

## COAG: corrupting Australian governance

*By Bill Rowlings OAM, CEO, Civil Liberties Australia*

The NSW Parliament's Library, in a major research paper, is opening debate on a topic that should have received much more public airing: how COAG corrupts the machinery of Australian government, operating beyond the Australian Constitution.

Mind you, that's not what a comprehensive research paper by Lynsey Blayden says. Its executive summary politely claims the detailed analysis:

*"...suggest(s) the need for considered evaluation of Australian federalism in the twenty-first century, what it is, what it does, what it should do and where it is going."*

Here, here, says Civil Liberties Australia. In spades.

We have been saying the same thing for close to a decade, but in blunter terms: COAG is an illegitimate, centralised, dog chain on democracy skewered into place on the whim of the federal executive 20 years ago.

The sooner it is analysed, debated – and abolished – the better. There is already a "COAG Reform Council" which has been ineffective, so the prospect of "reform" of this pimple on the polity is bleak

It should be replaced by something agreed to by the states, rather than what it is, a quick fix, light bulb idea of then-PM Paul Keating in 1992 for controlling the states and territories and dripping out encumbered dollars from the central brown paper bag in line with federal executive political demands and expediencies. The Blayden paper put this more eloquently:

*"It is more amorphous, an administrative creation of executive will, resistant to neat description or characterisation. It is something of a moveable feast, constantly changing..."*

There is mechanism available in the Constitution to do, legally, all the things that COAG does, without legal foundation. It is the Inter-State Commission, covered in section 101:

### **101 Inter-State Commission**

*There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce, and of all laws made thereunder.*

Access to the full NSW Parliamentary Library paper is provided after this executive summary of this first-rate paper. CLA commends the full document to you:

In 2006, the Council of Australian Governments (COAG) adopted a new national reform agenda and established the COAG Reform Council, developments which

were later used as a foundation for the first Rudd Government's reforms to intergovernmental relations in Australia.

These reforms used COAG as their focus and established a revised federal financial relations scheme and a broader reform agenda. They also gave the COAG Reform Council an expanded role in measuring the progress of reform across all jurisdictions and reporting its findings to COAG.

The apparatus of COAG and intergovernmental relations now encompasses an extensive system of COAG Councils and other fora, as well as less visible forms of collaboration, which take place between the agencies and officers of all levels of government.

This structure is largely focussed on developing and implementing the COAG reform agenda, which covers a wide range of policy fields, including education, skills and training, health, housing and homelessness, the environment and regulatory reform. This policy agenda is underpinned by the revised financial framework that is embodied in the Intergovernmental Agreement on Federal Financial Relations.

The reforms to COAG and its processes instituted by the first Rudd Government have changed the character of COAG, arguably transforming it from a leaders' summit to a central institution of government. This new significance of COAG has given rise to renewed concerns relating to the lack of permanency, transparency and accountability in intergovernmental relations.

This (NSW Parliament) paper provides an overview of the operation of COAG, and other aspects of intergovernmental relations in Australia. A two-part approach has been taken.

Part One provides a 'bare bones' overview of the framework of COAG and its reform agenda. Its aim is to provide a kind of 'mud map' to enable relatively easy navigation of the labyrinthine structure of COAG, its associated Councils and its current reform agenda. Much of the information contained in the first part is taken from COAG-related websites. In an attempt to make this map clear, commentary and critique has been left to Part Two of the paper, to the extent that this is possible.



COAG is something of an atypical body or institution, neither constitutional nor statutory in origin or nature. It is more amorphous, an administrative creation of executive will, resistant to neat description or characterisation. It is something of a moveable feast, constantly changing and adapting to political and other circumstances. Any description of it can therefore only hope to capture its working at a particular point in time. It is this task that Part One of this paper has set itself, relying solely on publicly available material.

Part Two provides an overview of some of the current evaluations of COAG, in light of its apparent transformation, and also some of the suggestions for reform that have been put forward. Part Two does not attempt to cover all of the relevant issues

that are identified in the literature about federalism and intergovernmental relations. Its aim is rather to canvass some of these issues in a broad way while focussing primarily on COAG.

Discussed in Part Two are the following issues with COAG and the practice of intergovernmental relations in Australia:

- Lack of transparency in intergovernmental relations;
- Accountability – COAG, intergovernmental relations and Parliaments;
- Commonwealth's dominance of COAG;
- Lack of institutional structures and systems; and
- COAG & the consequences of intergovernmental relations.

Many of the problems associated with intergovernmental relations in Australia can be traced back to the features of Australia's federal structure, which continues to influence and shape the ways in which governments transact their affairs. The continuing relevance of the issues discussed in Part Two of this paper suggest the need for considered evaluation of Australian federalism in the twenty-first century, what it is, what it does, what it should do and where it is going.

ENDS NSW Parliamentary Library paper: for the paper, go to:

<http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/COAG>

## **Commentary by Civil Liberties Australia:**

This is what COAG's website says about COAG...along with some *Civil Liberties Australia* commentary:

The Council of Australian Governments (COAG) is the peak intergovernmental forum in Australia.

*It may be, but it is a bastard child, one parent only, the federal government. If COAG has this role, it is an unConstitutional role: that is, COAG has no basis in Australia's founding document, no basis in law.*

The [members of COAG](#) are the Prime Minister, State and Territory Premiers and Chief Ministers and the President of the Australian Local Government Association (ALGA). The Prime Minister chairs COAG.

*ALL of the above are unelected...so far as COAG is concerned. They are elected to their various positions (and in those positions, they are accountable). But in relation to COAG, they have no responsibility or accountability to the people of Australia, under no electoral or reporting requirements. In this respect, COAG is above the law, and well above the people, both of which are wrong.*

The role of COAG is to promote policy reforms that are of national significance, or which need co-ordinated action by all Australian governments.

*There should be no role for COAG unless it is Constitutionally-endorsed by the people of Australia. The Constitution contains a mechanism for collective action, but it has been ignored.*

COAG meets (see website photo) as needed, usually once or twice a year, though at times it has met up to four times in a year. COAG may also settle issues out-of-session by correspondence.



*This statement clearly show that COAG is a political device. If it was a proper part of government, it would have set meetings, they would be open to the public, and there would be a public record. COAG keeps no minutes, it simply issues "communiqués", which are fancy French names for PR spin.*

*Since its first meeting in 1992, COAG has been the most expanding bureaucracy in Australia...other than spooks and their ilk, of course, since September 2001.*

– Bill Rowlings, CEO, Civil Liberties Australia

COAG website: [http://www.coag.gov.au/about\\_coag](http://www.coag.gov.au/about_coag)

*By the way, the COAG website says that: Material obtained from this website is to be attributed as: copyright Commonwealth of Australia. Now, who exactly is that? Is it them, or is it us? We the people own what is produced by the government, not some abstruse body called the "Commonwealth of Australia". If the US Government produces material, it is free for people to use: so should be material produced by the Australian Government. Why should the Australian people not be able to use material produced by employees who are paid by the Australian people?*

More commentary from the Civil Liberties Australia website on COAG:

<http://www.cla.asn.au/0805/index.php/articles/articles/coag-is-it-puppet-master>

<http://www.cla.asn.au/0805/index.php/articles/articles/ghosts-of-coag-the-review>

<http://www.cla.asn.au/0805/index.php/articles/articles/coag-won-t-consult-on>

<http://www.cla.asn.au/0805/index.php/clarion/2010/jan-2011-newsletter-gillard-chooses>

and

<http://www.cla.asn.au/0805/index.php/subs/2010/reform-committee-needs-more-time-lbr-g-resources-and-publicity-cla-says>

*...in which CLA describes the growth of COAG (and its dozens of offshoots) as "the most detrimental development to Australian democracy since federation".*

ENDS

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