

The Federation White Paper reform process

This reform process was initiated by the current Prime Minister to examine measures to reform the Australian federal model.

This is a summary of a first look at the proposed overall process and an initial Commonwealth issues paper prepared for the Australian Risk Policy Institute (#ARPI). Other background papers can be found under the tag [Real](#).

The Australian federation has been out of balance following the Commonwealth's seizure of state income taxation powers after the Second World War. As a result, the Commonwealth collects income tax for functions it does not have constitutional power to administer and which it then distributes to the states. This creates duplication and, more importantly, a discontinuity between the electoral responsibilities of the different levels of government (eg, the states are held accountable for the failure to deliver services for which they no longer have taxing capacity).

Timeframe

Issues papers are being released in 2014. A series of five issues papers will be published in the second half of 2014. The first deals with general issues (<http://federation.dpmc.gov.au/download-full-issues-paper>). Three papers will look at roles and responsibilities in the areas of health, education, and housing and homelessness. The final will consider issues with federal financial relations.

Initially, a Green Paper was to be released in the first half of 2015 but recently the Prime Minister indicated that this would probably be in the second half of 2015.

The White Paper itself was to be released at the end of 2015 but is now slated in the run-up to the elections in 2016.

Relevant Speeches: Henry Parkes Commemorative Dinner 2014

The Prime Minister noted that: "Under our constitution, the states are still legally responsible for them (a range of services including health, education and public housing) but a century of encroachment has left the Commonwealth financially responsible for vast services that it doesn't actually deliver and can't really control."

Rather than looking at formally changing the relationship of the states to one of subordinate jurisdictions (as he had proposed in 'Battlelines': "it's a good principle to propose the smallest change that will actually tackle the problem – that's why resolving the mismatch between what the states are supposed to deliver and what they can actually afford to pay for is worth another go. ... Might the states be prepared to accept responsibility for broadening the indirect tax base; might they be prepared to surrender some of their responsibilities to the Commonwealth; might there be new funding formulas that wouldn't solve the blame game but could at least give it a new and more realistic starting point?" <http://www.pm.gov.au/media/2014-10-25/sir-henry-parkes->

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Related reviews: Commission of Audit and Taxation Review

The Commission of Audit identified a series of overlapping areas and recommended cut-backs in Commonwealth involvement. These changes are now underway. I previously looked at this in this post. <http://www.silenttheory.net/2014/05/commission-of-audit-background-briefing.html>

At the Henry Parkes Commemorative Dinner 2014 the Prime Minister said: “So this federation reform process is proceeding in parallel with a tax reform process which makes this a once-in-a-generation opportunity for all first ministers, all levels of government to address the issues bedevilling our federation.”

First Issues Paper

This paper sets the scene, noting that the problems are well known and that attempts to remedy the problem have gone nowhere. It cites N Greiner from the Australian Financial Review, 5 May 2014 saying:

Politicians and bureaucrats across the political spectrum and at all three levels of government will happily agree that the federation is ‘broken’ and ‘dysfunctional’ on both the revenue and expenditure sides yet equally, over a quarter of a century or more, they have all indulged in an orgy of inaction in terms of improving the situation.

Conspicuously absent from the discussion has been an honest look at the underlying reason for the present state. Simply put, this has been largely the result of Commonwealth adventurism and opportunism. It cites examples of cooperation, which have hardly been cooperative in the usual sense of the expression – including the corporations legislation exercise. It is worth-while reflecting on that exercise to discover how Commonwealth pursuit of power has led to unexpected action and negative market consequences.

Corporations Law Reform

This exercise involved a number of players with different motivations. The Commonwealth was motivated by the prospect of bring every aspect of corporate governance under Commonwealth control (previously, the constitutional control on the creation of corporates was a state responsibility). In pairing control of corporates and the taxation power, the Commonwealth has systematically worked to downplay other forms of business management (trusts, cooperatives, partnerships and agents) in favour of a business platform that the Commonwealth had legislative responsibility for. This new found power was immediately used, not for corporate governance, but in attempts to leverage outcomes in employment disputes.

This type of Commonwealth attempt to leverage greater constitutional power has had the undesirable side effect - damaging the capacity of business to adopt appropriate business platforms.

The High Court on a number of occasions has ruled Commonwealth activities to be unlawful, and yet its activities continue unabated. The paper does not make open reference to unlawful Commonwealth activity in the area of expenditure and taxation law. The most glaring of these are taxation concessions provided to remote regions, but there are many other examples.

Observation One: The First Issues Paper fails to identify the root cause of the present difficult and does not acknowledge that the issues could be resolved without the need for constitutional change by the unilateral withdrawal of the Commonwealth from a series of key areas and the cessation of the Commonwealth undertaking unlawful action.

The paper attempts to set a series of high level principles for allocating roles at different levels of government. While the relationship between responsibility for the discharge of service and the responsibility for collecting taxes to support the function is mentioned, it has been deliberately downplayed and, surprisingly, been made subject to “national interest considerations” which while discussed are not explained in the paper. A background briefing on taxation issues is [here](#).

Observation Two: There must be a direct relationship between the provision of services and the collection of revenue. This is the key issue in any review of federation.

The paper introduces the notion of “subsidiarity” (responsibility should rest with the lowest level of government possible) as a principle. This is so even though state and local government governance arrangements lie outside Commonwealth constitutional responsibility (a background briefing on the regional issue is [here](#)). The paper then goes on to assert that national efficiency can provide significant unit cost savings.

Observation Three: A priori assumptions about efficiency should not be made in the paper. Efficiency is a factor of time and technology – political decisions should not be made today based on particular business models that may be irrelevant in a couple of years.

The White Paper asks whether future Issue Papers should focus on Health, education, and housing (including homelessness) – ie, subject matter rather than core issues, such as the exercise of Commonwealth powers such as taxation.

Observation Four: Focus should be placed on Commonwealth action that has placed strain on the Federation. Consideration should be given to Commonwealth exercise of income tax powers, and whether these powers should be given back to the states or only exercised by the Commonwealth on behalf of the states. Consideration should be given to the establishment of appropriate intra-state institutions to deal with areas where state activities might be coordinated (rather

than the Commonwealth leveraging financial control to deal it into these functions).

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