenced by jurisdictions providing good governance, and best practice program and service delivery — major objectives of moving from a three-tiered to a two-tiered constitutional system.

In addition to the above factors, diversity flexibility and competition between jurisdictions can be influenced by differing tax regimes. While the tax reforms proposed under the new Federation would be delivered via nationally agreed tax regimes by the City and Regional Councils, each jurisdiction would remain free, as noted in Chapter Three above, to choose their own tax rates — reflective of their underlying fiscal efficiencies and their choice of the size of government within their jurisdictions.

ECONOMIC GROWTH AND SUSTAINABLE POPULATION

Moving forward into the 21st century, Australia's economy will likely be driven by four important forces namely:

- An ageing but growing population.
- An emerging Asian economic power block, particularly China and India.
- Environmental constraints dominated by climate change.
- Significant technological changes driven by the ICT revolution.

To some extent these four forces are inter-related. For instance, while our population would be ageing and fiscal pressures from health care rising, the economic forces from Asia are likely to translate into strong growth in our economy with demand for skilled labour dictating a strongly growing workforce and population. As projected in the 2010 Intergenerational Report, on present trends of fertility, life expectancy and net overseas migration of around 180,000 pa, Australia is likely to reach a population of around 36 million by 2050.

The Government has recently released the first sustainable population strategy. The objective here should be not to set artificial targets for population growth, because factors such as economic growth and productivity performance are likely to influence significantly such population outcomes in the longer run. The objective of any sensible population strategy should be to set in place the kind of policies that will deliver the education, health, urban infrastructure and public transport, urban design and amenity, and regional development that would accommodate such economic and population growth in a manner that preserves social cohesion and environmental sustainability. Moreover, the demand for our resources particularly from Asia is unleashing a fundamental restructuring of the Australian economy towards resource development. Population growth and increased workforce participation would assist in that adjustment process by increasing the supply of skilled labour available for bidding by other trade-exposed industries such as manufacturing, tourism and education services, in competition with the rapidly growing resources sector.

Clearly, population strategy is such a significant national issue that, under the proposed new Federation, it should remain a Federal responsibility guided by the release of the Intergenerational Report and the proposed PC report on social and environmental sustainability. As stated above, the strategy should be based on an overall policy mix of optimising economic growth against social cohesion and environmental sustainability. The COAG should have responsibility for co-ordinating the provision of infrastructure and community amenity on both a city and regional basis, consistent with achieving the population strategy. Importantly, policies on strategic planning, infrastructure provision, and markets in energy, communications, water and carbon would play a central role in achieving a sustainable basis for the population strategy.

Immigration policy could appropriately be based on the two-tiered Federal constitutional model where policy, legislation and visa processing would remain determined at the Federal level, but program delivery especially of settlement and associated community services for newly arrived migrants could be delegated as a responsibility of City and Regional Councils. Immigration policy should be couched in a medium term framework guided by the population strategy relating to economic growth, social cohesion and environmental sustainability. Moreover, the PC could be tasked with advising the Federal Government publicly on the likely shorter term immigration demand and supply factors and their consequences for

sustainability, to assist the Government in determining the annual net migration intake as announced in each year's Federal budget.

WORKFORCE PARTICIPATION AND WELFARE TO WORK REFORM

Demographic ageing and fiscal pressures, and the rapidly emerging resources sector, clearly determine that a high priority should be placed on policies for increasing work force participation and reducing welfare dependency. There is reasonable bipartisanship on this issue but not necessarily on the means and degree of reform needed.

OECD analysis indicates that Australia's participation rate is above the OECD average but we still lag behind the best performers: Denmark, Japan, Norway, New Zealand, Sweden and Canada. Moreover, underutilised labour (that is, the unemployed, the underemployed that would like to work more hours, and workers only marginally attached to the labour force) is above the OECD average. The most important underutilised groups are women especially those with children, lone parents, people with disabilities, older workers, people with low education attainment and the indigenous population. People with disabilities, lone parents and indigenous Australians face particularly weak labour market engagement which raises the risk of social exclusion. OECD analysis indicates a close link between social exclusion and labour underutilisation and has recommended a strategy for Australia focussing on individual needs, including an education system that better promotes equity and an integrated community service approach to people with disabilities and the homeless.

The 2005 **Welfare to Work** reforms introduced by the Howard Government have now been supplemented by the **Building Australia's Future Workforce** package introduced by the current Government in the 2011-12 Budget. These reform packages have focussed on four main recipient groups, namely jobless parents, disability support recipients, mature aged unemployed and the long term unemployed, and have sought to improve rewards from working via the tax/transfer system, tightened eligibility and work test requirements, and enhanced training and other support to improve connectivity with the labour market. In the recent Building Australia's Future Workforce package, measures also included a new intense approach that seeks to address geographical disadvantage in an attempt to break the cycle of entrenched and ongoing labour force disconnection in ten selected areas. The measures are aimed particularly at jobless families and teenage parents.

There are significant areas of policy that are mainly Federal responsibilities that influence labour force participation with the main issues focussing on labour market flexibility, the tax and transfer system, eligibility requirements for income support, and job network delivery mechanisms. Skills formation and a well-functioning education system would also need to be a high priority for both Federal and city and regional governments.

One important issue that will become an increasing imperative to be addressed by the Federal Government would be to progressively rebalance the tax and transfer system towards a predominant emphasis on welfare to work objectives, thus undoing much of the focus of the current tax and transfer interface on delivering middle class welfare.

Again, the proposed two-tiered constitutional model for the new Federation would appear to be an appropriate way forward for enhancing welfare to work reform, determining that policy responsibilities, income support systems and disability insurance would rest with the Federal Government, but that the delivery of services, particularly for skills formation and community and family support services, would rest with the City and Regional Councils. Over time,

consideration could also be given to transferring Centrelink's regional network and related services from the Federal jurisdiction to the city and regional governments for co-ordination with their existing community and family support services.

HEALTH REFORM

The current health system is a patchwork of overlapping responsibilities between the Commonwealth and the States and Territories, poor accountability and incentives for best practice and cost minimisation, lack of cohesion between hospitals and primary health care, barriers between public and private sectors, and a mismatch between funding and administrative responsibility. The direction of current reforms is aimed at addressing some of these weaknesses, through having more decentralised networking, integration of services, scrutiny of output pricing, and more reliable avenues of financing. Health reform is also fundamental to addressing the longer term fiscal gap by containing health expenditures.

The move to a revamped Federation could be particularly instrumental in finally sorting out the health system issues, and enhancing the prospects for a well-functioning system of networks on a city and regional basis. Federal responsibility could focus on policy design, insurance, pharmaceutical benefits and the funding arrangements for the growing health expenditure gap. Cities and regions could focus on service delivery through proposed new integrated service networks. One possible approach that could be negotiated through the COAG would be as follows:

- There would be an overarching objective for the reforms that would seek to deliver hospital and primary health care services on an integrated basis and with truly independent local networks free of outside bureaucratic interference (such bureaucratic interference still remains a major risk to the achievement of the National Health Reforms as recently agreed to by the COAG).
- There could be around 40 networks of integrated, public and private hospitals and primary health care and aged care facilities. There could be between three and six networks in each major city and at least one network in each region. State bureaucracies could be abolished and each network governed by an independent board, directly responsible to the relevant city or regional Health Minister.
- Health services would be provided on a fee for service or co-payment basis, including public hospitals, with a safety net for those who couldn't afford the relevant fee or co-payment.
- The Federal Government would remain responsible for Medicare insurance and the private insurance market, the delivery of the Pharmaceutical Benefits Scheme, and full funding responsibility for aged care.
- Funding would be provided to the networks as shared between federally supplied SPPs and city and regional taxation. The Medicare Levy could be abolished. Above base funding, the Federal Government could guarantee to supply any annual growth in funding of the networks beyond the growth in nominal GDP as well as underpinning the funding of Medicare. The health insurance rebate could also be abolished.
- In return for these growth funding guarantees, the health networks would be subjected to the scrutiny of a newly created national health services regulator that would determine the price at which government financial payments would be made to each network for the integrated services provided.

BOX 4.2: THE COAG DEAL ON HEALTH REFORM

On 13 February 2011, the COAG agreed on national health reforms to secure the long term sustainability of Australia's health system. The main objectives of the reforms are to deliver a nationally unified and locally controlled health system that would:

- introduce new financial arrangements for the Commonwealth and States to share equally the costs of growth in the public hospital system;
- confirm the States' lead role in public health and as the system managers for public hospital services; and
- acknowledge the Commonwealth's lead role in delivering primary health care reform.

The COAG agreed that the Commonwealth would continue its **base** funding for hospital services at levels already set out in the IGA on Federal Financial Relations and the National Healthcare Agreement, and for the Commonwealth to increase its contribution to efficient **growth** funding for hospitals progressively to 50 percent by 1 July 2017.

The COAG also agreed to establish Local Hospital Networks (LHNs) as the basis for the running of the public hospital system under a local governance model. Each LHN would involve a single or small group of public hospitals with a geographic or functional connection that is large enough to operate efficiently and provide a range of hospital services, and small enough to enable LHNs to be effective in the delivery of their local health services. Each LHN would be a separate legal entity with its own Governing Council and CEO and would be aimed at giving local communities and clinicians a greater say in the delivery of local health services.

The COAG endorsed proposals to contribute funding for hospitals into a single national pool to be administered by an independent national funding body, distinct from Commonwealth and State Departments. This funding will include base and growth funding on an activity basis. There would be complete transparency and line of sight of respective contributions into the pool and from the pool through State accounts to LHNs.

The role of the States as system managers for the public hospital services would include system-wide public hospital service planning and performance; purchasing of public hospital services; planning, funding and delivering capital; and planning, funding (with the Commonwealth) and delivering teaching, research and training.

The parties further agreed to the establishment of a national approach to activity based funding (ABF), and that public hospital services will be funded, wherever possible, on the basis of a national efficient price for each service provided in order to make funding more efficient and to help drive efficiency in the delivery of services. The national efficient price would be set by an Independent Hospital Pricing Authority. Small rural hospitals would continue to be funded by block grants where the ABF alone wouldn't enable them to maintain community service obligations.

The Commonwealth also undertook to establish Medicare Locals, to co-ordinate and better integrate primary health care services in their local communities and regions. It is intended that Medicare Locals and State-funded health and community services would work co-operatively to achieve these objectives in each community.

A National Health Performance Authority is to be established under Commonwealth legislation, that would produce reports on the performance of hospitals and primary health care services. In addition, the Australian Commission on Safety and Quality in Health Care would be tasked with developing, monitoring and implementing national standards for improving clinical safety and quality in hospitals and health care settings.

EDUCATION REFORM

Like health policy, there is much reform underway in education policy through the COAG and other processes. More resources and emphasis on early childhood development is being advanced. School and student performance is under closer scrutiny through literacy and numeracy improvement programs, nationwide primary and secondary student testing, and the MySchool website. A national curriculum is being designed and negotiated. There is growing emphasis on national standards for teachers, improved teacher performance and more flexible pay arrangements. There are also new incentives being created for the best performing schools, and some decision making is being decentralised and devolved to school principals and boards. In addition, there is the Gonski review into school funding where the terms of reference require that its recommendations be directed towards achieving a funding system beyond 2013 which is transparent, fair, financially sustainable, and effective in promoting excellent educational outcomes for all students.

Major new reforms of vocational education and training (VET) are also underway as set out in the Building Australia's Future Workforce package announced in the 2011-12 Budget. As reported by Skills Australia and the PC, much needs to be done on vocational education and training in terms of:

- moving to demand-based funding of students and employers, and to outcomes-based funding of registered providers;
- revamping student fees and their underlying incentive structures including co-contributions for Certificate IV courses and above by students and employers;
- restructuring of apprenticeships and improving linkages of courses to industry needs, as well as improved mentoring and career support for apprentices;
- making public providers more flexible and autonomous, and levelling the playing field between public and private providers, as well as improving the VET in schools program;
- improving the standards of VET trainers and assessors with better rewards for excellence, as well as improving the standards, transparency and reporting (including via the MySkills website) of all registered providers;
- increasing support for VET trainers to develop their skills in the use of digital media and broadband infrastructure; and
- increasing the integration between the VET and higher education sectors, including improved student pathways from VET to higher educational institutions.

Major reforms have also been put in place in relation to universities, and 2012 will see significant incentive improvements to the whole higher education market when Commonwealth funding will be allocated on the basis of the demand by all eligible students to attend particular institutions.

Again, any move to reform the Constitution onto a city and regional basis would be an opportunity to improve and greatly expand on the current education reform agenda. The COAG could negotiate a reasonably progressive and innovative package with the main elements possibly being, as follows:

- Individual schools would be the cornerstone of the reforms. Ownership of all government schools would transfer to the City and Regional Councils, but under charter they would become independent units, governed by their own boards and principals, who would have control over the direction of each school and the selection of staff. State education bureaucracies would be abolished. Restrictions on out-of-area

enrolments would also be abolished. Funding would be shared between Federal and city and regional administrations on an equitable basis, with the funding for each school being demand-driven on the basis of the number of students that enrol in the school concerned, with adjustments for area disability factors.

- There could also be schools networks, administered by local area school authorities on behalf of the City and Regional Councils that would have no direct control over schools but could co-ordinate pre- schools, primary and secondary schools and technical trade colleges, both public and private, that volunteer to join each network. The main task of the networks would be to build integrated links giving students and parents multi-choice within their network.
- All schools would be subject to the national curriculum and national Natplan testing, and be subject to performance standards with all outcomes published regularly on the MySchool website. Also, there would be a national schools inspectorate that would do performance audits of every school on a triennial basis.
- City and Regional Councils would have responsibility for vocational and further (diploma standard) education including financial support, where the funding would follow all eligible students, as now being introduced for higher education, and with HECs style loans to cover student fees. Existing TAFEs could be corporatised or privatised, as new community colleges and/or technical trade colleges, with the objective of building better career paths to industry and academic paths to university.
- For higher education, existing public university charters and other governance arrangements would be transferred from State and Territory ownership to the City or Regional Council in which the central campus is located or have shared ownership between several Regional Councils where appropriate. The Federal Government would continue to supply almost all of the public financing of higher education. Public universities would be free to decide on their own business case including their mix of teaching versus research, but would also be accountable for meeting performance and financial viability standards. New private universities would be permitted subject to the same standards.
- The Federal Government would retain control over foreign student entry requirements to all education sectors, as well as immigration status, in consultation with educational institutions, City and Regional Councils and industry and union stakeholders.

BUSINESS REGULATION AND INDUSTRIAL RELATIONS

Under a revamped Constitution, important business regulation and associated regulatory agencies that are already a Commonwealth responsibility under the corporations power or have been referred to the Commonwealth by the States and Territories, should obviously stay at the Federal level. This covers the tariff protection regime, competition and consumer legislation, corporate law and the consumer credit regime.

In relation to the States and Territories, 27 areas of important regulation covering significant areas of business-related activities, are the subject of the COAG's Seamless National Economy negotiations aimed at achieving arrangements that better suit the advancement of a single national market. Moreover, the COAG has requested that relevant Ministers and officials bring forward options for a further wave of regulatory and competition reforms for its ongoing national reform agenda. Obviously, these processes should continue to finality. Under the transition to a new Federation, proposed new harmonised legislation under the Seamless National Economy processes could be then enacted as overarching law at the Federal level for implementation and enforcement by the cities and regions. These uniform regimes would offer increasing opportunities for efficiencies for both the public and private sectors. The associated regulatory and enforcement agencies should remain at the city and

regional level. Existing State-based agencies could come under co-operative joint ownership by the City and Regional Councils in that former State, and act on behalf of their new council owners on a fee for service basis. This would be consistent with the approach suggested above for existing state debt and asset management offices and in conformity with a functional division of responsibilities under a revamped Constitution.

BOX 4.3: COAG'S BUSINESS DEREGULATION AGENDA

In a presentation to the Melbourne Institute's Economic and Social Outlook Conference, on 2-3 November 2006, Gary Banks, Chairman of the Productivity Commission, called upon the COAG to establish nationally a new governance and reform framework for regulation, by taking action in the following six areas:

- Extend the regulation-making framework that the COAG had already agreed upon and strengthen best practice in terms of consultation, sanctions for non-compliance and governance principles for all regulatory bodies.
- Apply these principles to Ministerial Councils and national standard-setting bodies to enhance regulatory practice, and seek failsafe mechanisms to avoid unwarranted jurisdictional variations from agreed national standards.
- Review the existing stock of regulation in a systematic and coordinated way.
- Establish mechanisms that ensure regulations remain relevant and effective over time.
- Agree funding arrangements that provide financial incentives to the States and Territories for an appropriate sharing of the costs and benefits of reform.
- Include in the regulatory reforms provisions for independent monitoring and assessment of progress in implementing agreed reforms.

Against a background of mounting pressure to take further actions on business deregulation, the COAG agreed, on 26 March 2008, to a far reaching and accelerated business regulation reform agenda across 27 areas of regulation covering issues such as occupational health and safety (OH&S) regulation, environmental assessment processes, food regulation, and rail safety regulation. This reform agenda was aimed at achieving a Seamless National Economy for reducing the costs of regulation and enhancing productivity and workforce mobility in areas of shared Commonwealth and State responsibilities.

Unfortunately, there has been increasing criticism that the Seamless National Economy processes are making too slow a progress and have become bogged down in inter-jurisdictional negotiations. Recognising that some important progress has been made, the COAG agreed in February 2011 to bring forward its final completion date for the Seamless National Economy agenda from June 2013 to December 2012. In addition, the COAG asked relevant Ministers and officials to bring forward options for a further wave of regulatory and competition reforms. However, the CRC has now reported that 12 reforms are at risk of not being completed by December 2012, including on harmonised OH&S laws, a national trade licensing system, national regulation of the legal profession, and energy reform. The CRC has thus urged the COAG to take swift action on these reforms because "time is running out".

At its February 2011 meeting, the COAG also agreed to a comprehensive reform plan for a new system of Ministerial Councils. These changes included a fundamental shift towards a council system focussed on strategic national priorities and new ways for the COAG and its Ministerial Councils to identify and address issues of national significance. The COAG effectively halved the number of Councils from over 40 to 23, comprising 12 permanent Standing Councils, six temporary Select Councils and five Legislative & Governance Fora.

Industrial relations remain the one area where there isn't bipartisan support for the way ahead. All other areas of microeconomic reform from 1983 onwards have aimed essentially for flexible and competitive markets, including pro-competitive regulation where appropriate. The labour market is different. Both sides of politics agree on a reasonable degree of flexibility, but different models. One model is for mainly devolved markets between free agents that are demanding and supplying labour, underpinned by individual contracts. The other model embraces enterprise bargaining between employers and collective labour (that is, a central role for unions), underpinned by certified agreements. Ultimately, this is an ideological issue. However, in reality both models, at least in their original form (that is, enterprise bargaining introduced by the Hawke and Keating Labor Governments and the Workplace Relations Act introduced by the Howard Coalition Government in 2006), have proven flexible and adaptable to rapidly changing economic and industrial circumstances. Accordingly, neither economic theory nor empirical study is likely to judge one model clearly more flexible than the other, at least in their original forms, in terms of promoting greater productivity growth and participation rates, and advancing overall wellbeing.

The reality of the political economy means that, in each jurisdiction, we are tending to swing from one model to the other as we move from centre-right to centre-left administrations and back again under our democratic processes. In addition, at the national level, we are in a process of seeking to move to a single industrial relations framework using the corporations power as well as some referral of powers to cover unincorporated enterprises and the State public sector. However, this is a protracted and difficult process that is unlikely to be fully realised.

A two tier based constitutional reform would pave the way for achieving a single overarching Federal regime with a single nationwide regulator and/or arbitrator. This wouldn't prevent the tendency of swinging from one model to another, subject to the checks and balances of the Senate where minority parties and/or independents generally hold the balance of power. But it would mean that we would have a single harmonised labour market, which could be of net benefit for the allocation of both labour and capital and to the advancement of overall national wellbeing.

RESOURCE DEVELOPMENT

The resources sector now has a heightened influence on economic outcomes in Australia. It has lifted its GDP share appreciably and it is the driving force in our export sector. The emergence of modernising and urbanising China and India as serious economic powers, and the increasing emergence in this century of the Asian economies now significantly influence the movements in our terms of trade and national income, and exchange rate adjustments and macroeconomic settings. These drivers are likely to be long lasting.

BOX 4.4: FISCAL STABILISATION RULES AND A POSSIBLE NATIONAL FISCAL STABILISATION FUND

In mid 2010, the IMF recommended that, for the Australian budget, the automatic stabilisers should be allowed to operate fully, given that the growing dependence on mining may amplify the business cycle. This would imply saving any revenue windfalls and running larger budget surpluses during upswings than in the past to help avoid potential overheating and building a buffer against a sharp fall in commodity prices

More recently, the IMF appears to have gone further. It has suggested that, for countries like Australia that are benefitting from higher commodity prices, some of the boost to government revenues could be saved in order to ensure a more equal distribution of the benefits across generations and to reduce long term fiscal vulnerabilities from an ageing population and rising health care costs.

Clearly, the national fiscal strategy should take into account the increasing importance to the economy of the resources sector and the role being played by the commodity cycle in driving the business cycle. Given the proposal under the new Federation model to transfer much of the risks of managing national fiscal balances to the Federal Government, serious consideration could be given to the Federal Government adjusting its fiscal strategy to take into account the increased fiscal risks and the concurrent increased variability and uncertainty from the commodities cycle. This could include instigating new fiscal rules, such as they have in Chile, that ensure a certain proportion of resource related revenues are saved by running higher surpluses at the height of the cycle once commodity prices exceed a certain threshold. This sort of regime would enable the budget to be run with higher surpluses at the top of the commodity cycle alleviating pressure on the exchange rate and interest rates to the betterment of all sectors competing with the resources sector. The main objective would be to fortify the fiscal position to allow discretionary spending or saving decisions to be made that would bolster automatic stabilisers in managing demand fluctuations through the economic cycle.

As mentioned by the IMF, a further objective could be to create more 'permanent' savings to deal with the long term fiscal pressures, or to build a fund preserved for future generations if it were judged that the boost to national income from resources development was a medium term, not a more long lasting, phenomenon.

A related question would be to consider how these increased fiscal savings could best be managed. One possibility is for the savings to be placed in a fiscal stabilisation fund which, pragmatically, could operate as a division of the existing Future Fund and be able to invest both onshore and offshore according to its legislated mandate under independent management. The portfolio would of necessity need to include a proportion of more liquid assets and some natural hedges against our trading cycle, that could be mobilised to fund discretionary stimulus spending at the bottom of the economic cycle. Alternatively, or as a complementary measure, the portfolio could be constructed with a view to it being used flexibly as collateral for increased gross borrowing to finance fiscal stimulus measures, through the cycle.

It therefore would be sensible in moving away from the current piecemeal policy and administrative approach to resource development. In this regard, constitutional reform could see an opportunity to transfer policy responsibility to the Federal Government, with accompanying administrative and regulatory efficiencies, covering both onshore and offshore developments and covering Crown ownership of both minerals and petroleum. Moreover, transferring resources taxation to the Federal Government and implementing a wide ranging resource rent tax regime would appropriately transfer fiscal risks and automatic stabilisers to the Federal Budget. This fiscal framework would also provide room to alleviate pressures on other sectors by reducing company tax and addressing skills shortages across the economy, as well as greatly improving efficiencies in the resources sector and beyond by abolishing State royalties. However, abolishing royalties would probably necessitate a 'compensation deal' with City and Regional Councils for the funding of public infrastructure necessary to

support the resources and related sectors. This could involve not just direct funding by the Federal Government of resource regions such as the Kimberley-Pilbara-MidWest, Bowen-Whitsundays and Riverlands-Central, but also additional infrastructure funding of City Councils such as Perth and Brisbane brought under indirect pressures from resource developments, particularly as fly-in-fly-out operations bring population pressures to these cities.

NATIONAL ENERGY FRAMEWORK

Australia is a major producer, user and exporter of energy, with abundant reserves of coal, natural gas, and uranium. We have dwindling reserves of crude oil, but significant potential for the production of renewable energy. Energy is obviously a major policy matter for the Federal Government and it is increasingly and intrinsically intertwined with climate change policy. Under constitutional reform, obviously such important national policy should remain under Federal jurisdiction.

In terms of domestic energy use, responsibility for the integrated national energy market (that is, electricity and gas) could be transferred to Federal jurisdiction. In the meantime, there is an urgent need for the COAG to finalise the full establishment of the national electricity market, including such areas as deregulation of retail pricing, timed metering and the provision of necessary interconnection capacity between the five eastern State electricity grid networks.

On abolition of the States, it would probably be an optimal outcome for those electricity transmission grids currently owned by the States and Territories to be privatised subject to appropriate competition regulation, or transferred to a new Federal grid network owner, the National Transmission Company (NTC), that could also be tasked with greatly increasing the State-to-State interconnection capacity to facilitate the single market. By that time, it would also be optimal from a governance point of view for all electricity generation and retail operators currently owned by State or Territory Governments to be fully privatised into the competitive generation and retail energy (covering both electricity and gas) markets.

INFRASTRUCTURE REFORM

To support growth and wellbeing, there is a need to make sure that existing infrastructure is being used as efficiently as possible; that there is transparent analysis of infrastructure deficiencies; and that there is robust cost-benefit analyses of all federally-funded new projects to assist in determining infrastructure priorities.

In this regard, in the 2011-12 Budget, the Government announced important reforms that should drive lasting improvements to the way Australia plans, finances and builds the infrastructure needed to compete in the 21st century. The reform package included:

BOX 4.5: THE COAG REFORMS OF THE NATIONAL ENERGY MARKETS

Reform of the Australian electricity industry commenced in the early 1990s. At that time, the electricity supply industry in each State or Territory was generally characterised by a vertically integrated government-owned monopoly responsible for the generation, transmission, distribution and retailing of electricity; prices were set by these monopoly utility companies and/or Government Ministers; and there was limited physical interconnection of the network and no proper trading of electricity across State and Territory borders.

From the mid-1990's into the current century, National Competition Policy (NCP) significantly reformed Australia's energy markets, through the disaggregation of the elements of the energy supply chain; the introduction of competition in electricity generation and gas and electricity retailing; and the corporatisation and, in some States and Territories privatisation, of energy assets.

In recent years, the central focus of the COAG reform agenda has been the development of national regulatory frameworks. National energy regulatory institutions now include:

- the Australian Energy Regulator (AER) which is responsible for economic regulation of transmission and distribution networks for the national electricity market (NEM) and for gas pipelines for all States except Western Australia;
- a new Australian Energy Market Operator (AEMO) for the NEM and the gas market;
- the Australian Energy Market Commission (AEMC) which is responsible for rule-making, market development and policy advice concerning the NEM and access to natural gas pipelines services and elements of the broader natural gas markets; and
- the National Competition Council (NCC) which determines access arrangements for electricity transportation and access arrangements for gas.

As a result of reforms over the past two decades there is now structural separation of the monopoly network elements (transmission and distribution) and the competitive elements (generation and retail) in the gas and electricity sectors; there has been full privatisation of electricity businesses in Victoria and South Australia, partial privatisation in NSW, and corporatisation and competitive neutrality arrangements in other states for their government-owned energy businesses; there has been full privatisation of gas transmission businesses, and privatisation of distribution and retail gas businesses in most states; a competitive wholesale market exists for electricity and there is competition in the retail gas market and growing contestability in electricity retail; and national third party access regimes are in place for electricity and gas networks.

- Enhancements to Infrastructure Australia (IA) with a 40 per cent increase in its funding so that it can expand its work to provide independent policy advice on national infrastructure reform, such as National Port and Freight Strategies, while working with governments and the private sector to develop a deeper 'pipeline' of priority infrastructure projects in the Australian market.
- Greater independence and financial autonomy for IA with a revamped governing council to strike a balance between experience and renewal, as well as enabling IA's assessments of projects (including cost-benefit analysis) to be published.
- Removal of impediments to private sector investment (particularly by superannuation funds) in infrastructure by establishing special tax provisions for infrastructure projects designated to be of national significance.
- Establishment of an Infrastructure Financing Group of private and public sector advisers to identify further areas of work around private financing of infrastructure.

- Lengthening of the Commonwealth Government Securities yield curve incrementally, when prudent to do so, to help the financing of long term infrastructure projects.

Constitutional reform could be used to deliver a transparent, coherent and co-operative model for delivering infrastructure reform. The COAG could be tasked to complete the negotiation of the regulatory frameworks for all sectors including transport, energy and water, and for a unified, overarching competition and access regime to govern these frameworks. The COAG should be supported by an independent IA, as enhanced by the reforms announced in the 2011-12 Federal Budget, that will enable the IA to carry out analysis of regulatory inadequacies, infrastructure deficiencies and the cost-benefit analysis of the pipeline of new infrastructure projects of national significance (including presumably major urban infrastructure networks). The COAG could also call upon the PC to undertake full public inquiries into particular sectors, and seek recommendations from the ACCC before determining the best course of action for reform. The COAG would then make its recommendations to the Federal Parliament (or where appropriate to City and Regional Councils) for enactment into legislation. All advice from the COAG, and the IA, PC and ACCC, should be made public.

TRANSPORT AND COMMUNICATIONS

Under constitutional reform, responsibility for both transport policy and delivery, whether at Federal or city/regional level, would best be determined according to the mode of transport and the locational, financial and historic factors involved.

Clearly, aviation policy and regulatory responsibilities should remain with the Federal Government, including international agreements, domestic travel, air safety, and regulatory supervision of what is essentially now the privatised network of international, national, regional and local airports. The ACCC would continue to monitor and regulate the competition framework for the industry including airport charges, slot allocations and terminal space.

Responsibility for road transport policy and regulation should be very much determined by locational factors and whether the roads in question are nationally significant, or not. On the demand side, road charges could be introduced across the nation by the Federal Government, after agreement by the COAG, using latest GPS tracking technology, with specific charges being imposed per kilometre for the type of vehicle and type of road (minor, major, freeway) used. Revenue would be shared between the two tiers of government as well as with private road operators. Toll roads would be made redundant, and public-private partnerships (PPPs) would be made more viable as traffic flows would be charged identically for using all major roads (or freeways) and would be indifferent to which major traffic route (or freeway) is used. In addition, City Councils should be encouraged to introduce congestion charges in all five major cities.

On the supply side, the Federal Government could retain full responsibility for the existing national highway system together with all other major inter-city and inter-regional connecting highways that the Federal Government could pledge to develop as a truly high quality national highway system, just as President Eisenhower championed and commenced the Interstate Highway System in the USA more than five decades ago and which was essentially completed in the 1990s. This is the type of highway system that is needed to fully connect our continental nation to help deliver a truly single market to the economic and social wellbeing nationwide. City and Regional Councils would be responsible for all other roads

including all intra-city arterials that form part of each city's strategic plan. In addition, Regional Councils would be responsible for all regional and rural connector roads vital for rural and regional industries and communities. City and Regional Councils should have the financial wherewithal to construct and operate these roads, either by themselves or under PPP contracts, given their revenue sharing from the proposed road user charges and congestion charges.

Rail would be difficult as locationally existing State track and signalling networks would need to be transferred to the Federal level upon the abolition of State Governments. The best solution would be for the Australian Rail Track Corporation (ARTC) to merge its existing national track network with the State networks under Federal regulatory jurisdiction. As is now evolving, all freight train operations would be privatised before the abolition of State Governments. Responsibility for passenger services between the major cities would need to become a full Federal responsibility, including the possible High Speed Rail connecting Brisbane-Newcastle-Sydney-Canberra-Albury-Melbourne, the Indian-Pacific connecting Sydney-Perth, the Overland connecting Melbourne-Adelaide, and the Ghan connecting Adelaide-Darwin.

All public transport, including metro, bus, tram and ferry services would be the responsibility of the City and Regional Councils, whether supplied in-house or by private contractors under subsidy arrangements. Passenger rail services between major cities and regional centres, including commuter trains feeding into the city metro networks, would be jointly shared by the relevant City and Regional Councils. Through the COAG, these councils could request Federal financial support for some of these services where such support would incorporate externalities that would not be captured otherwise.

The ACCC would have responsibility for regulating track network charges by the ARTC, and the COAG would need to finalise the establishment of a nationally-based rail safety regulator.

All ports, whether major resource export facilities or freight container terminals, would need to be privatised by the time State Governments are abolished and come under the regulatory supervision of the ACCC. Interconnection of ports with the national rail and road freight networks would be a Federal responsibility, following recommendations agreed by the COAG, after detailed land transport and port analysis and advice by IA, and by the PC as required. Coastal and international shipping policy and administration would continue under Federal jurisdiction, and again the COAG would need to finalise the arrangements for a nationally-based maritime safety regulator covering shipping and ports.

Postal services would remain a Federal responsibility, without COAG involvement, including the degree to which Australia Post would face competitive markets and whether parts of its functions could be outsourced or privatised. Also, the degree to which Australia Post would deliver other services, such as financial and payment services, and the extent of its community service obligations, would continue to be the responsibility of the Federal Government.

Communications policy including telecommunications and the integration of communications and media should remain at the Federal level, with the rollout of the National Broadband Network (NBN), or some variant thereof, presumably as the foundation infrastructure platform of future communications marketing and regulatory developments. The NBN would remain regulated by the ACCC, and the PC should be called upon by the Federal

Government to investigate NBN milestones in its development stage and to hold a full public inquiry before any proposed privatisation of the NBN were to take place in the future.

LAND USE MANAGEMENT AND THE ENVIRONMENT

Issues of land use management are fundamental to determine the distribution of the nation's land resource base between competing claims for residential and industrial use, resource development, agricultural activities, environmental protection, and indigenous land title and occupation. Therefore, under the two tier constitution model, it would make sense that all non-urban land use management policy and regulation and associated Crown land ownership reside with the Federal Government, given that resources, environment and indigenous affairs, as well as important aspects of agriculture matters such as water reform, would all come under Federal jurisdiction. The administration and delivery of land use management services on the ground could then sensibly be delegated to local land management offices under city and regional control.

All urban land could be designated as such for each individual city and town at the time of the constitutional reform, with such designated areas encompassing existing city and town boundaries as well as areas for future expansion as set out in individual city or town strategic plans. Given the interface with proposed City and Regional Council jurisdiction over town and city planning and urban development, it would seem appropriate that designated urban land use management and any associated Crown ownership of urban land would come under City and Regional Council jurisdiction. Proposals for future changes to designated urban areas could be assessed by the IA, for agreement by the COAG.

With constitutional reform, environmental issues could best be handled at the policy and assessment level by the Federal Government, and this is where the Federal Government should concentrate its efforts and leave program delivery to City and Regional Councils under the two-tiered constitutional model. Major policy issues would presumably revolve around climate change and the creation of a market for carbon and the renewable energy targets, and the likely enormous issue of climate change adaptation. As well, there would need to be an ongoing priority for environment protection and land and conservation management under the existing Federal environment protection legislation.

This jurisdiction over environment policy would need to cover both urban and non-urban areas, in order to make all parts of the nation accountable under one integrated environmental regime that would take into account the likely spillovers of environmental effects between urban and non-urban areas, and would enable appropriate trade-offs to be made on competing claims. While political and legal disputes would inevitably arise from time to time between the two layers of government on certain environmental issues and projects, particularly where they were located on urban land, on such occasions City and Regional Councils would be stakeholders just like any other player dealing with the Federal Government at the time.

With the Federal Government being responsible for national environmental policy and assessment, there would remain plenty of room for the delivery of national programs at the city and regional level as agreed within COAG frameworks, including implementing solar energy feed-in programs, energy efficiency building codes, local delivery of climate change adaptation measures, and locally-based landcare and other environmental protection, conservation and heritage programs.

WATER REFORM

The COAG still has much work to do to establish a fully operational water trading market, including full tradability between regions and between States. In addition, the COAG has to sooner or later grapple with the issue of allowing water trading between rural and urban use. Moreover, the Federal Government has much work to do to settle on a Murray-Darling Basin Plan that efficiently delivers a balance between economic, social and environmental factors acceptable to all stakeholders, and that can be passed by the Federal Parliament.

Under constitutional reform, Crown ownership of non-urban waterways and artesian basins as well as policy and regulatory supervision of the water industry and the development of the national water trading market would need to be under Federal jurisdiction, given the importance of water as a national asset, and as the water market is likely to straddle many city and regional boundaries. Presumably the national market, and its sub-markets, would eventually expand beyond just the Murray-Darling Basin and related systems, to cover trading in the Greater Artesian Basin as well as coastal river systems, and not only in southern regions but in northern regions especially as northern agricultural production becomes more viable as climate change evolves. This would require a much expanded coverage of the mandate of the Murray-Darling Basin Authority (MDBA). Presumably, most major cities and regional towns would also trade in water rights in the fully developed market. With such market expansion, it would also become necessary to expand the coverage of the mandate of the MDBA especially in relation to the imposition of caps on water usage across the nation.

By the time State and Territory Governments are abolished, all irrigation authorities would need to be transferred into co-operative ownership or fully privatised as agreed by relevant State and Territory Governments with irrigation farmers and other stakeholders. New irrigation schemes could be public or private, operating on a commercial basis within the overall water market and regulatory arrangements.

Waterways in designated urban areas could be allocated under Crown ownership and jurisdiction to the City and Regional Councils, given the need to integrate the management of both land and waterways under city and town planning and urban development powers for efficient and effective policy and administration.

Urban water authorities would need to come under the ownership of the relevant City and Regional Councils. Also, the COAG could be tasked with negotiating sensible microeconomic reforms of the urban water supply industry, following the current inquiry by the PC. Given the ensuing market structure, regulatory supervision would presumably be carried out by the ACCC on a uniform national basis as part of a possibly wider mandate covering the national water market. Also, councils should be able to pursue further private involvement in urban water markets in competition with the existing water authorities or as the contractors of services under competitive tender to those authorities, as is already happening with the building and operation of desalination plants.

BOX 4.6: NATIONAL WATER REFORMS

(i) Commonwealth and the COAG involvement in water reforms

Since Federation, responsibility for Australia's water resources has primarily rested with the States and Territories, under section 100 of the Constitution, which provides that "the Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation."

However, since the 1990s, the COAG has become increasingly involved in water policy in Australia. This increase in involvement coincided with the implementation of the National Competition Policy reforms. In 1994, the COAG agreed to a Water Reform Framework which established a strategic direction for water reform. Key elements of the framework included pricing reform, the clarification of property rights, improved natural resource management, water trade reform, and institutional reform. In 1995, the COAG decided that the implementation of the Water Reform Framework would come under the umbrella of National Competition Policy, whereby progress on water industry reforms was linked with National Competition Policy payments.

Following on from this Water Reform Framework, the Intergovernmental Agreement on a National Water Initiative (NWI) was concluded at the June 2004 COAG meeting. The aim of the NWI is to increase the efficiency of Australia's water use, leading to greater certainty for investment and productivity, for rural and urban communities, and for the environment. This is to be achieved by developing a more cohesive national approach to the way Australia manages, measures, plans for, prices, and trades water. Under the NWI, governments have made commitments to prepare water plans with provision for the environment, deal with over-allocated or stressed water systems, introduce registers of water rights and standards for water accounting, expand the trade in water, improve pricing for water storage and delivery, and meet and manage urban water demands.

The National Water Commission's 2009 biennial assessment report on the implementation of the NWI found that, despite some progress, the pace of water reform has slowed on almost every front. The report was particularly critical of a lack of progress in water planning and the failure to address over-allocation. The report applauded progress on water trade, but noted that some State-imposed barriers remain.

(ii) Murray-Darling Basin reforms

In addition to the efforts to promote broader water reform, the Commonwealth has worked to improve the management of water resources within the Murray-Darling Basin, which spans four States and one Territory.

In January 2007, the Howard Government announced a \$10 billion National Plan for Water Security, which sought to improve the efficiency of existing water infrastructure, address over-allocation, and improve metering, accounting and water data.

This package was succeeded by the Rudd Government's Water for the Future initiative. In return for a share of the funding, the Government sought agreement from Basin States to a new Basin wide planning process. In July 2008, the Commonwealth and the Basin States concluded the Intergovernmental Agreement on Murray-Darling Basin Reform, which saw the Basin States refer water planning powers for the Basin to the Commonwealth and agreed to the establishment of a new independent MDBA.

CITY AND TOWN PLANNING

The COAG has already laid out a cities strategic planning framework that sets out principles for coherent, best practice strategic planning, with an emphasis on economic, social and environmental net benefits and the proper integration of infrastructure provision and development approval processes into the strategic planning process. Under constitutional reform, this overarching framework could be re-endorsed by the COAG as applicable nationwide. Moreover, the COAG should be tasked with reporting to the Federal Parliament every three years on the compliance and performance of all City Councils and relevant Regional Councils under the COAG framework.

BOX 4.7: THE COAG AGREEMENT ON CAPITAL CITY STRATEGIC PLANNING SYSTEMS

On 7 December 2009, the COAG agreed that by 1 January 2012 all States will have in place plans that meet new national criteria under the COAG reforms to capital city strategic planning systems. The reforms are to ensure our capital cities are well placed for the future, with strong, transparent and long term plans in place to manage population and economic growth, as well as climate change, housing affordability and urban congestion. The new systems will involve new national criteria that:

- provide for future-oriented and publicly available long term strategic plans;
- are integrated across functions (land use, infrastructure, transport) and integrated across the three levels of government;
- support economic growth, population growth and democratic change, productivity and global competitiveness, climate change mitigation and adaptation, and efficient development and use of new and existing infrastructure;
- provide for nationally significant economic infrastructure (both new and upgraded existing) including transport corridors, international gateways, intermodal connections, major communications and utilities infrastructure, and the reservation of land for future expansion;
- consider and strengthen the networks between capital cities and regional centres and other domestic and international connections;
- provide for planned and sequenced land release and a balance of infill and greenfields development;
- clearly identify priorities for future investment and policy effort by government and effective frameworks for private sector investment and innovation;
- encourage world-class urban design and architecture; and
- provide for effective implementation arrangements and supporting consultation and engagement mechanisms with external stakeholders.

The CRC was also tasked with independently reviewing the consistency of capital city strategic planning systems with these new national criteria. The CRC will also support continuous national improvement in strategic planning and build and share knowledge of best-practice planning approaches.

BOX 4.8: CANBERRA AS A SPECIAL CASE: NATIONAL CAPITAL AND WORKABLE REGIONAL CITY

Canberra would retain its special status as the national capital and seat of the Federal Parliament, executive government and public administration. However, the governance arrangements over strategic planning for the national capital are a dilemma. It has been argued that the existing arrangements whereby the national capital aspects of Canberra are the responsibility of the Federal Government, under the National Capital Authority (NCA), and the city planning and development approval aspects are handled by the ACT Government, aren't working well. Similarly, handing all responsibilities to either the Federal or ACT Government wouldn't be satisfactory as neither would be able to carry out both national and city responsibilities in an objective and accountable way. One option would be to have a joint Federal/ACT authority to handle all aspects of strategic planning responsibilities for the entire Canberra-Queanbeyan conurbation, thus integrating national capital aspects with land use, transport and environment planning.

The new joint authority could be given a revamped, more visionary charter to preserve at least what remains of the Griffin legacy, particularly the layout of the inner national capital precinct with its grand vistas based on geometric lines, angles and circles, and with the focal points, as envisaged by Walter Burley Griffin, such as Capital Hill, Red Hill, Mt Ainslie and Black Mountain. Griffin's vision was to overlay this layout with an 'Organic City' of grand monumental, architectural and landscape dimensions that was never implemented. Over the years, city planners have moved from Griffin's more compact European city design to a more spread out garden city based on a less dense foreshore development, neighbourhoods and suburbs, motorways, and a more natural landscaping consistent with the local "Australian" surroundings.

The joint authority should also be tasked, and adequately resourced, to preserve the lake and its foreshores and wetlands, the parliamentary triangle, the war memorial precinct, the defence complex and the military academy precinct. The new and old Parliament Houses and all national institutions should be maintained to the highest standards. As well, the joint authority could promote the heart of the capital as a place to celebrate our achievements as a nation, and to fully appreciate our parliamentary, cultural, historic and indigenous institutions, traditions and conventions amidst Canberra's natural landscape.

Beyond its role as the national capital, Canberra would need to continue to thrive as a functional, liveable city that would also serve as the centre of the newly-created Monaro Region. The ACT boundaries would be dissolved and Queanbeyan included in the greater Canberra city limits. To ensure that Canberra develops as a workable and liveable regional city, the joint authority would need to continue the process of redesigning Canberra away from the long failed Y-Plan, with the future city population radiating in interconnected concentric circles from the current heart of inner Canberra. Urban infill and consolidation, and densification along transport corridors and around town centres, would give a greater efficiency and continuity to the city, enhancing social, economic and community coherence and sustainability. As Canberra-Queanbeyan approaches a projected population of between 430,000 and 500,000 residents by 2032, a mass transit system may be feasible that would interconnect inner Canberra, the town centres (including Molonglo and Queanbeyan) and the proposed Majura-to-Hume industrial and technology corridor (including the airport).

Despite the new COAG strategic planning framework, city planning remains a major problem. For most major cities, multiple local jurisdictions represent an obstacle to State Governments properly implementing longer term strategic plans. For instance, Sydney is governed by 43 local councils which means local development processes often clash with strategic plans particularly in stymieing efforts to increase density along transport corridors. Moreover, State Governments have overall performed poorly at co-ordinating infrastructure provision. With

the establishment of City and Regional Councils under constitutional reform, a major reform could be achieved by handing uniform responsibility for strategic planning, urban infrastructure, and residential and industrial development approval processes over to the relevant City or Regional Council, with the objective of improved outcomes for urban development along major transport corridors, and better location of residential developments that allows easier access for all residents to employment opportunities. Significant administrative efficiencies and cost savings would also be achieved.

Housing supply is now a major political and economic issue as strong population growth and inadequate planning and development approval processes mean that increasingly demand for housing is outstripping the ability to supply the required housing stock. Moreover, infrastructure charges by both State and local governments have resulted in inefficiencies and inequities being built into the land and housing supply chain. City and Regional Councils may give an institutional and governance structure that could eventually overcome obstacles to the adequate supply of housing. The COAG could reinvigorate its current efforts, with advice from the PC, to agree on a policy framework that would guide the new Councils in solving the continued housing shortages.

In addition, by the time of the abolition of the States and Territories, each public housing authority should be wound up and its assets sold to the private, co-operative or not-for-profit sectors. From then on all public housing subsidies could be delivered through Rent Assistance from the Federal Government, as recommended by the AFTS review, and all emergency public housing needs could be delivered by City and Regional Council community service departments via private, co-operative or not-for-profit providers. Significant administrative savings would be possible.

INDIGENOUS AFFAIRS

Given the central place of Australia's indigenous peoples in our nation's historical, settlement and cultural development over the past 40,000-60,000 years, as well as the significant challenges of resolving indigenous disadvantage, indigenous affairs and indigenous land title issues should clearly be a Federal Government responsibility incorporated directly into the Constitution. The revamped Constitution should specifically provide for this allocation of powers, along with a statement of recognition of our indigenous peoples and their contribution to our nation including the importance of the distinct and unique cultures of the Aboriginal and Torres Strait Island peoples and their prior and continuing ownership of the land.

It could be argued that economists and microeconomic reform have little, if anything, to contribute to resolving indigenous issues of dispossession, deprivation and disadvantage. However, if we are serious about advancing the wellbeing of the Australian people, then we need to focus on this issue. There are important microeconomic reform issues relating to education attainment, workforce participation, economic development opportunities, and regional and remote development that need to be addressed.

The resolution of indigenous land ownership should be the responsibility of the Federal Government. Certainty of tenure is imperative for effective and sustainable economic development, whether through the recognition of native title or other settlement processes.

Delivery of programs and services to indigenous peoples and their communities could be the responsibility of the Federal Government either by funding its indigenous initiatives, such as

housing, health, education, and law and order, directly into mainstream City and Regional Council programs, or by delegating specific Federal indigenous programs to city and regional authorities, as provided for under the flexibility provisions proposed for such delegations under the revamped Constitution. In addition, the Federal Government could enter into agreements with autonomous indigenous communities to deliver services and programs on the ground.

PROVISION OF LOCAL UTILITIES AND MUNICIPAL SERVICES

Under constitutional reform, the provision of basic local utilities services of electricity and gas would be provided through national markets and private sector retailers in active competition as outlined above. Town and city water supplies would be provided predominantly by local water authorities as outlined above with the prospect of evolving microeconomic reform of urban water supply markets in the future.

All other municipal services would be consolidated for delivery by the new City and Regional Councils, with multiple council offices in each jurisdiction to provide the appropriate public access to these services. Such services would include family and community services, community health services, emergency housing, and consumer advocacy, as well as local museums and heritage protection, and educational support services and local library services.

Essential services such as fire brigade, ambulance and SES emergency services and rural fire services would also be the direct responsibility of the City and Regional Councils.

Registration of births, deaths and marriages, as well as land titles registration, would also remain at the local council office level, but the responsibility for the development of a nationwide electronic and historic data base management system could be designated to newly established central agencies at the Federal level.

PUBLIC SERVICE AND ADMINISTRATION

The Federal Government would, of course, continue to be serviced by the Australian Public Service, under the guidance of a well-resourced Australian Public Service Commission (APSC). The organisation of Federal public administration should continue under the model of having about 17 or 18 super ministerial portfolios with a core policy department at the centre of each portfolio. This model has served us well since its introduction by the Hawke Government in the 1980s.

At the time of the abolition of the States and Territories, much State bureaucracy could also be abolished or significantly scaled down, and the Federal and local government bureaucracies subjected to widespread streamlining. This would be particularly so, given the proposed role to be played by health and education networks, the integration of city and town planning and infrastructure development, and the Federal takeover of important new powers previously held by the States in areas such as taxation, business regulation, resources and energy, land use management, and environmental protection, and the establishment of the proposed National Judicial System. This would mean both tiers of government could run much more efficient bureaucracies.

The City Councils could probably be able to copy the super ministerial portfolio model from the Federal jurisdiction given their importance and resource base. For Regional Councils,

this would raise more difficult issues as they would be required to delivery significant activities but with less mature and less well-resourced administrative bases. However, the ACT has built up a feasible and workable city-state administrative structure around 5 or 6 ministerial, policy and service delivery portfolio structures. This could be one model that could evolve over time for Regional Councils to follow.

It would be important for each jurisdiction to have a Public Service Commission, of varying sizes, that would be responsible for strategic leadership and guidance of each public service and to ensure that the public service remains transparent and accountable for its performance. To nurture and encourage future public service reform across all jurisdictions, the Australian Public Service Commission (APSC) could be the lead player, and the Australian Public Service Commissioner could be tasked by the COAG to co-ordinate these reform activities with fellow public service commissioners from the cities and regions.

CHAPTER FIVE: CONCLUSION

The Federation has served Australia well for the past 110 years. It has great attributes that should be preserved. It has brought unity while preserving diversity, as well as political and social stability, democratic vitality, and economic progress and financial stability. While the Federation isn't broken, it needs updating and modernising. It has shortcomings probably not contemplated by the founding fathers and certainly not conducive to the challenges of the 21st century. The balance of power within the Federation has shifted increasingly to the centre, and that is probably the reality of Australia as a modern globalised economy and society. The roles and responsibilities between the tiers of government are confused and unclear, and the delivery of policy outcomes to local communities is sadly lacking. Economic reforms are faltering, with States and local government no longer having the wherewithal to deliver on the tasks assigned to them.

The overarching objective of advocating constitutional reform, as proposed in this paper, is to open up a series of opportunities for Australia to embed a new set of institutions, processes and incentive structures for policy making that would be conducive to capturing the benefits of productivity, efficiency and growth, as well as cooperation, accountability, sustainability and service delivery, thus enhancing the wellbeing of the Australian people.

This paper argues that the proposed restructuring of the Federation onto a cities and regional basis would bring a more feasible and efficient balance between the tiers of government, that recognises the realities of Australia in a globalised world and that could lay the foundation for significant economic, social and environmental reforms. The paper doesn't argue for a dismantling of the Federation, and recognises the clear benefits that the Federation has delivered to the nation. However, it does argue that the Federation needs to be revamped and repaired. There needs to be injected into the Constitution factors that would result in a rebalancing of the powers between the tiers of government and addressing the trade-offs to bring that rebalancing about. This would include moving the Federation towards a more centralised model but at the same time strengthening the decentralisation elements of the Federation under the second tier of government so that they can deliver appropriately to the citizens and communities of our cities and regions. The seven major drivers for such an outcome would be:

- 1. Clear Roles and Responsibilities:** The Constitution would clearly designate roles and responsibilities between the two tiers of government. Constitutional powers would still be set out under major 'subject' headings. However, within these heads of powers, roles and responsibilities would be allocated on a 'functional' basis. On the one hand, the Federal Government would be tasked to concentrate on national policy design, legislative frameworks and financing regimes. On the other hand, City and Regional Councils would be tasked with implementing national policies and programs and service delivery to regional and local communities, particularly the delivery of the new health and education networks, with them also retaining significant urban, regional and local responsibilities over strategic planning, urban infrastructure, and public transport. The aim would be to assign to the appropriate tier of government those tasks that it is judged that tier would be best suited to undertake.
- 2. A Cities and Regional Approach:** In moving to a cities and regional basis for a new Constitution, the aim would be to take advantage of the diversity of Australia as a nation continent, while at the same time reinforcing and enhancing the flexibility, dynamism and competitive environment inherently built into the existing three-tiered Federation. The cities

and regional level seems to be the appropriate point at which to condense State and local government into a single layer, that would sharpen the focus on service delivery of national, urban, regional and local programs, while at the same time opening up opportunities to significantly streamline public administration. The move to a two tier based Federation would shift the balance of power further towards central government, but this would be counter-balanced by a delegation of authority with matching revenue raising powers to a new and consolidated second layer of government, thus empowering the cities and regions in a way that currently doesn't exist. We need to address head-on the reality that constitutional powers are increasingly moving to Commonwealth control, with the development of greater tensions between the centre and the lower levels of government, and the increasing faltering of many economic, social and environmental reforms necessary to safeguard the wellbeing of the Australian people.

3. The COAG as the forum for unifying and consolidating the Federation: While the two tier based model would deliver significantly more power to the Federal Government over major national policy areas, the voice of the City and Regional Councils would be better heard at the national level through a revamped COAG which would have a clear, significant and central role in the policy fabric and workings of the Federation, as recognised under the new Constitution. The COAG would serve as the main forum through which the design of national policy reform would be integrated with best practice program implementation and service delivery on a consensual basis, and would be a fundamental institution for a united and consolidated Federation. Moreover, the COAG would be fully supported with independent analysis, advice and recommendations from its own secretariat as well as the CRC, PC, IA and ACCC.

4. Credible and cohesive Macroeconomic Policy Framework: The proposed national fiscal strategy and tax reforms would deliver a credible and comprehensive macroeconomic policy framework necessary to underpin economic stability, growth and prosperity in the new Federation. Importantly, fiscal risks would be shifted decisively to the Federal Government in terms of both cyclical budget risks as well as carrying the longer term fiscal risks, particularly from the projected growth in health expenditures and the uncertainties facing the financing of our future defence capability. Moreover, the City and Regional Councils would be supplied with new, enhanced and more stable sources of revenues such as the proposed new cash flow consumption tax and the proposed new land tax that would give the new Councils the wherewithal to carry out their functions properly. To complement this, the new IGA on Federal Financial Relations must be implemented fully so that the Federal government desists from seeking to control inputs under federally funded programs and Cities and Regional Councils are given full autonomy, and are held accountable for delivering outcomes, under a robust, measurable and transparent performance monitoring system.

5. Incentives and opportunities for a significant new Microeconomic Reform Agenda: The revamping of the Federation, including the negotiations leading to that revamping and subsequent deliberations by the COAG, would reinforce the case for constitutional reform and a new Federal governance system on the basis that such changes would present to Australia greatly enhanced opportunities for achieving the sorts of economic, social and environmental reforms necessary to maintain and enhance our place in a rapidly changing and globalising world. In various areas of major national policy concern, where the powers between the two tiers of government would need to be redefined or clarified as part of the constitutional reform process, opportunities for

advancing microeconomic reforms would arise because of the interaction of the following factors:

- The redefinition and clarification of various powers between the two tiers of government would of itself result in major reforms. The act of abolition of the States, and the reassignment of their powers, is central to this process.
- The defining of various powers for allocation between the two tiers of government on a functional basis (that is, between national policy frameworks and service delivery to local communities) would facilitate the opportunity for implementation of major areas of reform.
- The new structures and incentives built into the constitutional framework for the new Federation, including through the enhanced COAG model, would greatly improve the chances of achieving major reforms, right across the whole policy spectrum, and be fundamental for the ongoing process of reform that could endure on a longer term basis.

Out of this powerful interaction of factors within the new Federation, one could envisage a range of examples where microeconomic reform of major policy areas could be achieved, as follows:

- (i) a revamped Federation, particularly the move to a cities and regional approach, could be particularly instrumental in finally sorting out the health system issues and enhancing the system of local networks. Federal responsibility could focus on policy design, insurance, pharmaceutical benefits and the funding of the growing health expenditure gap. Cities and regions could focus on regional and local service delivery through the new integrated and autonomous service networks;
- (ii) the move to reform the Constitution onto a city and regional basis would be an opportunity to improve and greatly expand on the current education reform agenda in an innovative way including enhancing the moves to greater school autonomy, transparency and accountability, and exploring possible networking of schools;
- (iii) constitutional reform could see an opportunity to transfer policy responsibility to the Federal Government over both onshore and offshore resources development and covering Crown ownership of both minerals and petroleum, and to put in place a comprehensive and cohesive national, fiscal and taxation regime for what is now a pivotal sector driving the economy;
- (iv) there would be increased opportunities to sort out the roles and responsibilities for the delivery of land transport investment and urban and nationally significant infrastructure, and to move to governance at the city and regional level so that Australia could finally deliver on urban strategic planning and address the co-ordination of urban infrastructure and the issues surrounding congestion and the supply and affordability of housing; and
- (v) revamping roles and responsibilities between the two tiers of government and linkages through the COAG would bring the structures and incentives for addressing energy and water reform and fundamental environment issues in the national interest.

6. Diversity and competition within the Federation: The factors driving economic reform would also allow the cities and regions to concentrate on underlying issues such as transport and energy costs, infrastructure quality and reliability, workforce skills, and

political and social stability, as well as variable tax rates, that would underpin the diversity, flexibility, dynamism and competitiveness of the revamped Federation.

7. **Streamlining of public administration:** Finally, the proposed revamping of the Federation would offer the real prospect of delivering significant efficiencies and effective public administration across the country. The dismantling of State bureaucracies, and the streamlining of Federal and local government bureaucracies, could present a major opportunity to trim the size of government, and make more effective the delivery of services to citizens, communities and business enterprises across the country, on a cities and regional basis.

ATTACHMENT A: PROPOSED CONSTITUTIONAL DIVISION OF POWERS BETWEEN FEDERAL AND CITY/REGIONAL TIERS OF GOVERNMENT

| HEADS OF POWER | FEDERAL POWERS | CITY AND REGIONAL POWERS | SHARED POWERS AS DELEGATED TO CITY AND REGIONAL COUNCILS |
|--|--|---|--|
| Foreign Affairs & Trade | All Federal Responsibilities. | | |
| Defence & National Security | All Federal Responsibilities. | | |
| Justice & Law Enforcement | National Judicial System. National Policing. Criminal & Civilian Code. | Police Forces. Prison Services. | |
| National Fiscal Strategy | Charter of Budget Honesty. | | Charter of Budget Honesty. |
| Revenue Raising | Personal Tax. Company Tax. Custom & Excise. Resource Taxes. | Consumption Taxes. Land Taxes. Service Charges. | |
| Financial Sector | RBA Act. Financial & Credit Regulation. G20 & IFIs. | | |
| Microeconomic Reform | COAG. PC. IA. ACCC. | COAG | COAG. PC. IA. ACCC. |
| Population Strategy | All Federal Responsibilities. | | |
| Immigration | Policy & Admin. Visa Processing. Detention Centres. | Community Services. | Settlement Services. |
| Welfare to Work | Social Security. Income Transfers. Jobs Network. | Community Services. Education and Skills Training. | Federal Regional Network. |
| Health Reform | National Policy. Growth Finance. Medicare. | Hospital Ownership. Clinic Ownership. | Health & Hospital Networks. |
| Education Reform | National Policy. School, TAFE & University Funding. Innovation. | School & TAFE Ownership & Funding. University Ownership. | Education Networks. |

| HEADS OF POWER | FEDERAL POWERS | CITY AND REGIONAL POWERS | SHARED POWERS AS DELEGATED TO CITY AND REGIONAL COUNCILS |
|---|--|---|---|
| Business Regulation | Competition & Business Law. Corporations Law. Tariff Regime. | | COAG Harmonised Seamless National Economy Reforms. |
| Industrial Relations | All Federal Responsibilities. | | |
| Resources Development | All Federal Responsibilities. | | COAG Resources Reforms. |
| National Energy Framework | National Energy Market. Transmission Grid. Regulation of Electricity & Gas. | | COAG Reforms of the National Energy Market. |
| Infrastructure, Transport & Communications | National Transport and Infrastructure. Aviation Policy & Regulation. Road Pricing. Rail Track Network. Inter-City Rail. Ports Strategy & Regulation. Communications. | Urban, Regional & Local Infrastructure. Congestion Charges. Public Transport. Inter-Regional Rail. | COAG Reforms of Transport & Infrastructure. |
| Land Use Management & the Environment | Non-Urban Land Use Management. Environmental Policy & Assessment. Climate Change. Carbon Market. Renewables Target. | Urban Land Use Management. | Local Land Management Offices. COAG National Environmental Programs. |
| Water Reform | Water Policy. Non-Urban Waterways & Basins. Water Trading. ACCC Regulation. | Urban Waterways. Urban Water Authorities. | COAG Water Reforms. |
| City and Town Planning | | Planning Policy & Regulation. | COAG Strategic Planning Framework. COAG Housing Supply Framework. |
| Indigenous Affairs | Policy & Regulation. Land Title. | Education, Health & Community Services. Community Policing. | Special Indigenous Programs. Law and Order. |
| Local Utilities & Municipal Services | Data Base System for Land Titles and Birth, Death & Marriages. | Mainly City & Regional Responsibilities. | |
| Public Service and Administration | Australian Public Service. | City & Regional Council Public Services. | |

ATTACHMENT B: PROPOSED FIVE CITY COUNCILS AND NINETEEN REGIONAL COUNCILS

PROPOSED CITY COUNCILS

| Code | City | Popn ('000) | Area Covered |
|------|--------------|---------------|---|
| SYD | Sydney | 4,472 | Sydney Basin but not Central Coast |
| MEL | Melbourne | 3,996 | Limits as defined in long term strategic plan |
| BRI | Brisbane | 2,004 | Greater Brisbane including Ipswich |
| ADE | Adelaide | 1,187 | Greater Adelaide including Gawler |
| PER | Perth | 1,742 | Greater Perth and corridor south to Mandurah |
| | Total | 13,401 | |

PROPOSED NSW/ACT REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|-----------------------|--------------|--|
| HUN | Hunter | 676 | Newcastle, Cessnock, Maitland, Muswellbrook, Singleton |
| ILL | Illawarra | 431 | Wollongong, Nowra, Southern Highlands |
| NR | Northern Rivers | 485 | Tweed, Lismore, Ballina, Pt Macquarie, Grafton |
| MNE | Macquarie-New England | 510 | Tamworth, Armidale, Dubbo, Bathurst, Orange, Broken Hill |
| MON | Monaro | 569 | Canberra, Queanbeyan, Goulburn, South Coast |
| RH | Riverina-Hume | 325 | Wagga Wagga, Albury-Wodonga |
| | Total | 2,997 | |

PROPOSED VIC REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|------------------|--------------|--|
| BG | Barwon-Grampians | 598 | Geelong, Warrnambool, Ballarat, Horsham |
| MM | Murray-Mallee | 539 | Bendigo, Mildura, Wangaratta, Shepparton |
| GIP | Gippsland | 262 | Latrobe Valley, Bass Coast, Sale, Bairnsdale |
| | Total | 1,397 | |

PROPOSED QLD REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|------------------------|--------------|--|
| GC | Gold Coast | 582 | Southport, Surfers Paradise, Robina, Tweed Heads |
| BSC | Burnett-Sunshine Coast | 610 | Caloundra, Maroochydore, Hervey Bay, Bundaberg |
| DD | Darling Downs | 358 | Toowoomba, Warwick |
| BW | Bowen-Whitsundays | 406 | Rockhampton, Gladstone, Mackay |
| CY | Cape York | 531 | Townsville, Cairns, Mt Isa |
| | Total | 2,488 | |

PROPOSED SA/NT REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|--------------------|-------------|---|
| RC | Riverlands-Central | 437 | Mt Barker, Barossa, Mt Gambier, Pt Pirie, Whyalla |
| NT | Northern Territory | 226 | Darwin, Alice Springs |
| | Total | 663 | |

PROPOSED WA REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|---------------------------|-------------|---|
| SWG | South West-Goldfields | 356 | Bunbury, Albany, Wheatbelt, Kalgoorlie |
| KPM | Kimberley-Pilbara-MidWest | 148 | Pt Hedland, Karratha, Geraldton, Broome, Kununurra, Derby |
| | Total | 503 | |

PROPOSED TAS REGIONAL COUNCILS

| Code | Region | Popn ('000) | Major Centres in the Region |
|------|----------------------|-------------|---------------------------------------|
| DTM | Derwent-Tamar-Mersey | 503 | Hobart, Launceston, Burnie, Devonport |
| | Total | 503 | |

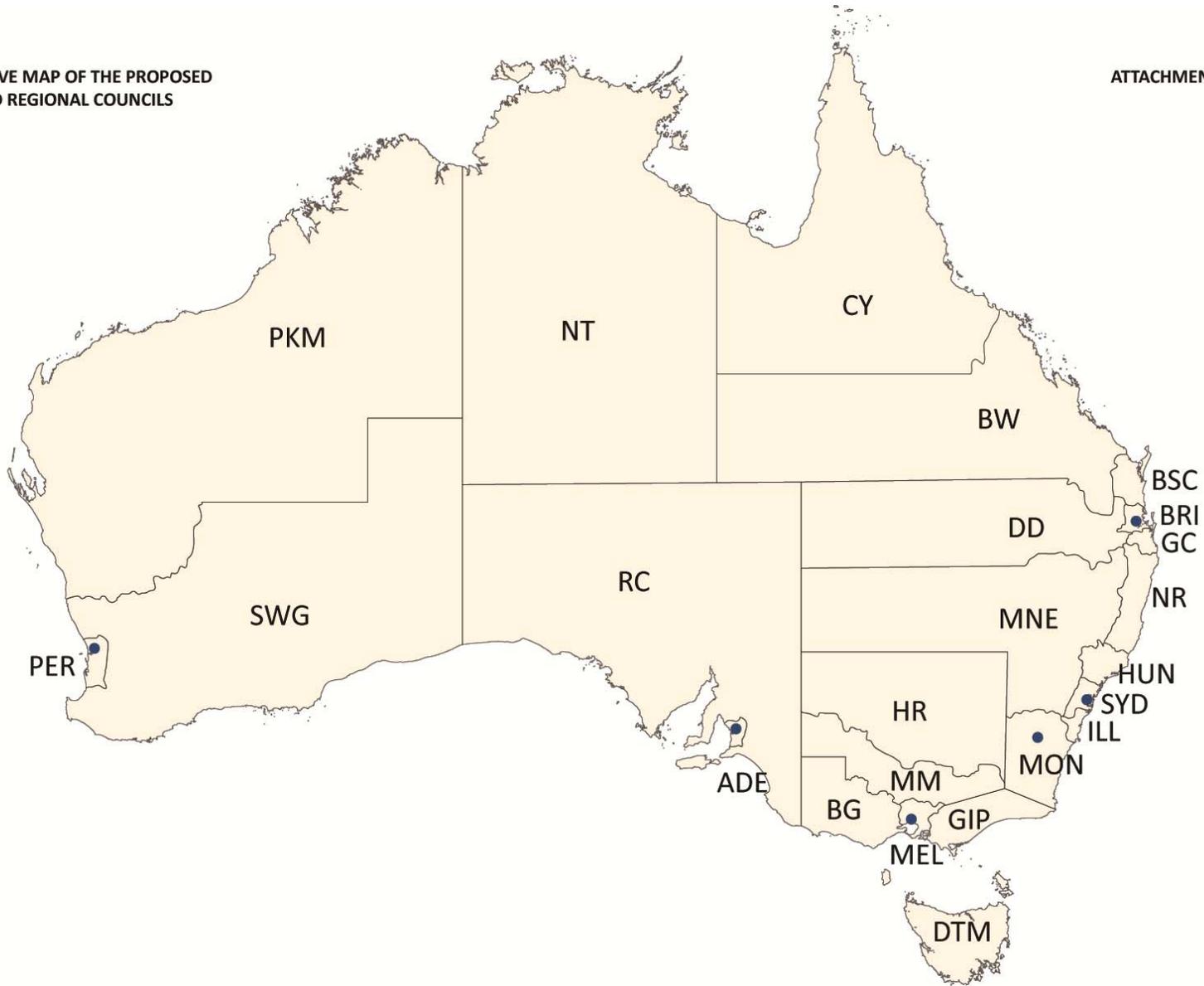
ATTACHMENT C: PROPOSED CITY AND REGIONAL COUNCILS INCLUDING PARLIAMENTARY REPRESENTATION

| CITIES AND REGIONS | POP'N ('000) | CAPITAL | NO. OF SEATS IN HOUSE | NO. OF SENATORS | MAJOR CENTRES IN THE CITY OR REGION |
|---------------------------|---------------|------------------|-----------------------|-----------------|---|
| Sydney | 4,472 | Sydney | 41 | 7 | Sydney Basin but not Central Coast |
| Melbourne | 3,996 | Melbourne | 36 | 7 | Limits as defined in long term strategic plan |
| Brisbane | 2,004 | Brisbane | 18 | 7 | Greater Brisbane including Ipswich |
| Adelaide | 1,187 | Adelaide | 11 | 7 | Greater Adelaide including Gawler |
| Perth | 1,742 | Perth | 16 | 7 | Greater Perth and corridor south to Mandurah |
| Total Cities | 13,401 | | 122 | 35 | |
| Hunter | 676 | Newcastle | 6 | 5 | Newcastle, Cessnock, Maitland, Muswellbrook, Singleton |
| Illawarra | 431 | Wollongong | 4 | 3 | Wollongong, Nowra, Southern Highlands |
| Northern Rivers | 485 | Pt Macquarie | 4 | 3 | Tweed, Lismore, Ballina, Pt Macquarie, Grafton |
| Macquarie-New England | 510 | Armidale | 5 | 5 | Tamworth, Armidale, Dubbo, Bathurst, Orange, Broken Hill |
| Monaro | 569 | Canberra | 5 | 5 | Canberra, Queanbeyan, Goulburn, South Coast |
| Riverina-Hume | 325 | Albury-Wodonga | 3 | 3 | Wagga Wagga, Albury-Wodonga |
| Barwon-Grampians | 598 | Geelong | 5 | 5 | Geelong, Warrnambool, Ballarat, Horsham |
| Murray-Mallee | 539 | Bendigo | 5 | 5 | Bendigo, Mildura, Wangaratta, Shepparton |
| Gippsland | 262 | Yallourn | 2 | 3 | Latrobe Valley, Bass Coast, Sale, Bairnsdale |
| Gold Coast | 582 | Surfers Paradise | 5 | 5 | Southport, Surfers Paradise, Robina, Tweed Heads |
| Burnett-Sunshine Coast | 610 | Maroochydore | 6 | 5 | Caloundra, Maroochydore, Hervey Bay, Bundaberg |
| Darling Downs | 358 | Toowoomba | 3 | 3 | Toowoomba, Warwick |
| Bowen-Whitsundays | 406 | Rockhampton | 4 | 3 | Rockhampton, Gladstone, Mackay |
| Cape York | 531 | Townsville | 5 | 5 | Townsville, Cairns, Mt Isa |
| Riverlands-Central | 437 | Barossa | 4 | 3 | Mt Barker, Barossa, Mt Gambier, Pt Pirie, Whyalla |
| Northern Territory | 226 | Darwin | 2 | 3 | Darwin, Alice Spring |
| South West-Goldfields | 356 | Albany | 3 | 3 | Bunbury, Albany, Wheatbelt, Kalgoorlie |
| Kimberley-Pilbara-MidWest | 148 | Karratha | 1 | 3 | Pt Hedland, Karratha, Geraldton, Broome, Kununurra, Derby |
| Derwent-Tamar-Mersey | 503 | Hobart | 5 | 5 | Hobart, Launceston, Burnie, Devonport |
| Total Regions | 8,551 | | 78 | 75 | |
| TOTAL | 21,952 | | 200 | 110 | |

ATTACHMENT D: INDICATIVE MAP OF THE PROPOSED CITY AND REGIONAL COUNCILS

INDICATIVE MAP OF THE PROPOSED
CITY AND REGIONAL COUNCILS

ATTACHMENT D



ADDENDUM: ALTERNATIVE CONSTITUTIONAL REFORMS

The major hurdle to significant constitutional reforms in Australia, especially to the model proposed in this paper, is to tackle politically, culturally and historically the possibility of abolishing the States. Thus, some would view proposals to do just that and to move from three tiers of government to two tiers as being almost impossible to achieve, even over the longer term. However, without such ambitious proposals, it isn't possible to build a model that:

- Seeks best practice in terms of assigning clear roles and responsibilities;
- Attempts to put in place as many incentives as possible for ongoing economic reforms; and
- Proposes wholesale streamlining of public administration within the Federation.

However, with the model as set out in this paper as the benchmark, it is possible to work through various alternatives that still seek to achieve significant elements of both constitutional and economic reform. One such alternative is set out in this Addendum. This alternative could allay the fears of State leaders, politicians and stakeholders by retaining the States and increasing their number to twelve but with an accompanying significant consolidation of local government beneath the States. This alternative would achieve many of the objectives and elements of a fully implemented cities and regional approach. Such an alternative could serve to engender a lively debate on the range of possible reforms that could be achieved as part of a more near to medium term agenda.

CONSTITUTIONAL REFORM MODEL

The alternative model set out in this Addendum is based on maintaining the existing three tiered governance structure but seeking to achieve a more sensible allocation of roles and responsibilities between the three tiers as well as a substantial streamlining of public administration.

The model would propose four important constitutional reform elements:

- (i) increasing the number of States (and Territories) from the current 8 to 12 in order to achieve a more city and regional focus for the second tier;
- (ii) reallocating some constitutional powers of national significance from the States to the Commonwealth, and similarly reallocating some powers of an urban and local nature to local government;
- (iii) streamlining significantly the third tier of government which currently consists of about 700 local councils, by amalgamating all metropolitan councils into five 'mega' councils covering the five major cities and reducing the number of smaller city, regional and country based councils to less than 100; and
- (iv) the inclusion in the redrafted Constitution of provisions to formally establish a revamped COAG (expanded from the current 9 to 13 members) as the fundamental institution for a united and consolidated Federation, as well as updating and streamlining the current electoral provisions of the Constitution that determine the allocation of its members amongst the constituent States.

Out of this proposal, one could imagine the negotiation of constitutional reforms that would achieve a much improved allocation of 'subject' powers within the Federation as follows:

- The Commonwealth Government having responsibility for nationally significant powers fundamental to the good governance of Australia as a well functioning sovereign nation, such as foreign affairs and defence, national economic management, business and financial regulation, industrial relations, social welfare, indigenous affairs, immigration, and postal services and communications, as well as powers over issues where the spillover effects are nationwide, such as water and the environment.
- State Governments retaining all residual powers including over areas of significant social and economic policy within which to administer their 'sovereign' jurisdictions, such as health, education, justice and law enforcement, resources and energy, and land use management.
- Local government gaining certain powers from State Governments so that they can properly administer their urban, regional and local affairs. Accordingly, local government would have powers over public transport (including the metro networks in the major cities), urban infrastructure and urban water, and strategic city planning, as well as the delivery of existing municipal services.

While this reallocation process would likely bring major reform benefits, it needs to be recognised that it wouldn't deliver on four important elements of the two-tiered constitutional reform model that is the central proposal of this paper. Importantly:

- (i) this alternative proposal wouldn't achieve the allocation of 'subject' powers according to the two fundamental principles of national significance, and urban, local and regional relevance that form a cornerstone benchmark of the two-tiered model;
- (ii) it wouldn't allow for the 'subject' powers to be further defined, by delegation, on a 'functional' basis, whereby the Commonwealth Government would concentrate on national policy design, legislation and funding packages, and the lower tiers of government would concentrate on program implementation and service delivery at the urban, regional and local levels;
- (iii) it wouldn't necessarily facilitate the wholesale streamlining of public administration, although significant dismantling of some State bureaucracies could be achieved by successful negotiation of major reform packages over areas such as health and education. It would probably be necessary to complicate further the judicial system with a likely expansion from 9 to 13 in the number of judicial systems; and
- (iv) it wouldn't alleviate the tensions between States' rights and centralism, thus continuing the pattern of stalled or slowing reforms as the notion of 'national interest' continues to be swamped in the mire.

Finally, the redrafted Constitution could sensibly update and streamline the electoral provisions of the Constitution. The existing provisions that determine the House of Representatives to be, as nearly practicable as possible, twice the size of the Senate, could be retained, but the formula for determining the number of electorates per State could be simplified on a per capita basis. The House of Representatives could be retained at its current size of 150 members given that there would still be three tiers of government. But the Senate could be reduced from the current 76 to 72, by having only six Senators per State. Senators would serve six year terms to be achieved, as in the main proposal in this paper, by only half the States going to each Federal election. If the NSW/WA/SA based States went in

one cycle and the Vic/Qld/Tas/NT based States went in the other, the aggregate number of electors at each 'half' Senate election would be almost even.

MACROECONOMIC FRAMEWORK

Through the negotiations for a redrafted Constitution, the macroeconomic framework as proposed in the main two-tiered proposal in this paper, would still need to be achieved in full under the three-tier model. Establishing this framework would be a necessary condition to underpin the Federation, given that the 12 States would have a mixture of strong and weak balance sheets, and many would have longer term fiscal pressures and reliance on Commonwealth financial grants and HFE equalisation arrangements.

The redrafted Constitution would thus need to require that there be a national fiscal strategy and framework as encapsulated in a revamped Charter of Budget Honesty that applied to all three levels of government.

- This framework could achieve the aims of shifting the majority of both cyclical and long term fiscal risks to the Commonwealth.
- The Charter of Budget Honesty could require that all State Governments have balanced budgets over the cycle, and all local councils have balanced annual budgets, and the provisions relating to publishing medium term fiscal strategies, structural analysis and pre-election material could be mandatory for the five large States, and optional for the remainder.
- As well, an Intergenerational Report at least every three years could be required on a consolidated Commonwealth-State basis.

It would also be imperative that all tax reform proposals set out in the main proposal be delivered in full. This could include setting out in the redrafted Constitution the division of revenue raising powers between the three tiers of Government, similar to the division of powers set out in the main proposal except that local government would share the proceeds of the new land tax. Both State stamp duties and local council rates could be abolished. While the States would retain, under residual powers, the right to impose onshore royalties, a deal should still be done through the COAG for a compensation arrangement with the Commonwealth for the relevant States to share in some of the proceeds of the expanded resource rent taxes for spending on infrastructure to support resources development.

MICROECONOMIC REFORM

Under this three-tiered governance model, the structures and incentives for advancing wholesale microeconomic reforms on an ongoing basis would be much weaker than under the two-tier model. In particular, while the COAG would be properly established under new provisions in the Constitution, the tensions between States' rights and centralism would continue to obscure debate over the national interest.

This would clearly be a COAG of a totally different nature and power structure than in the main two-tiered proposal. Indeed, the States would be emboldened by their enhanced sources of revenue and not feel as much under Commonwealth financial pressure to agree to reform proposals. This would necessitate hard bargaining by the Commonwealth with the assistance and backing of reform-minded States to achieve ongoing reforms and to persuade all States to be confident with the backing of their new and enhanced revenues to embrace

reforms as equal partners with the Commonwealth. Areas where possible major reforms could be advanced are set out below.

Health Reform: The objective under the three-tiered model could still be to achieve the full suite of health reforms as set out in the main proposal. While setting up the networks wouldn't fit as neatly into the 12 State structure, it would be imperative that the 12 States agree to make each network fully autonomous and independent, and to substantially dismantle their health bureaucracies.

Education Reforms: Similarly with education reform, the Commonwealth should continue to seek full autonomy and independence for schools and to trial local education area networks on a voluntary basis, as well as totally revamping and reforming the VET sector. Again, the States should substantially dismantle their education bureaucracies.

Industrial Relations: With this power moving to the Commonwealth, particularly over employees in the non-corporate sectors, the objective of achieving a single industrial system nationwide would still be achieved, but with all the ongoing 'ideological' difficulties remaining.

Land Transport: Major reforms could be achieved in land transport by the Commonwealth expanding the national highway system to allow for the interconnection of all the State capitals, as well as introducing in partnership with the States the GPS-based road user charging systems, and the five mega councils introducing congestion charges to the major cities. In addition, the takeover of public transport by the city councils in particular could bring major improvements when combined with their responsibilities over strategic planning, infrastructure, and city and town planning. Urban development along major transport corridors might finally be delivered. All rail track could still be transferred to the ARTC, and regional passenger rail could be transferred to a new Commonwealth-owned GBE covering all passenger services (like the US Amtrak).

Environment & Water: These powers would transfer to the Commonwealth given their spillover effects nationwide. But, as under the main proposal, the Commonwealth should concentrate on national environmental protection policy and assessments, with the States delivering on local community based programs such as landcare. Water reforms as set out in the main proposal could presumably still be achieved in full, with control over urban waterways in designated urban areas being delegated to local councils.

Land Use Management: This power would continue to rest with the States and policy in this area would no doubt continue to be dominated by local vested interests. Thus, the tussles between competing agricultural, resources, environmental and indigenous claims would continue. This could be an area, however, that the COAG could have on its new forward agenda with the objective of devising a sensible, pragmatic but harmonised system to be applied by all State jurisdictions. Again, control over land use management in designated urban areas should be delegated by the States to local government.

City and Town Planning: Given that these powers would move to local government, the major breakthrough of combining strategic planning, urban infrastructure (including public transport), urban water, and city and town planning could still be finally achieved, with hopefully much improved outcomes for urban development and infrastructure, including extensive densification along major transport corridors; greatly improved responsiveness of housing supply to demand leading to improved, housing affordability; and easier access for all residents to the locations of employment opportunities.

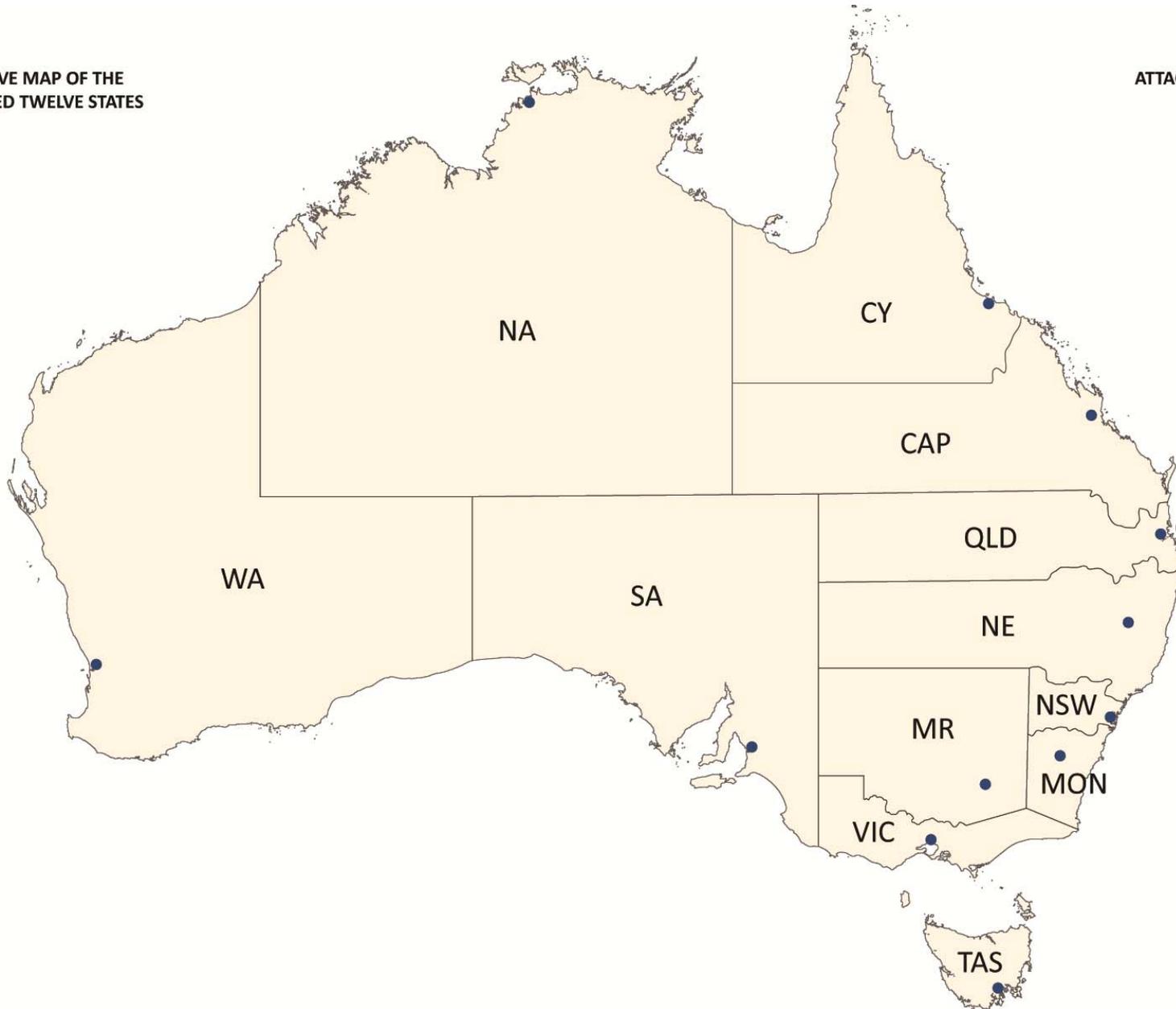
ATTACHMENT A.1: PROPOSED TWELVE STATES

| STATE | POPULATION ('000) | CAPITAL | NUMBER OF SEATS IN HOUSE | NUMBER OF SENATORS | MAJOR CENTRES IN THE STATE |
|--------------------|-------------------|----------------|--------------------------|--------------------|--|
| NEW SOUTH WALES | 4,655 | Sydney | 32 | 6 | Sydney, Bathurst, Orange. |
| NEW ENGLAND | 1,488 | Armidale | 10 | 6 | Pt Macquarie, Newcastle, Central Coast, Armidale, Dubbo. |
| MONARO | 1,000 | Canberra | 7 | 6 | Canberra, Queanbeyan, Wollongong, Goulburn, Sth Coast. |
| VICTORIA | 4,854 | Melbourne | 33 | 6 | Melbourne, La Trobe, Geelong, Warrnambool, Ballarat. |
| MURRAY-RIVERINA | 864 | Albury-Wodonga | 6 | 6 | Bendigo, Mildura, Albury-Wodonga, Wagga. |
| QUEENSLAND | 3,267 | Brisbane | 22 | 6 | Brisbane, Gold Coast, Sunshine Coast, Toowoomba. |
| CAPRICORNIA | 693 | Rockhampton | 5 | 6 | Rockhampton, Gladstone, Bundaberg. Mackay |
| CAPE YORK | 531 | Townsville | 4 | 6 | Townsville, Cairns, Mt Isa. |
| WESTERN AUSTRALIA | 2210 | Perth | 15 | 6 | Perth, Bunbury-Busselton, Kalgoorlie, Geraldton, Karratha. |
| SOUTH AUSTRALIA | 1624 | Adelaide | 11 | 6 | Adelaide, Barossa, Mt Gambier, Pt Pirie, Whyalla. |
| TASMANIA | 503 | Hobart | 3 | 6 | Hobart, Launceston, Burnie, Devonport. |
| NORTHERN AUSTRALIA | 261 | Darwin | 2 | 6 | Darwin, Alice Springs, Derby, Broome. |
| TOTAL | 21952 | | 150 | 72 | |

ATTACHMENT A.2: INDICATIVE MAP OF THE PROPOSED TWELVE STATES

INDICATIVE MAP OF THE
PROPOSED TWELVE STATES

ATTACHMENT A.2



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ENDNOTE: RICHARD MURRAY BIOGRAPHICAL NOTE



Richard Murray retired in 2011 after a 41 year career in the Australian Public Service, mainly in the Australian Treasury.

He has a BEc and Postgraduate Diploma in Economics from the Australian National University and MSc (in economics) from the London School of Economics.

Mr Murray commenced in the Treasury in 1970, working as a policy analyst and adviser in a variety of areas covering both micro and macroeconomic policy issues.

In 1989 Mr Murray was promoted to the Senior Executive Service and over the next decade held various senior executive positions in the Treasury, covering macroeconomic forecasting, infrastructure and competition policy, banking and finance, taxation policy, international economy, foreign investment, budget policy and debt management. These included Treasury representative at the Australian High Commission, London (1993-96), Executive Member of the Foreign Investment Review Board (1998) and General Manager of the Treasury's Domestic Economy Division (1998-2000).

In 2000 Mr Murray was assigned to the Department of the Prime Minister and Cabinet as head of its Economic Division. Returning to the Treasury as Chief Adviser (Corporate Strategy) in 2001, he was involved in significant reform of Treasury's management model, corporate planning and budgeting and in the restructure of the Treasury Board and Group. Subsequently promoted to the position of Executive Director (Deputy Secretary) of the Treasury's Fiscal Group, Mr Murray was responsible for the delivery of the 2003 and 2004 Budgets, fiscal strategy, debt management, welfare to work reforms, health policy, higher education reform, innovation and industry policy and Commonwealth-State financial relations. He headed the Demographics Task Force that worked on policy responses to population aging, particularly addressing productivity, participation and population issues.

In April 2005 Mr Murray took up the position in Washington, DC of Alternate Executive Director on the Board of the IMF, representing the Asia and the Pacific Constituency comprising Australia, Korea, Mongolia, New Zealand, the Philippines, Seychelles and most of the Pacific Island nations. In the following year he was to become Executive Director of the Constituency at a time when the Board faced significant IMF reform issues in relation to quota and voice, multilateral surveillance, new lending instruments and income and expenditure reforms, and later the multifaceted response by the IMF to the global financial crisis.

In 2008 Mr Murray became Executive Director - Policy Co-ordination and Governance at the Treasury and served in this role until his retirement. On governance issues his responsibilities centred around the Treasury Board's 2009 reassessment of the Treasury's organisational strategy and corporate processes and subsequent implementation issues. Mr Murray's responsibilities for overall policy co-ordination covered a variety of associated strategic projects, including financing issues and private sector credit availability in the wake of the global financial crisis, sustainable population strategy and longer term national broadband network, digital dividend and associated communications policy reforms.

commentaries on “a new federation with a cities and regional approach”

- 1) Professor AJ Brown**
- 2) Associate Professor Robyn Hollander**
- 3) Professor Brian Head**
- 4) Professor Alan Fenna**
- 5) Response from Richard Murray**

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PROFESSOR AJ BROWN, GRIFFITH UNIVERSITY

By his own account, Richard Murray is a dreamer. However the power and significance of dreams should never be underestimated.

In *To Constitute a Nation* (1999) Helen Irving argued persuasively that Australia's present federation was itself the product of a 'utopian moment', a time of "both optimism and dismay, of disillusionment with old constitutional relations and confidence in the local ability to forge new ones." Richard Murray's detailed vision of an alternative governance structure and governing strategy for Australia bears similar hallmarks – although far more optimism than disillusionment. His imagining of what could be, and perhaps should be, demonstrates both the rarity and the importance of those able to stand back and articulate a holistic picture of how life and government could perhaps be better. Plainly, irrespective of the merits of this particular proposal, we would benefit if more senior policy makers had both the time and talent for such thinking.

The content of the Murray plan could be easily criticised. Assumptions that a two-tiered federation would be both more efficient and more responsive have a long history in Australia. However this remains an instinct for which there is little empirical evidence, and which studies of citizen attitudes show is unlikely to win the support of any popular consensus – even when a majority of citizens favour structural change in the nation's governance. Constitutional lawyers such as myself could pick apart the lack of specificity regarding how the benefits of federalism might be preserved in this scenario: how the division of powers and responsibilities would be entrenched; how the constitutional prerogatives and autonomy of regional governments would be protected from ad hoc political incursion by an ever more powerful national government. These are vital concerns that preserve the present system – dysfunctional as it plainly is – even when only a minority think it is adequate.

The thesis that the driving purpose in improving the system of government is to sustain a microeconomic reform agenda could also be challenged. This is nakedly the perspective of a career public servant from a central federal government agency for whom microeconomic reform is a prime, abiding agenda. But in the long term the purpose of governance is to serve the needs and wants of the community, defined much more broadly.

Moreover, in the present term, microeconomic reform is too often a recipe for uniformity and centralisation in regulation and decision-making, when the case for political and institutional change in Australia should be based in equal measure on enhanced capacity for local and regional autonomy and diversity, with whatever alternative inefficiencies this might necessarily entail. Unfortunately, the view from Canberra too often entails a theoretical or idealised attachment to the idea of increased local and regional power rather than a real understanding of just how important this is in practice, how vital it is that it be entrenched, and how little of it there is under any existing or proposed arrangements. I am allowed to say this because I was born in Canberra.

Criticisms like these should not be seen as detracting from the power of the author's vision. What Richard Murray's paper demonstrates is that it is feasible both to imagine alternative, arguably better ways of governing, and then develop them in enough detail to actually test out the putative costs and benefits in order to advance the debate as to where we might usefully go – out of our present unsustainable reality. Murray's paper is important because it

provides a coherent national vision. It follows in the footsteps of a long history of debate that our fundamental governing structures are just not right. This is a debate that predates Federation itself, and indeed which predates many of the colonial separations that lumped us with our present territorial hotchpotch.

The problem with such debates has been their frequent parochialism and their own ad hocery. Colonial separation movements, and later New State movements, have pursued the vision of a less centralised, more diverse federation but were too reliant on parochial demands for regional independence – highly difficult to realise. Visions of restructuring in which regions play a greater role have, until recently, been too strongly dominated by centralist, bureaucratic assumptions that good regional planning and outcomes need not be accompanied by viable, sustainable regional democracy.

Trying to separate democracy and community from the fundamentals of governance systems is both wrong in principle and a doomed exercise in practice. As Ken Wiltshire wrote in *Tenterfield Revisited* (1991), what was missing from most 20th century debates over the solutions was any proposal which married federalism's divided sovereignty and the "pure regionalism" of unitary traditions into a "realistic alternative design." Finally, more recently, such conceptualisations appear to have become more feasible. Some have come from Wiltshire himself. Others have come from thinkers like Chris Hurford AO, who was first to coin the idea that Australian governance might be redeveloped around a more coherent framework of regions, but clearly within a federal structure, and thus perhaps be called 'regional states'.

Whether Richard Murray's alternative design is realistic – or not – is not the issue. The great contribution here is its degree of detail. It is sufficient to meet Wiltshire's standard for a factor so sorely missing from the argument. It is testable. For this reason it is perhaps even more threatening than a general, vague dream might be to those whose job you might think it was to help chart the future of Australian governance. It will probably attract vehement, even virulent criticism for being too centralist, too Canberra-centric, too unrealistic. But that is not its purpose, nor its value.

The value of Murray's paper lies in lifting the standard of research and debate around the specific pros and cons of redistributing policy responsibility, power and institutional resources in particular ways to better achieve a more sustainable future for Australian society. Critics can nit-pick all they like, but they – like all of us – must now face this challenge. Murray shows we are capable of rising to it. Unless we are truly satisfied that our present federal system is as good as it gets, then what should be our preferred alternative; and what exactly would it look like? Australian history now has the benefit of the Murray vision. The question critics must answer is – what is theirs? Only with stimuli like these can we ever hope to advance the debate significantly.

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ASSOCIATE PROFESSOR ROBYN HOLLANDER, GRIFFITH UNIVERSITY

A New Federation with a Cities and Regional Approach is a welcome addition to the ongoing debate about the Australian federation. Richard Murray has presented an ambitious proposal to radically restructure the Australian federation. The plan has two dimensions. The first is to replace the six existing states and two territories with x metropolitan and y region. The second is more sweeping. It addresses the distribution of roles and responsibilities and proposes that the commonwealth assume policy making responsibility for the bulk of activities with the new regions taking over the implementation role for all but the most local of issues. Thus Murray proposes we move from a jurisdictional federation where roles and responsibilities are divided between the commonwealth and the states to a functional one where responsibility for policy in many areas is effectively shared but the governments assume different roles.

This commitment to radical change sets Murray's paper apart from much of the existing work on federalism in Australia. Despite its centrality, federalism has attracted surprisingly little attention. The scholarship and commentary that does exist typically falls into one of three clusters. The first is largely conceptual and theoretical. It draws heavily on political and legal theory and is concerned with both the nature of federalism itself and its relevance in an Australia where big ideas tend to be underplayed and undervalued. Although the debates leading up to federation focused on practical problems, some of the players were interested in more conceptual and theoretical aspects of federalism. This interest has resurfaced periodically (see for example Sawyer 1969; Davis 1995; Galligan 1995; Aroney 2002).

These theoretical concerns have been overshadowed however by a much larger body of work focused on improving the workings of our existing political arrangements (see Twomey & Withers 2007 for a more recent example). In 1901, a French observer, Albert Métin, characterised Australia as having socialism with no doctrine; he could have just as easily characterised Australia as a federation without federalism. This has translated into a pragmatic approach to our federation. While Prime Minister John Howard could declare that "If we were starting Australia all over again, I don't think we ought to have states" (Grattan 1991: 5), he and others before and after never seriously considered going back to the drawing board. Instead the attention has focused on reviewing and revising the existing arrangements.

The third cluster has been devoted to thinking about ways in which the federation may be reconceptualised and reconstructed. This strand is further divided. On the one hand we have the work of scholars such as AJ Brown who are seeking realignment between federalist principles and their practice in Australia. This literature is particularly interested in questions of democratic legitimacy and engagement. On the other we have those, of whom Murray is one, who see institutional reconfiguration as a key to delivering better policy outcomes. Murray's work begins by establishing a case for change, before going on to detail an alternative model for the Australian federation. He concludes by considering the processes for the transformation of our current arrangements.

Policy Failure

Murray's case for radical transformation of the federation rests on the argument that our existing arrangements have failed especially in relation to building a national seamless

economy. The quest for a national economy has always been a central aspiration. Indeed it provided a key rationale for the formation of the federation in the first place and informed assignment of roles and responsibilities in the constitution. Hence, responsibilities for many of the elements then essential to a single economy, such as currency, were assigned to the Commonwealth. However our constitutional architects assumed that businesses would remain small and the volume of interstate trade modest, and they underestimated the degree of interstate mobility. This meant that responsibility for many aspects now considered key to economic prosperity, such as business regulation and education, were left with the states.

For Murray and others, this represents a threat to our ongoing prosperity because of the resulting fragmentation and variability and also because the existence of multiple jurisdictions limits the opportunities for reform. Although persuasive at first glance, the situation is complex and it is not clear that the states are the problem that Murray suggests. National Competition Policy (NCP) and its younger sibling, the National Reform Agenda (NRA), provide examples of how our federation can work effectively and moreover how the existence of multiple jurisdictions can successfully promote economic reform. In the case of NCP two state premiers, John Bannon and Nick Greiner, were key drivers at an early stage (Parkin 1996). Similarly the NRA emerged as a Victorian initiative under the Premiership of Steve Bracks (Keddie and Smith 2009). While both NCP and NRA were primarily market focused, state based initiatives have not been restricted to the economic arena. For example, in 2007 the Council for the Australian Federation, a state and territory intergovernmental forum, commissioned the Garnaut Review on Climate Change which was later adopted by the federal government. Nor is it fair to say that the states have always underperformed when compared to the commonwealth in the economic reform stakes. In the case of NCP, the commonwealth proved to be the laggard successfully resisting pressure to deregulate many of the activities under its jurisdiction (Hollander 2006).

We could also argue that in some areas the duplication and overlap so reviled by the critics has served us well (Hollander 2010). It is clear that this has been the case in relation to the natural environment. While having to negotiate with multiple levels of government creates an added level of complexity for business, especially when there are significant policy differences between the various governments, federalism has provided the environment with a higher level of protection than would otherwise be the case. Without the 'double handling' provided for under Australia's constitution, iconic areas of natural heritage such as the Great Barrier Reef, Tasmania's Franklin River and much of our forest estate would have been lost. While the federal government has taken leadership on many occasions, in others the states have moved to protect environmental values in the face of federal opposition (Hollander 2004).

System Design

Murray proposes that Australia adopt a system which combines elements of jurisdictional and functional federalism. It would be jurisdictional in that powers would be divided between sovereign entities, but whereas the states currently enjoy a wide range of powers on paper at least, under Murray's model the new regions' powers would be strictly limited to 'local' issues such as land use planning and community infrastructure. The central government would resume responsibility for all other matters. This reverses our current provisions where the central government's powers are carefully outlined (in section 51) and the residual lie with the states. While reducing the powers of subnational levels of government should eliminate some of the current complexity, the potential for familiar issues to re-emerge in the future remains. In 1901, it is probable that the division of powers looked perfectly reasonable. What

was not foreseeable was how quickly it would become anachronistic. We can anticipate that what looks rational in 2012 is similarly likely to lose its relevance over time. The strains may already be showing in areas such as water. While distribution can be managed locally, catchments often straddle boundaries and during the long drought, state governments in Victoria and elsewhere attempted to source water from other catchments to provide for their thirsty capitals. Similarly the emergence of a conurbation in South East Queensland to beyond the current NSW border in the south, to Ipswich in the west and into the Sunshine Coast in the north, means that urban planning will need to be considered from an intergovernmental perspective. All of this suggests that efforts to draw clear lines between regions will remain elusive.

The functional elements of Murray's proposed design also raise questions. The Federal Republic of Germany provides us with an example of how a functional federation operates. In Germany, policy in many areas is set at the national level and then implemented by the *Länder* governments at state level. However, unlike the Australian Senate the German upper house, the *Bundesrat*, does represent state interests primarily because it is composed of *Länder* delegates who have considerable opportunity to contribute to the decision making process. In the Australian context it is difficult to see how COAG could be made to play a similar role, especially if the Senate is to remain part of the institutional framework and COAG continues to be dominated by the Prime Minister.

In many ways, the new institutional structure more closely resembles a decentralised unitary system such as existed in the United Kingdom prior to devolution whereby the central government allocates specific responsibilities to various bodies such regional authorities, local government and local management committees and boards. In the case of the UK these bodies assumed a significant degree of autonomy in determining how services were delivered but were ultimately subject to authority of the government in Westminster. While this might be the path we wish to travel we need to be clear that this is where we are going. We might also need to ask why many countries with a unitary form of government are opting for higher degrees of decentralisation and devolution.

Constitutional Change

The final part of Murray's paper is devoted to considering the process by which the changes he proposes might be achieved. Australia's record is a poor one; of the 44 proposals put to referenda, only 8 have succeeded, the majority of which were concerned with administrative matters. Williams (2012) argues that much of this failure can be attributed to the choices made by successive governments in matters such as timing, question design and process. While this suggests that referenda are not doomed to fail, it is still not clear that the Australian polity would embrace such a radical change. As Murray notes, the transformation would require the support of the states that would need to be committed to their own destruction. Such a stance is not unknown although the circumstances tend to be quite particular. For example, in 1922 the Queensland Legislative Council voted to abolish itself but in this case the government which had the power to appoint members had ensured the abolitionists were in the majority. In cases of more profound change – as in Spain following the death of Franco, where the Cortes General effectively voted for its own destruction – the old regime had little legitimacy.

It is also hard to imagine that the Australian electorate would be sympathetic to the concentration of power that would result for the proposed changes. As the republican debate of the mid 1990s showed, there is a widespread reluctance to further empower politicians

and the proposed framework could amplify existing disquiet around the power of the executive in our two-party parliamentary democracy. It is interesting to observe that the concentration of power that characterises centralised unitary systems is often offset by the existence of multiple parties which act to disperse that power. Thus countries such as Sweden and New Zealand, which are characterised by dominant single chamber parliaments, also have electoral systems which help smaller parties to win seats.

Conclusion

In 1969 Sawyer characterised Australia as the 'frozen continent'. Despite the absence of formal constitutional change, however, today's federation is vastly different from the one envisaged by the founders over a century ago. Much of the change that we have witnessed thus far has been pragmatic – designed to solve pressing policy problems - rather than part of any carefully planned reconstruction (Hollander and Patapan 2007). Our federation will continue to evolve. While we might disagree on many aspects of the detail, thoughtful contributions such as Murray's expand our horizons and challenge us to think more expansively about what our federation could look like in the future.

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PROFESSOR BRIAN HEAD, UNIVERSITY OF QUEENSLAND

The challenge of reforming federalism

Richard Murray argues persuasively that the Australian federation has generally served us well for more than a century but that its failings now demand serious attention. This is not the first, nor the last, attempt to reconsider Australian federalism from the perspective of offering radical reform options. Whereas some previous reform projects have focused on constitutional law and referenda processes, Murray's contribution to the debate is anchored in a strategic policy approach, and it is certainly among the more thoughtful and impressive of such contributions. From Murray's vantage-point, working in a key central agency of the federal government, it is perhaps not surprising that securing strategic policy outcomes is seen as the driver for governance reform, and that the recommended directions serve to confirm and extend the centralist trends of the last fifty years.

From this perspective, the failures of federalism are attributable in large measure to the current state/territory level, and the proposed abolition of the states would provide an opportunity to reconfigure the weak local level of government. The preferred model involves replacing both levels with 24 metropolitan and regional councils. In this revised array, the five largest cities would attain new roles as integrated metropolitan city councils. The only areas not subject to major boundary and role changes are Tasmania and the Northern Territory, which would remain intact but as regional councils. The size of these 24 councils has been carefully considered, with attention to the various issues of population, geography, and history; but with large variations remaining in terms of size and resources.

Schemes for improving the structures and processes of the Australian federation have been numerous over the years. They have emerged as punctuated interventions disturbing the otherwise grey routines of government. Reform schemes have tended to emerge as bursts of activity spurred by perceived opportunities to tap into a vein of reformist sentiment, whether legal, political, economic, or regional. For example, plans for rational reform flourished briefly in the era of post-war reconstruction (e.g. Greenwood 1946), resurfaced in the Whitlam era which witnessed lively debates about the powers of the federal government in many policy spheres (1973-75), took other pathways in the constitutional review initiatives of the late 1980s and the republic debate of the 1990s, and very notably the various 'new federalism' negotiations associated with the role of COAG especially in the early 1990s and again very recently. To complete the historical background, there have also been isolated bursts of separatist sentiment (in Western Australia) and regionalist sentiments that fuelled 'New States' movements in northern New South Wales and northern Queensland at various times. Indeed the creation of new States within the boundaries of existing States by the referendum process has been seen as the easiest way of diversifying the federation and recognising regional interests (see Wiltshire 2007).

Richard Murray does not dwell on the history of constitutional reform schemes, nor the sad track record of failed referenda. He is not focused on the politics of transition or the role of citizens and the mass media in advocating for major change. Rather, his analysis focuses on how best to achieve national policy goals and objectives, arguing that the current system is inefficient and an obstacle to future achievements. This analysis then leads to the claim that it is necessary to re-design appropriate roles, structures and responsibilities of the levels of government, leading readily to his preferred two-level model. Essentially the argument is that achieving the national policy objectives of effective economic management, together with

many related key policy goals, would best be served by confirming the federal government's supreme role in most areas of strategic policy, abolishing the current eight state and territory jurisdictions, and replacing them with two dozen substantial city and regional councils.

Over the previous decades, reformists have provided various blueprints advocating anywhere between 12 and 100 regional-level bodies to replace the current state and municipal levels (see Brown 2007; Head 2007). Murray's model is solidly grounded in arguing for 24 such bodies, although the specific numbers and their specific boundaries would be certain to attract strong debate around the nation. In deference to the politics of transition, Murray also offers a more modest alternative model that sets the general direction for larger changes in future – twelve states (gained essentially by subdividing NSW and Queensland), and consolidating over 600 local government bodies into fewer than 100 local councils including an increased number of metropolitan councils.

It would be easy to become preoccupied with specific arguments about the best division of roles and responsibilities, negotiating the tax revenue and equalisation issues, and settling jurisdictional boundaries, together with all the consequences for the electoral systems and accountability processes. Instead, these comments will focus on some fundamentals in public policy and the political system. Among these important issues are whether the case for change has been persuasively made, whether the solutions are well crafted and coherent, whether the reform plans would attract wide political support, whether the reforms need to be accepted as a total package or as a measured sequence of specific changes, and whether any proposed transitional arrangements (if supported politically) would be administratively manageable.

In the policy literature, it has become common to distinguish between the 'problem' stream of agenda-setting, the 'solution' stream of options and recipes, and the 'political' stream of bargaining and support (Kingdon 2003). The reform of federalism is not one problem but a meta-challenge encompassing a complex series of problems. The strategies available for defining, championing and implementing complex reforms are uncertain. The chair of the Productivity Commission has eloquently argued that the necessary ingredients include clear goals, good analysis, and the political will to resist special interests (Banks 2010). This might work in specific areas of micro-economic policy reform, as evidenced by the suite of productivity and competition policy reforms agreed by COAG since the 1990s. It has proved rather more difficult to mobilise understanding and support around 'better governance' for the future of the federation, since the breadth and depth of issues are so difficult to comprehend and market. The case for steady change within the federal arrangements has been well put by other analysts (e.g. Twomey & Withers 2007) who argue that important step-level improvements are still possible without structural renovation. This is also the position of State Premiers, who remain important players in sowing suspicion about centralisation in Canberra and who influence the agenda concerning policy issues that directly affect many services for citizens. It is possible that some kind of future crisis could trigger a groundswell of support for fundamental change, and that exceptional leaders could step forward to steer a reform process over many years. In the meantime, Richard Murray has planted a big flag for intelligent centralisation, with enhanced roles for a regional level of governance in service delivery. There is much to appreciate and to ponder in his diagnoses of the problems and the required future directions for the Australian federation.

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“To every complex problem, there is a simple solution...”

Thinking boldly about how the federation should look is a useful exercise. Much of what exists in any political system exists because of circumstances prevailing and decisions taken long ago. Inertia rules. Quite possibly that inertia and the blindness to alternatives that is characteristic of any society means rule by the dead hand of the past. Clean sheet design could alert us to better ways of organising our political and service delivery systems.

This proposal for sweeping and comprehensive reform of Australia’s federal system reflects an understandable frustration with the decay of the original model, and with the way inadequacies in the way Australia’s urban agglomerations are governed. At its heart is the proposal that the states be abolished and that their position as the constituent units of the federation be assumed by a modestly larger number of major metropolitan and non-metropolitan regional governments. That scenario has been canvassed for almost as long as Australian government has been in operation. This version aims to retain a federal character, but one with only two instead of three levels of government and where a much larger range of functions are formally made the responsibility of the central government. This would make Australia unique among federations which, without exception, have extensive networks of local government in addition to the government of the union and the governments of the constituent units.

The question of whether such a radical revamping could ever be achieved is logically quite separate from the question of whether it is a worthwhile objective. The fact that it is undoubtedly unachievable makes discussion of its merit no less interesting or relevant. A utopian goal — such as communism — influences the direction of reform, which may be significant even if movement in that direction is modest. Unfortunately, it is not at all clear whether proceeding in this direction would deliver many or any of the desired benefits. Flaws in the regional governance model have been well identified by Twomey (2008), and rather than repeat what she has said I will simply note a few of the main question marks that hang over this proposal.

Although pitched as a reformed federalism, effectively this is a proposal for a unitary state. As is acknowledged in an understated way a number of times in the paper, “the move to a two-tiered based constitutional model for the Federation would shift the balance of power further towards central government”. That in itself is not necessarily a fault, but there is no point in pretending otherwise. It is certainly not the first time that someone has advocated abolishing the federal system; what would that achieve and what would it cost?

The present proposal would appear to provide two compelling benefits: an improvement in the governance of Australia’s metropolitan centres and greater independence for Australia’s regional and remote areas. It is a moot point whether greater independence for regional and remote areas would be a good thing. It is certainly the case that Australia’s metropolitan areas could benefit from more comprehensive governance arrangements.

A long-overdue reconfiguring of metropolitan governance is entirely feasible within Australia’s existing federal framework. So the real question is: should we jettison the states? The argument seems to be that a) many state functions have shifted to the centre already; b) there is little clarity left in the way roles and responsibilities are divided; c) the states lack sufficient revenue to execute their tasks properly; and d) we could disembarass ourselves of the somewhat tendentiously described “dead hand of bloated state bureaucracies”.

There is certainly some truth in a, b and c. The Commonwealth has re-written the federal system by assuming substantial new responsibilities in a range of State policy domains, in no

small part thanks to pronounced vertical fiscal imbalance that it has engineered and the result is evident in widespread ambiguities of responsibility. The problem is that there is little reason to think that Australian federalism's useful features will be retained or its undesirable features necessarily expunged by abolition of the states.

To retain the balance between two levels of government that is the essence of federalism requires that the constituent units be 'polities' in their own right, responsible for a meaningful range of tasks, possessing some sense of identity as political communities, and being significant sites of democratic political representation and contestation. With the states eviscerated, there would be no constituent units and no federalism in Australia. There would be local governments of a pragmatic administrative nature supported by desultory citizen interest.

Meanwhile it is not as if the hard work of service delivery in health care, education and social services or the difficult decisions in regulation and infrastructure investment would simply disappear with the euthanasia of the "bloated state bureaucracies". As the GFC spending programs illustrated, the Commonwealth is blessedly free of those ongoing challenges and when it does take them on, nothing is as straightforward as it seems. Quite possibly, if the states did not exist the Commonwealth would have to invent them.

"To every complex problem there is a simple solution... and it is usually wrong".

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THE AUTHOR'S RESPONSE TO COMMENTARIES

Including amendments to the allocation of jurisdictional powers from those set out in the paper

Richard Murray

I would like to very much thank AJ Brown, Robyn Hollander, Brian Head and Alan Fenna for the time and effort they have taken to analyse my paper and to supply such thoughtful, knowledgeable and constructive comments. I have taken these comments very seriously indeed, prompting me to pen this response in advance of publication. In this response, I have sought to answer some of the criticisms levelled at the paper, but also to concede that my model for constitutional reform should be amended in advance of publication in terms of the jurisdictional allocation of powers to get the balance right in terms of the structure, processes and incentives built into the model.

Vision for our Federation

Firstly, I have deliberately presented in my paper what I consider to be a vision of what we could aspire our Federation to be. As stated by AJ Brown, whether my design could become reality or not isn't the issue. What I have intended is to set out a benchmark reform model that can be analysed and tested, and most importantly provoke serious debate. There are at least five fundamental questions that I consider should be debated and addressed:

- 1) Are we really satisfied that the Constitution of 1901, although it has evolved over 111 years, is a satisfactory basis for governing our continental nation for this 21st century?
- 2) If over the 20th century, Australia has evolved demographically, economically, socially and environmentally, as a nation of five highly urbanised cities but with a sizeable minority living across a patchwork of diverse and vibrant regional communities, why shouldn't our Federation reflect that reality?
- 3) Given the increasing concentration of power at the centre of our Federation, shouldn't we be asking the question of whether or not this is where we want our Federation to be at?
- 4) Given that we are a sparsely populated but continental nation, shouldn't we be seriously examining whether or not we really need three layers of government, or would a move to a two-tiered, more consolidated, governance structure be more viable and workable?
- 5) For how much longer can we pretend that the States and Territories can play their proper role in the Federation if we don't seriously address the allocation of taxation powers and seek to eliminate the unsustainable VFI through tax reform.

Defending and Building a Better Federation

The second point I want to make is that I have written this paper as a staunch federalist seeking to build a new Federation that is best suited to the good governance of Australia for the 21st century. In this regard, Box 2.3 benchmarks my Federation model against four important federalism principles and I stand by the robustness and credibility of that analysis.

In terms of my view of the significance of the achievement of Federation in 1901, I am indeed amazed at the fact that in many deliberations of our Founding Fathers, there seemed to be a

long held sense that Federation into the continental nation of Australia was inevitable and, accordingly, in 1901, the Founding Fathers achieved just that.

I also take great pride that Australia walks tall as one of the continental nations that, in the aftermath of the American Revolution, has become a democratic federation. The group of federations I have in mind comprise the United States, Australia, Canada, Brazil, India, South Africa and Mexico.

Also, I want to make it quite clear that my career mainly in the Australian Treasury, but also at Prime Minister and Cabinet and at senior postings in Washington and London, have not biased my views towards centralised power and I agree that all wisdom doesn't reside in Canberra, far from it. I have worked over many years with my State and Territory colleagues for whom I have total confidence and respect. In all this, I am sceptical and suspicious of the continual encroachment of centralised powers on the structure and workings of the Federation. That is in many ways why we need to debate the state of the Federation as a matter of high priority.

Economic Framework and Pragmatic Approach

The third point I wish to make is that I am not a constitutional expert but an economic and strategic policy adviser and therefore my paper is written from that perspective. In this regard, I think I am in good company with many Founding Fathers who, armed with a vision of creating a new continental nation, devoted much debate to the role of government (Conservatives vs Liberals), in order to address the pressing economic and social issues (eg free trade vs protectionism) that the Federation would need to face.

Also, like the Founding Fathers, I have taken both a theoretic and pragmatic approach to my analysis and indeed the Addendum to the paper sets out an alternative 12 States model that brings to the fore the need for pragmatism and compromise in any exercise of constitutional reform.

Getting the Balance Right

In terms of getting the right balance in my constitutional reform model, I haven't deliberately set out to make our Federation even more centralist than it has now become. I think that successive Federal Governments and the High Court have already done more than a sufficient job of that for us. My intention was to recognise the reality of this increased concentration of power in the context of Australia being a strong and vibrant trading nation competing in a globalised world. But, at the same time, I have sought to preserve decentralised elements that would keep in check this concentrated power, and preserve choice, diversity and competition as vital elements of the Federation.

In terms of how the Federation should be structured to achieve the right balance, my proposal for a revamped and enhanced COAG enshrined in the Constitution is of fundamental importance. I wouldn't envisage that the COAG should be a body where the Prime Minister can continue to dominate over the subsidiary level of government. Indeed, I would see the five City Lord Mayors as powerful COAG players just as the Premiers are today but with the necessary taxation resources to back them up, and for some of them to bring the zeal of reform that we have seen in the past from the likes of Nick Greiner and Jeff Kennett. I would also see several dynamic Regional Councils, such as say, Monaro, Northern Rivers, Gold Coast, Cape York and Derwent-Tamar-Mersey, playing useful supporting roles in most reform exercises.

I am concerned, however, that both Robyn Hollander and Alan Fenna have expressed concerns that my model resembles more a decentralised unitary system rather than a true federation. I couldn't imagine a much worse constitutional direction for Australia to take. This indicates to me that the jurisdictional allocation of 'subject' powers that I have proposed in my paper does not have the right balance, and in the final section of this response below, I have made amendments to that allocation in advance of the publication of the paper.

Amendments to the Allocation of Powers

As set out in the paper, the jurisdictional allocation of powers as I have proposed, would be contained in its own Allocation of Powers Part of the Constitution with three distinct Sections, as follows:

- 1) **Federal powers** would be those of national significance including powers central to the governance of Australia as a sovereign nation such as foreign affairs and defence; and powers relating to our place in a globalised world such as economic management. Importantly, this would include my proposed allocation of powers from the States and Territories to the Federal Government (including taxation powers) over resources development and the energy market, given the significance of these sectors to the future of our nation in the 21st century.
- 2) **Powers of urban, regional and local relevance** would be allocated to the Cities and Regions and relate to those issues contained within their jurisdictions such as public transport, urban infrastructure, town planning and urban development. I would see this allocation as an opportunity for a major and long overdue reform vital to the future strategic planning and consolidated development of our five major cities.
- 3) **Shared powers** would be those covering areas of national importance applied on a nationwide basis. These powers would be specifically subject to my proposed overarching principle laid down in the Constitution that the roles between the two tiers of government would firstly be defined on a functional basis with the Federal Government to concentrate on policy design, financing regimes and legislation, while the Cities and Regions would need to design and provide all program and service delivery.

My paper then proposes that these powers be allocated constitutionally to the Federal Government, subject to flexibility provisions in the Constitution that would require agreement to be made with the Cities and Regions for program and service delivery by them to citizens and communities. I now concede that this allocation of shared powers constitutionally to the Federal Government would not bring an appropriate balance to my model and could potentially undermine the role of the Cities and Regions in any deliberations of the COAG in seeking agreements on such areas of national importance. Therefore, I would propose the following allocation of powers to correct this imbalance of my paper, prior to publication:

- In terms of economic powers, the myriad of existing State-based business regulations such as those the subject of COAG's Seamless National Economy processes should be allocated to the Cities and Regions, not the Federal Government.
- In terms of social policy, social welfare and immigration should remain Federal powers, but with agreement required through the COAG on how community and family support services and migrant settlement services would best be delivered to citizens and communities by the City and Regional Councils on the Federal Government's behalf. On the other hand, on the abolition of the States and Territories, the Cities and Regions

would have taken over as major owners and stakeholders in the vitally important areas of health and education. Therefore, in order for them to be able to be powerful participants with the Federal Government in any COAG negotiations on health and education, I would now propose that these powers rest with the Cities and Regions, not with the Federal Government.

- In relation to environmental issues, the allocation of environmental powers needs to take into account the important international dimensions of environmental policy as well as the spillover effects of many environmental issues across jurisdictions, and, indeed, across the whole nation. Therefore, environmental powers should be allocated to the Federal Government as my paper proposes. However, the issues of land management and water are not as straightforward and could be handled pragmatically in a different way. While these two areas have important national ramifications and significant spillover effects, they are also fundamental to the wellbeing of many local communities within all jurisdictions. Therefore, I would now propose that the allocation of powers over land management and water resources be to the Cities and Regions and not to the Federal Government, and it should be left to the COAG to negotiate the best direction of both land management and water reforms into the future.

Table 1. Allocation of powers

| CONSTITUTIONAL ALLOCATION TO: | FEDERAL POWERS | CITY AND REGIONAL POWERS | SHARED POWERS - Subject to functionality principle and COAG agreement |
|--------------------------------------|---|--|---|
| FEDERAL GOVERNMENT | Foreign Affairs and Defence. Economic Management. Industrial Relations. Resources and Energy. Indigenous Affairs. | | Social Welfare. Immigration. Environment. |
| CITY AND REGIONAL COUNCILS | | Urban Strategic Planning. Public Transport. Urban Infrastructure. Urban and Town Development. | Health. Education. Business Regulation. Land Management. Water Resources. |