

Reference, government

## A Global Dialogue on Federalism

*Focusing on important themes of federal governance through country case studies that illustrate federalism's diversity, challenges, and opportunities*

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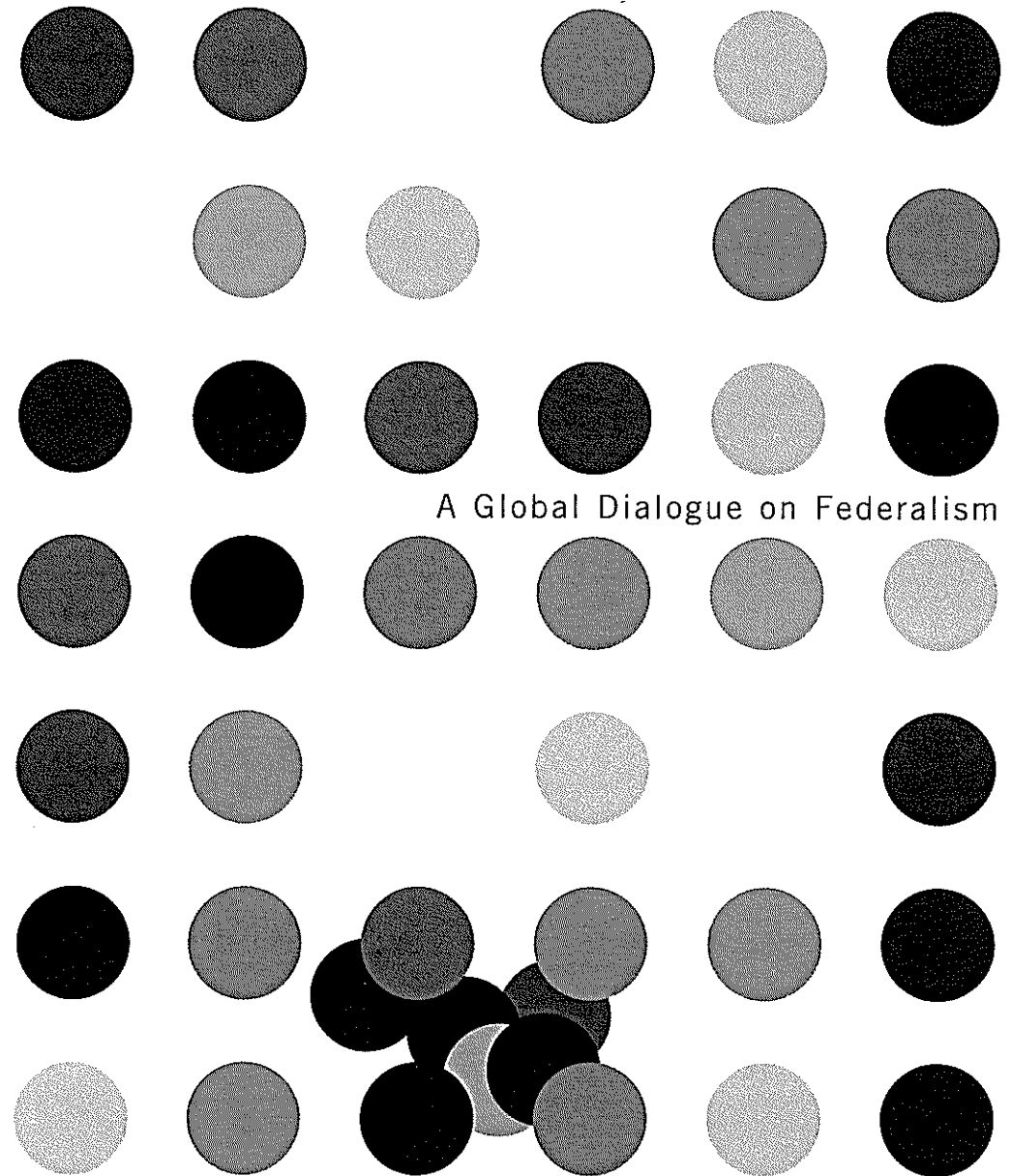
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The booklet and book series emerged from the Global Dialogue on Federalism, a joint program of the Forum of Federations and the International Association of Centers for Federal Studies (IACFS). The program creates forums around the world through which experts exchange experiences, ideas, and academic research to identify emerging challenges and inspire new solutions.

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## A Global Dialogue on Federalism

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FEDERAL SYSTEMS

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EDITED BY RUPAK CHATTOPADHYAY  
AND KARL NERENBERG

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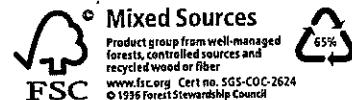
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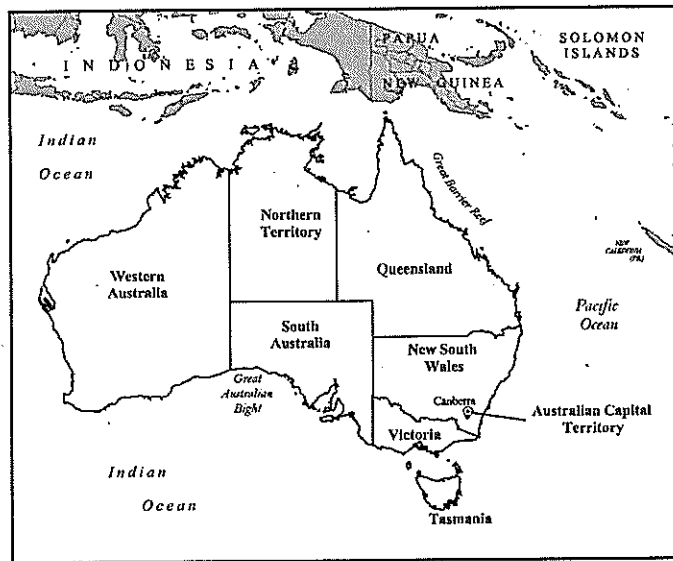
## Preface

We are pleased to introduce this booklet, Volume Eight in the Global Dialogue Booklet series, which is devoted to the topic of intergovernmental relations in thirteen federal or federal-type countries/regions. The featured countries/regions are: Argentina, Austria, Australia, Brazil, Canada, the European Union, Germany, India, Nigeria, South Africa, Spain, Switzerland and the United States. Each of these countries/regions has something unique to bring to this important examination of a topic for which there is not yet a common discourse and lexicon internationally.

Over-all, what a reader might conclude from this Booklet is that the subject of intergovernmental relations is an area where much study and investigation is still needed. The founding documents of most federations or federal-type countries/regions make virtually no reference to the rules, guidelines or norms governing cooperation and communication between and among governmental entities. Indeed, as this collection of articles shows, for almost all federal or federal-type systems, intergovernmental relations are still very much a work in progress. Much of what takes place in the intergovernmental domain, in all the countries/regions analyzed, is *ad hoc* and based on circumstance, culture and custom, rather than law and regulation.

It is impossible, of course, to imagine a system that entailed more than one order or level could function without some generally agreed means for cooperation and communication between and among the entities of government. Yet, this collection of articles underlines the fact that both those who practice and those who study federalism have only quite recently turned their attention to the matter of intergovernmental relations; and, as they have done so, they have developed very different ways of conceptualizing and describing the subject.

That is why booklets such as this one, and the series of which it is a part, can be of such value. They can provide practitioners and researchers alike



## Intergovernmental Relations in Australia: Increasing Engagement

JOHN PHILLIMORE

Australian federalism was not designed with intergovernmental relations uppermost in mind. Despite this, Australia has developed a comprehensive set of intergovernmental institutions and policy communities, and fostering cooperative relations between orders of government is high on the political agenda.

The expectation at "federation" in 1901 was that the two levels of government – the Commonwealth (the national or federal government of Australia) and the six State governments – could operate largely independent of each other. Following the US model, Australia's Constitution assigned to the Commonwealth government a limited number of (mostly concurrent) responsibilities, with the residual power being left to the States. Each level of government possesses a relatively complete set of legislative, judicial and executive institutions, based on British responsible government and the common law.

Two intergovernmental elements in the Constitution never operated as intended. The upper house of parliament, the Senate (comprising equal numbers of Senators from each State), rapidly became a party-based institution; while the Inter-State Commission had only two brief and undistin-

Intergovernmental relations in Australia have been crafted pragmatically, taking into account changing conditions in Australian federalism more broadly. In the current context that means that there are increasingly shared functions, as government's role has widened and demands for national action in a globalized world have increased. There has also been an inexorable centralizing trend, as central government powers have increased through a combination of (relatively rare) constitutional amendments, expansive High Court decisions and a high degree of vertical fiscal imbalance.

As a result, intergovernmental engagement has been primarily led by the Commonwealth government, through a mixture of coercion, opportunism and cooperation. The Commonwealth has used a range of legal, institutional and political mechanisms. Emphasis has been on executive action, with only a limited role for legislatures, to pass necessary legislation. However, as part of community demands for improved governance processes and policy outcomes, there have been increasingly frequent calls (especially from business) to reduce waste and duplication and increase cross-border harmonization within the federation. And so, intergovernmental cooperation is firmly on the national agenda.

The Constitution provides for legal measures to facilitate intergovernmental cooperation. States and Territories can refer specific powers to the Commonwealth (e.g. for regulating corporations), and the Commonwealth can vest its jurisdiction in State courts where this is administratively convenient. Referral of powers is generally viewed suspiciously by States and used relatively rarely. However, governments frequently use mirror or model legislation to enable increased harmonization, while allowing some State variations. Uniform legislation – where one jurisdiction enacts legislation which others then adopt – is also used, and normally arises from intergovernmental discussions.

In recent years the most significant development in intergovernmental relations has been the establishment (in 1992) of the Council of Australian Governments (COAG). This is the peak intergovernmental council on which sit all first ministers and the Australian Local Government Association president.

While meetings of first ministers were not new, the COAG has taken intergovernmental relations to a new level of depth and sophistication. Although not formalized in an intergovernmental agreement, the Council meets regularly and sets much of the policy agenda for Ministerial Councils, and for governments more generally.

However, while the Council of Australian Governments might be thought of as the 'Cabinet' of the federation, it is clearly one where the Commonwealth government is first among equals. The Council is, in fact, an administrative entity of the Commonwealth: the Prime Minister calls

financial and policy power of the Commonwealth. An increasingly dense network of intergovernmental working parties and meetings of officials surrounds COAG, all of which are either attended or supported by secretariats within first ministers' departments.

However while the Council of Australian Governments might be thought of as the 'Cabinet' of the federation, it is clearly one where the Commonwealth government is first among equals. The Council is in fact an administrative entity of the Commonwealth. The Prime Minister calls the meetings, sets the agendas and prioritizes policy issues, reflecting the financial and policy power of the Commonwealth.

The other core intergovernmental bodies are Ministerial Councils. There are over 40 such Councils, dealing with a wide variety of specific policy areas, and involving responsible ministers from all jurisdictions (and sometimes New Zealand).

Councils meet at least annually to develop policy reform measures and take joint action. Most practice consensus decision-making, although some have special voting arrangements associated with particularly significant issues or with resource allocation. Increasingly, their agendas are linked to that of the Council of Australian Governments.

Outcomes from Ministerial Councils and major funding programs may be expressed in legislation, but are also now frequently codified in Intergovernmental Agreements. There are agreements of this sort on issues such as financial relations, food regulations, gene technology, water, and security issues.

Australia also has a long tradition of establishing independent regulatory, policy or advisory institutions to oversee important areas of public policy, such as fiscal equalization, food safety, water, energy and transport regulation, competition policy and vocational training. This is often achieved through a Ministerial Council and an Intergovernmental Agreement. Membership of these institutions is usually jointly selected by the Commonwealth and States to ensure they are not dominated by one or other level of government.

In 2006, following the Canadian example, the Council for the Australian Federation (consisting of State Premiers and Territory Chief Ministers) was established. Aimed at both achieving greater harmonization and influencing national debates, it remains to be seen how it will fare, especially in view of the Council of Australian Governments' increasing importance.

The election in 2007 of the Rudd Federal Labor Government has seen a much expanded role for the COAG, with more frequent meetings and the conclusion of a new Intergovernmental Agreement on federal financial

The Rudd government has embarked upon a 'national reform agenda', extending the competition reforms of the 1990s with a new focus on human capital. A new independent Council of Australian Governments' Reform Council (with members nominated by the Commonwealth and the States) advises the COAG on a new outcomes-based financial reward system for policy reforms.

While it is as yet uncertain whether the new reform agenda will deliver the policy outcomes sought, it seems clear that intergovernmental relations in Australia will consist of an increasingly dense set of institutions and personal interactions, reflecting and accentuating the centralization of policy, management and administration within and between governments.

A key issue will be whether, and to what extent, the Council of Australian Governments, and intergovernmental relations more generally, will come up against particular limits. Those limits could be constitutional, organizational (there are already complaints of 'death by meetings'), political (can the new cooperative Council of Australian Governments survive potential changes of government?), or financial (will States continue to cooperate while remaining financially mendicant?). Overcoming these limits will be a major challenge for Australian intergovernmental relations in the future.