Federalism and Intergovernmental Relations: COAG, the NCP, and RIS

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Introduction

In this paper, the major aim is to examine the dynamics of intergovernmental relations in a federal state, Australia, with a focus on the dynamics of gaining intergovernmental agreement, a somewhat neglected topic. The dynamics are illustrated in the context of a detailed examination of the gaining of agreement to a major, nation-wide process of regulatory reform involving the existing stock of some 1,700 separate acts, regulations and related policies in the 1990s, and that continues to this day, and to the gaining of agreement to the regulation review processes that would be involved, both for the review of existing regulation and future regulation. The term regulation is used its broadest sense, to refer to all legislation, policy and subordinate legislation in regard to the economy. The research is based on material drawn from primary sources, as referenced, secondary sources, as referenced and interviews with persons involved in the processes described.[1]

The case study was chosen for three reasons: one, the regulatory reform policies referred to were, and remain, major policy efforts involving all Australian governments, with the gaining of agreement requiring the cooperative management of intergovernmental relations, rather than the unilateral imposition of authority by the federal government (Carroll and Painter 1995, Harman 1996, Weller 1996, Painter 1998); two, regulatory reform has become a major concern of the EU and its member governments in recent years, so that the paper provides a study of a comparable, non-EU experience (see, for example from a much larger literature, Majone 1990, Heritier, Knill and Mingers 1996, Moran 2000, 2001, 2003, Radaelli 2004); three, it illustrates the growing interdependence of national and international issues when governments search for policy solutions to complex economic problems, so has value as a guide to understanding the growing need to cope with this complexity, especially in a federal system (Boekelman 1996, Galligan and Wright 2002, Zimmerman 2002)

The search for agreement is examined in relation to three major aspects of the regulatory reform agreements that were reached: one, the establishment of a major, new, intergovernmental forum for managing intergovernmental reform, the Council of Australian Governments (COAG); two, the National Competition Process agreement (NCP), within the COAG framework; and three, the COAG Regulation Impact Statement (RIS) process. The emphasis is upon the factors that explain why agreement was reached, noting the importance of *a common view* as to the nature of the problems faced, the *credibility* provided for that view by influential economists in the OECD and the Australian Industry Commission, the *policy window* provided by a sharp recession in the late 1980s and early 1990s, the constraints and opportunity presented by *linkage politics*, the provision of *financial incentives* for the state governments to agree to the process and, again, the *influence* of the OECD's PUMA section in providing 'quality endorsed', prescriptions for the review of regulations.

[1] Interviews of from one to two hours were conducted in 2006 and, also, in 1994-95, with persons in senior positions in Commonwealth and state governments, particularly the Queensland, New South Wales and Victorian governments, the Productivity Commission, Office of Regulation Review, Office of Small Business, and Australian public servants who had worked in the OECD PUMA section in the 1990s. Unless otherwise noted in the text, those interviewed required anonymity as a condition of being interviewed.

The paper is divided into the following parts: one, an introductory section in which the significance of intergovernmental agreement for regulatory reform in a federal system is outlined; two, a section in which the process of gaining intergovernmental agreement for the creation of COAG is outlined, three, a section in which the development of two, separate regulation review processes are outlined, noting the influence of the OECD in relation to regulatory reform in Australia.

Regulatory reform and Australian Federalism

Regulatory reform

In the 1980s Australia changed its traditional economic policy of protecting industry and, with the deregulation of the financial sector, the floating of the dollar and the phasing out of tariff protection for manufacturing industry, moved to a position in which market dynamics were allowed greater play, opening up its domestic economy to international competition (Galligan, Caplin 1992). Also, as international linkages increased and became more intense, Australia's small, open economy faced the need to compete ever more effectively in a range of markets. The primary motive for these largely macroeconomic changes was the then relatively poor performance of the Australian economy, and a common, if not identical perception by all Australian governments that both macroeconomic and microeconomic reform was necessary if performance was to be improved.

With the bulk of macroeconomic reform achieved, the political focus turned to microeconomic, or regulatory reform in 1987, with ALP Prime Minister Hawke in his policy speech for that year's national elections, emphasising the need for the re-shaping of economic institutions to meet the challenges ahead (McAllister and Moore, 1991: 147). It was a theme he addressed again in a talk to the influential Business Council of Australia, emphasising the regulatory dross that had been accumulated in eighty-four years of federalism in Australia (Hawke 1987: 1598). It became clear that reform on the scale envisaged was unlikely to be achieved on a piecemeal basis, through existing, intergovernmental institutions and processes. The annual, 'premiers conference', for example, was not an appropriate forum, as it was highly adversarial and symbolic in nature, focused on determining the funds to be provided to the states by the Commonwealth in the year ahead. The existing, intergovernmental, Ministerial Councils and their supporting committees of federal and state public servants, similarly, had proved of limited value in gaining national agreement on a range of social as well as economic issues, often taking years to achieve even incremental reform (Painter 1998, 35, Nelson 1992). The desired reforms could not be achieved on a largely unilateral, authoritarian basis, by the Commonwealth government, for despite a steady encroachment by the national, Commonwealth government after federation at the turn of the century, the Australian Constitution left the Australian state governments with primary responsibility for manufacturing, agriculture, labour relations, trade and commerce, except in relation to their foreign or interstate dimensions (Zines 1992:71). The solution selected was a proposal to develop a new era of cooperative federalism, based on an agreed agenda, to be discussed at a series of 'Special Premiers' Conferences, launched by Prime Minister Hawke at the Press Club on 19 July 1990 (Weller 1996, 96). It was out of discussions in this context that

the COAG was developed, followed by the use of the NCP and RIS processes in attempts to ensure the desired type and quality of regulatory reform occurred.

Regulatory reform and intergovernmental relations

A federation is the result of a deliberate decision to divide authority and power among a number of governments, although united under a national government. In a federal state such as Australia, the achievement of substantial economic or regulatory reform in almost any area thus poses a substantial challenge, for constitutional authority in regard to economic matters in Australia is divided between the federal and state governments, so that a unified, systematic response to reform requires positive, active, continuing, *intergovernmental* agreement. If it is lacking, as can be the case, then the reform, at best, will be partial, varying by government and, from the point of view of the economy, possibly less than optimal. The situation is made more difficult as the Australian Constitution does not provide an institutional mechanism for joint decision making arrangements between the governments, either vertically, or horizontally. Hence, faced with this lacunae, plus an increasingly frequent need for intergovernmental agreement, a variety of mechanisms have been developed over time, such as the annual premiers' conference to allocate financial grants from the Commonwealth to the state governments, and ministerial councils to cover specific policy areas, such as transport or the environment. However, these decision making mechanisms '…evolved out of practical exigencies, for political and administrative convenience', rather than as systematically planned and resourced, continuing institutional mechanisms (Painter 1998, 23).

Hence, in the Australian context, discussion about the need for regulatory reform in the later 1980s and early 1990s involved substantial attention to the capacity of existing intergovernmental relations systems and processes as a means to the end of regulatory reform. The task of would-be reformers was four-fold, complex and challenging. It was: one, to gain and maintain for the duration of the reform period, a substantial extent of intergovernmental agreement about the range and type of reform necessary; two, to ensure that the desired regulatory content was achieved in the legislation and policy of all member governments; three, to ensure that the desired reforms were implemented, in a situation where the national, federal government lacked the constitutional authority to ensure appropriate implementation, although, in practice, its financial powers somewhat compensated for this lack of authority. Where, as was the case with regulatory reform in the early 1990s, the reform proposal is nation-wide, crosses a great range of legislative and policy areas, and is likely to continue for several years, then a fourth task was necessary, the task of gaining agreement on a suitable, institutional means for gaining intergovernmental agreement, monitoring progress and, as necessary, taking remedial action.

Gaining agreement on an institutional mechanism: the development of COAG

In this section the aim is to describe and assess the process of gaining intergovernmental agreement in regard to COAG, the institutional mechanism finally selected for managing a range of nation-wide issues, with regulatory reform a priority. It is important to note that, in respect to major, national reforms the need to gain agreement among the key actors is not restricted only to intergovernmental agreement. In addition, agreement has to be gained from a range of government and

key, peak business associations and related actors as to the need for reform and the range and type of reforms necessary. Hence, at any one time *multiple searches* for agreement will be taking place, more or less related to each other, involving some common actors and others specific to particular policy areas. Also, making the achievement of agreement more complex is the propensity of key actors to engage in *linkage politics*, making their agreement in one area conditional on agreement in regard to other, unrelated, or only partially related issues. Finally, the process of gaining agreement in any arena is rarely one with a clear beginning, marked by a clear decision, plan and implementation schedule. Rather, as with COAG, it tends to emerge somewhat slowly as key individuals and groups search for solutions, discuss and negotiate over a variety of options, then come to a decision as to a solution.

This was very much the situation when the search for agreement on an appropriate, institutional focus for managing nation-wide regulatory reform began. Prime Minister Hawke had regulatory reform to the forefront in calling in July 1990 for a new era of cooperative federalism and a new series of Special Premiers Conferences (SPC), in order to work out what regulatory reforms were necessary and how they should be conducted, but proposed no developed concept as to how this might be managed. The state governments, while for the most part sympathetic with the need for reform, also saw Hawke's proposal as a means of addressing their long-standing grievances in regard to federal-state financial relations. The result was that, in return for their agreement to meet, they argued that a range of other items, such as federal-state financial relations, should be on the agenda, a typical example of linkage politics, although all governments had a clear interest in further regulatory reform (Weller 1996, 96-97, Painter 1998, Carroll and Painter 1995, Edwards and Henderson 1995, 22-4). Hawke did not expect any immediate decisions on substantive issues from the SPC; rather, his aim was to gain agreement on the direction and scope for further work (Weller 1996, 96).

Hawke's proposal was well received, given added impetus by a propitious series of contextual factors. The most immediate was the very sharp recession that developed in Australia in 1989 and that provided somewhat of a `window of opportunity' through which the proponents of the need for regulatory reform could advance their cause. The recession, which lasted until 1992, was amongst the most severe to be experienced by OECD countries (Argy 1992:10-11). It served to intensify calls for reform, as a means of 'solving', the recession problem, adding persuasive weight to what soon came to be called the `New Federalism' (Greiner 1992). It was also aided by a second factor, the fact that, for the most part, there existed at a general level, substantial agreement on the types of reforms that were needed, based on the prescriptions of the supply side advocates of neoclassical economics (often rather unfairly castigated as economic rationalists). The impact of neo-classical economists, particularly those resident in the Commonwealth government's major economic advisory body, the Industry Assistance Commission (IAC, now the Productivity Commission), was important for the gaining of intergovernmental agreement, as it had enabled a consensus among key decision makers in all Australian governments as to what range and type of reforms were necessary. It provided a general set of policy prescriptions that seemed to offer solutions to economic crisis where Keynesianism had failed, prescriptions that stressed the competitive advantages of markets, that was critical of excessive government interference in markets and, as a result, strongly urged the need to review all existing regulation in a pro-market, pro-competitive

fashion (see Carroll and Painter 1995, chapters one, four and five, as well as the annual reports of the IAC).

Most importantly, the IAC had been urging the need for nation-wide regulatory reform by all Australian governments since at least 1988 (IAC 1988, iii, 15). A year later, in 1989, it was not only urging that microeconomic reform needed a commitment from all levels of government, but that 'existing mechanisms to promote co-operation between governments have met with only limited success', stressing that

> …inordinate delays in progress towards uniformity of State regulations in areas such as road transport and food are testimony to that. Given the necessity for cooperation in a number of key areas of reform, this issue needs to be addressed as a matter of urgency. The Commonwealth Government has a central role to play, both in identifying areas in which a cooperative approach is required and in bringing the various partners together (IAC 1989, 5-6).

Such publicly-voiced concerns about the fragmented nature and pace of reform, and the further complications and delays caused by the nature of a federal state, had some impact. In 1989, Prime Minister Hawke created a new, more powerful body, the Industry Commission, based on the staff of the IAC, but including within it the Business Regulation Review Unit and the Inter-State Commission. A prime aim of the new Commission was to bring greater cohesion to what had become a fragmented series of ad hoc reforms lacking an economy-wide perspective (IAC 1989, iii).

A third contextual factor was the growing, increasingly visible, international economic competition, first from the USA and Japan, then from the other East Asian economies, which was used to promote the argument that more rapid progress toward an effective single, national, Australian market was necessary to meet that challenge. In 1988, for example, the IAC made the need for microeconomic reform the centre-piece of its annual report, arguing that excessive protection and inappropriate government regulation were the major causes of an increasingly poor economic performance (IAC 1988, 4). The views of the IAC, along with those urging regulatory reform, were given added credibility by the 1987 publication of the OECD's influential study of 'Structural Adjustment and Economic Performance', a report the IAC cited in urging the need for reform and only one of a series of OECD reports and publications on the topic to this date (for a review of the relevant, earlier literature see Sarna 1981). The OECD report argued that there had been too much concern with the exogenous causes of poor economic performance by OECD members. Rather, it asserted that the major causes were domestic, involving inappropriate levels of protection for industry and a distinct failure to undertake necessary microeconomic reform and it laid out detailed programs for regulatory reform in order to boost productivity and performance (see, for example, OECD 1987, 15-17 and chapter eight, on 'Regulation and its Reform'). In other words, the interdependent nature of the OECD national economies had created a quest for policy solutions that were provided, in part, by an international organisation, although it, in turn, drew upon the ideas of key economists and associated decision makers in its member states. It was an example of a policy solution developed internationally in a loosely coupled, organisational network, that was taken up for domestic implementation, on a purely voluntary basis, by most OECD member states. In all cases, what appeared as implementation from the international perspective, required further policy development in the national context, refining the general policy solution provided by the OECD to meet the particular needs of each of its members. Those that were

federal states, especially where the sub-national governments had significant, constitutional authority in regard to the economy, were faced with the more challenging task, that of refining the OECD policy solution in a manner acceptable to multiple, sub-national governments.

In its early stages the Hawke proposal made no detailed mention of the need for a new, COAG-like body to manage intergovernmental relations, merely that it was necessary to 'manage our relationship across a wide range of federal issues more effectively and cooperatively', in a process leading to a 'genuine partnership' (Painter 1998, 36). However, the very call for an SPC, rather than an existing arrangement, implied new organisational needs if the scale of reform felt necessary was to be achieved. It suggested, in particular, the need for the heads of government to meet regularly to discuss matters other than the annual allocations of finance to the states, such as regulatory reform, meetings that would demonstrate the highest level of political commitment to reform. It also implied, but did not specify, the fact that the distribution of power among the members of such a meeting would be different from that at the traditional premiers' conference. In the latter, the Commonwealth was predominant by virtue of its control of the allocation of finance and, historically, it had not been loath to exercise that power, even where opposed by some, or all, of the state premiers. In the new SPC, the distribution of power would be different, more widely distributed, although it might vary from issue to issue, for in several areas of potential regulatory reform it was the states that had constitutional authority, not the Commonwealth. Negotiation, bargaining and consensus would be necessary tactics; tactics noticeably absent from traditional premiers conferences.

Further detail in regard to organisational arrangements came in a letter from Hawke to the premiers, announcing the intention to establish a Commonwealth-state steering committee for the SPC, chaired by the Secretary to his Department of Prime Minister and Cabinet, with, importantly, members drawn from the similar positions at state government level, with a new unit from within his department to provide continuing support. It would draw up papers for the first SPC, advance further work, as necessary, and suggest agenda items to the heads of government, including items that in several cases were already the subject of intergovernmental development, such as a proposal for a national rail freight organisation and the harmonisation of road transport regulations (Weller 1996, 97, Painter 1998, 37-8). This development sent not only a clear signal as to the seriousness of the Hawke proposal, but in the shape of the steering committee, provided the focus for the means necessary to ensure that necessary, detailed, preparatory work would be undertaken for the SPC, by tapping into a key network of the most senior bureaucrats in the nation, together with the sub-national networks that, in turn, revolved around each of these bureaucrats, by virtue of their positions in the state governments.

However well received the proposal, matters did not go entirely smoothly, for at the first SPC the state Premiers focused discussion on their financial grievances with the Commonwealth, attempting to gain a serious commitment by the Commonwealth to examine their concerns, in return for cooperation on regulatory reform (Painter 1998, 38). Nevertheless, agreement was reached on the need for a number of specific reforms, plus, importantly, for a series of committees and working groups of officials to meet on regulatory reforms, for example, the aim of creating a national market by breaking down regulatory barriers to inter-jurisdictional trade. The second SPC

meeting, in July 1991, also achieved progress in developing proposals for regulatory reform, with an agreement to set up a National Road Transport Commission, a National Rail Corporation, a National Grid Management Council, a mutual recognition scheme, and, importantly, the establishment of a joint working party to consider a national approach to competition policy. The latter was to become the vital core of the whole regulatory reform program, involving, ultimately, a review of some 1,700 separate pieces of state and Commonwealth legislation and policy for their impact on competition (Painter 1998, 40, Carroll 1995, Harman 1996).

The price the state premiers wanted for their further cooperation in regulatory reform became clearer in November, 1991, following a meeting between themselves in which they proposed the establishment of a 'Council of the Federation', as a permanent forum, particularly as regards continuing, regulatory reform, but also for discussion and hopeful resolution of their financial grievances (Painter 1998, 42). The premiers had been somewhat irritated by the domination of the Commonwealth in the SPC organisational arrangements to date, wishing to ensure that any permanent body that resulted was responsible to the heads of government as a whole and not simply dominated by the Commonwealth (Weller 1996, 97). Initially, in a considerable blow to Hawke's standing, Commonwealth Cabinet rejected the proposal, which would have given responsibility for control of the state governments' share of the national income tax to the proposed Council of the Federation, substantially reducing the Commonwealth's power. Further consideration of their proposal was delayed while Paul Keating succeeded Hawke as Prime Minister, and, while Keating did not accept the proposed Council of the Federation, he recognised the need for an appropriate, intergovernmental mechanism for regulatory reform. What resulted, after further negotiation, was an agreement to establish a Council of Australian Governments (COAG), to meet at least once per annum, chaired by the Commonwealth, with a reorganised system of Ministerial Councils and supporting committees of public servants placed within the umbrella of COAG. It was this network of committees that would provide, it was hoped, a more effective, intergovernmental focus for intergovernmental developments in regulation and its reform. The first COAG meeting took place in December, 1992 and the second, in June 1993. As the Director-General of the New South Wales Cabinet Office noted,

> COAG is evidence of the recognition that there is a need for formal cooperative structures in the Australian political system. Despite its largely adversarial character, this sphere of inter-governmental negotiations is attempting to find new approaches and solutions to matters of national significance (as quoted by Edwards and Henderson 1995, 24).

Key among its aims was 'cooperation among governments on reforms to achieve and integrated, efficient, national economy and single national market' (COAG 1992).

Gaining agreement on regulatory content: the NCP and RIS process

The agreement to create COAG was an achievement. It provided a national forum in which the most senior ministers and public servants from all governments would meet on a regular basis to lead, review and direct, nation-wide reform. This included those reforms that required active, intergovernmental review of regulations by representatives from all governments, including the design of new or amended regulations, within the COAG structure, with detailed work being undertaken by the dedicated working groups and reformed ministerial councils (Edwards and Henderson

1995). In addition, it provided a setting in which the individual regulatory reform efforts of each individual government could be agreed, monitored and assessed, although the actual reviews would be carried out, for the most part, by the staff of the governments concerned, working under their individual authority.

The question that arose was that of how to gain agreement that the reviews undertaken within COAG, and those undertaken by individual governments, although subject to COAG agreement, would be rigorous, achieving a high degree of quality as regards final content, when those undertaking the reviews might be subject to the same, self-interested pressures that had led to anti-competitive, economically inefficient, regulatory outcomes in the first place? It was this latter prospect that led to a search for intergovernmental agreement to subject regulatory reviews to a common regulatory review and design process, in the hope that this would ensure a greater degree of quality in the review outcomes. What eventuated, however, was not one, but two regulatory review and design processes, similar, but by no means identical. The first was the review process to be undertaken by all governments in fulfilling their review obligations under the National Competition Policy (NCP), process, the second was the Regulation Impact Statement (RIS) process, that was to apply to all regulation proposed by Ministerial Councils or national standard-setting bodies (NCC 1995, COAG 1995).

The NCP review process

The NCP review process was enshrined in a new, COAG-agreed, Competition Principles Agreement, that committed all of the governments to a review of all regulation that impinged on competition, eventually including some 1,700 regulations (NCC 1995, Harman 1996). As regards review processes, the Agreement specified that all reviews should

(a) Clarify the objectives of the legislation
(b) Identify the nature of the restriction on competition
(c) Analyse the likely effect of the restriction on competition and on the economy generally
(d) Assess and balance the costs and benefits of the restriction; and
(e) Consider alternative means for achieving the same result, including non-legislative approaches (NCC 1995).

Also, each government was to report annually to COAG, through the National Competition Council (NCC), on its progress in meeting its review objectives, with the NCC producing a consolidated report based on the individual reports. The NCP reviews were reviews of the existing stock of regulation in regard to the economy, with an emphasis upon enhancing competitive markets.

The process of reaching agreement on the NCP reviews had been a difficult one, for it encompassed several areas in which reform had already commenced, involved large numbers of regulations that fell under the control of the state governments, as well as the Commonwealth government, and was seen by some as an attempted Commonwealth takeover of these reforms, with only token gestures to COAG and cooperation (Painter 1998, 82). It required some two years of detailed work by a new COAG-based, Microeconomic Reform Working Group of senior officials, as well as sensitive and sometimes acrimonious negotiations at senior ministerial levels, to gain agreement on what became known as National Competition Policy (Harman 1996,

Painter 1998, 82-9). What resulted was a compromise, as enshrined in the Competition Principles Agreement. As indicated above, it imposed only a very flexible review process ‘template’, on the governments, one easily manipulated to avoid unpleasant review conclusions. Item (d), for example, required governments to ‘assess and balance the costs and benefits’ of any restrictions on competition contained in a regulation, without specifying what was meant by ‘assess’, or ‘balance’, or providing criteria by which they could be applied. Similarly, while item (e), required governments to consider alternative means to achieve results, including non-regulatory means, it did not specify that each alternative should be costed. It was in recognition of these limitations that two other important developments were agreed in regard to the reviews: one, the creation of a separate, National Competition Council, consisting of four, part-time councillors that would assess the governments’ progress in their reviews, reporting to COAG; two, the making available of substantial payments to the state governments (not the Commonwealth) that depended upon their progress in undertaking the agreed reviews of regulation (NCC 2006). The payments were to total $5.3 billion over the 1997-2006 period, based on economic gains made from the review process outcomes, with the Commonwealth Treasurer to make the decision on payments, with advice from the NCC.

In other words, the achievement of intergovernmental agreement in relation to at least the NCP set of regulatory reforms was determined by a number of factors. In terms of context, as noted above, there was a substantial degree of underlying consensus among all of the governments involved on the general need for regulatory reform to improve productivity and, in turn, the international competitiveness of Australian industry. This was a consensus, in turn, endowed with an intellectual rigour that gave greater credibility to those arguing for a rigorous review process, based on the arguments of leading economists, especially those within the IAC and the OECD. In addition, peak business associations at all levels of government, particularly the national, Business Council of Australia, were pushing for regulatory reform in general, and competition reform in particular. The Business Council of Australia, for example, in response to what at one stage seemed a likely breakdown in the process of gaining intergovernmental agreement on competition in COAG, managed a public campaign to persuade governments to reach agreement, operating at both national level, and, via its state divisions, at state government level, building a very effective alliance of business interests (Painter 1998, 87, Harman 1996, 213-4). However, even though this contextual setting was positive, it required a positive, financial incentive for the state governments to agree, finally, to the NCP and its review process. Also, in a move suggesting that the degree of trust between the governments was distinctly limited, the reaching of agreement required the establishment of an independent ‘umpire’, to oversee the review process and its outputs, in the shape of the NCC.

The COAG RIS process

In this same period COAG also endorsed a proposal from its Committee on Regulatory Reform (a committee of senior public servants), on the ‘Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies’, the RIS process (COAG 1995). This was a far more detailed, prescriptive document and associated process for the review and making of regulation than that required for the NCP, detailing not only the key processes to be followed, but the underlying, ‘best practice’, principles to be

observed, the types of analytical techniques to be used and the need for compliance and enforcement strategies to be included in the reviews. The process was to be overseen, as with the NCC, by a separate, largely independent body, the Office of Regulation Review (ORR), based in the Productivity Commission, an independent, economic advisory body reporting to the Commonwealth Treasury. In contrast to the NCC, however, it was not in any sense a representative body, with no opportunity for the state governments to determine its membership. The RIS process required that ORR be consulted in the early stages of a review, to determine whether or not a RIS was necessary (COAG 1995, 12) and that a draft RIS be sent to ORR for advice and assessment, before the RIS was made public, with ORR to consider:

- whether the Regulatory Impact Statement guidelines had been followed;
- whether the type and level of analysis was adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation had been adequately considered (COAG 1995, 12).

The ORR assessment and any responses made by Ministerial Councils and standard setting bodies were to be available to State, Territory and Australian Government Cabinets, and ORR was to report to COAG's Commonwealth-State Committee on Regulatory Reform if, in its opinion, decisions of Ministerial Councils or standard setting bodies were inconsistent with COAG guidelines. The Committee on Regulatory Reform, in turn, was to advise COAG concerning major issues (COAG 1995, 13). In addition, while Ministerial Councils did not have to accept the recommendations in the RIS presented to them at the conclusion of the process, they did have to certify that an appropriate RIS had been completed.

There were three important differences between the NCP and RIS processes. The first was that the COAG RIS process was designed to be the normal regulation review and design process for all *future* COAG work, with the exception of those related to NCP. In contrast, the NCP process was intended as a means for the review of the *existing* stock of regulations, at both Commonwealth and state levels. As such, the RIS process was not likely to impinge to any great extent on those areas of regulation under the constitutional authority of the state governments, only to those they agreed to refer to COAG for review, usually to a Ministerial Council or a national, regulatory agency. Moreover, all of the governments, with the exception of Western Australia, already had a RIS type system in operation within their own jurisdictions, although with marked differences in their coverage and requirements (see the detailed, annual reports of ORR for discussion of all Australian RIS systems and their evolution, at ORR 2006). Hence, they were familiar with such systems, their advantages and disadvantages, a feature that combined with the lesser scope of the COAG RIS and the ability of the state governments, by virtue of their membership of COAG, to manage its impact, made the reaching of agreement as to its necessity a less challenging task.

The second difference, as indicated, was in regard to the details of the processes, with that for RIS being far more detailed and sophisticated. While this implies that, as a consequence, reviews undertaken under the RIS process would be more rigorous than those undertaken in the NCP process, this was not necessarily the case, as consideration of the third difference suggests. That is, there was no direct financial

incentive for any individual government for the achievement of appropriate reviews under the RIS process, in contrast to the NCP process, other than any economic benefits that might result from improved regulation. Mindful of this key difference, the greater prescriptive detail in the agreed, RIS process reflected a desire to make it as rigorous as possible, for it lacked the motivation to achieve substantial rigour that was provided by the financial incentives of the NCP process.

The major reason for the lack of any direct financial incentive for reforms under the RIS process was that the NCP reforms, at least from the state government perspective, were likely to bring significant, if short-term, revenue and political costs to the state governments. This was because they included, firstly, not only the review of many specific regulations, but an agreement that the major government enterprises, most of which were controlled by the state governments, and that provided substantial sources of annual revenues, would now be subject to largely the same direct and indirect tax liabilities to which all privately owned enterprises were subject, for the first time. While, economically, the purpose of this reform was to ensure what was called 'competitive neutrality', and reduce economic distortions, at least in the short term it would substantially reduce state government revenues. Secondly, the NCP reforms also included an agreement that, for the first time, the provisions of the Commonwealth's trade practices legislation would be extended to all unincorporated enterprises in each state, and to their government-owned enterprises, particularly where they were monopolies or engaged in anti-competitive practices (Fels 1995). Again, in at least the short term, there was the potential for the state governments to suffer considerable financial pain, even if, ultimately, their economies would benefit. Hence, for the state governments the proposed NCP reforms were doubly unattractive, with substantial, if short-term losses of revenue to accompany the political stresses that inevitably would result from those groups that would suffer a loss of benefits from the reform of anti-competitive regulation. However, following an Industry Commission report on these reforms that showed substantial, longer-term gains, as well as repeated pressure from the state governments, the Commonwealth agreed to make compensating payments to the states, provided they made agreed progress in undertaking the reforms (Painter 1998, 53).

However, while the RIS process lacked the 'backing', of incentive payments to encourage effective regulatory reform, its proponents were able to call upon the support of the OECD in designing and in gaining the agreement of all governments to the more demanding prescriptions of the RIS process, for the OECD had just launched an agreed, cooperative policy of regulatory reform. As noted above, the OECD had indicated its growing concern for the adverse impact of a growing body of regulation on productivity in its member states (OECD 1987). This concern became the central focus of the work of PUMA (Public Management Service), a new OECD section, that produced a series of reports and papers linking the need for microeconomic reform to improved competition policy, privatisation and regulatory reform, particularly the latter (see, for example, OECD 1992a, 1992b, 1994, 1994a, 1995). The work of the new section proved influential, resulting in the unanimous endorsement by the OECD Council of a recommendation for regulatory reform and, importantly, embedded systems for improving the quality of future regulation in all member states (OECD 1995b). Three Australians, Paul Bradstreet and Paul Coghlan (senior public servants in ORR), plus John Braithwaite (an internationally respected academic and consultant in regulatory compliance), proved influential in the work of PUMA, helping to ensure

that the OECD's regulatory reform proposals received a positive reception in the IAC, and, in turn, within COAG (Bradstreet 1992, Braithwaite 1993, Coghlan 1995). As a result, the COAG RIS policy was based, in part, on the new guidelines for regulatory reform that had just been released by the OECD, guidelines, in turn, in part based on the experience of, and earlier guidelines developed by the Commonwealth's ORR and the Victorian government's Business Regulation Review Unit (OECD 1995b, Industry Commission 1995, 40, 61, ORR 1995).

It is difficult to judge the precise influence of the OECD in regard to the Australian, intergovernmental process of regulatory reform. Those interviewed for the study indicated that it had a varying degree of influence, in three major ways. One, by providing an increasingly credible *rationale* as to the need for microeconomic reform and structural adjustment by its member states, as expressed in reports and recommendations (see, for example, OECD 1987). Two, as an *actor* in the broader movement for microeconomic reform and structural adjustment within which regulatory reform developed in the 1980s and 1990s, as its staff spread their reform-oriented views to influential advisors and decision makers in the member states, both in visits to member states, and, particularly, in numerous OECD meetings on the topic attended by representatives from member states. Three, in the 1990s, in particular, as a source of policy and process *models* for the detailed guidance of regulatory reform efforts (notably, OECD 1995b and the considerable endorsement of its RIS-type model in ORR 1995). However, the OECD's influence was felt primarily at the national, federal level, with little signs of its impact at sub-national level.

Conclusion

This study illustrates the growing interdependence of national and international issues when governments search for policy solutions to complex economic problems. In the Australian federal context, this challenging prospect is made more difficult because of the need to gain agreement to policy solutions between governments at both the national and sub-national levels. In turn, gaining such agreement often involves managing the linkage politics that eventuates, as governments at differing levels attempt to gain benefits in one issue area by withholding their agreement, at least initially, in other areas, as happened in regard to the gaining of agreement in relation to both the establishment of COAG and the NCP process. In the latter case, final agreement could be reached only when the Commonwealth government offered positive financial incentives.

The case also highlights the considerable power of the sub-national, state governments in negotiations with the federal government, despite the latter's financial power. While much of the intergovernmental and federal literatures tends to emphasise the growing power of federal governments, this case shows that such power is restricted, sometimes constitutionally, at other times because of the compromises that have to be made in order to gain necessary agreement on coordinated action by the governments involved.

The study also emphasises the need for a number of factors to be present if intergovernmental agreement is to be reached. The first of these is a need for consensus as to at least the general nature of the problem faced, in this case the need for regulatory reform, a consensus that existed. The second is the need for *credibility*

as regards not only the nature of the problem faced, but the approaches needed to deal with the problems. In this case, this was provided by the ability to refer to sources with a relatively high status, such as the OECD and the Australian Industry Commission. The third is the need for a suitable window of opportunity and the recognition of that opportunity, in this case provided by a sharp recession in the late 1980s and early 1990s that drove home the fact of the vulnerability of the small, open, Australian economy to international competition. The fourth is the need to recognise and to be able to operate within the world of linkage politics, making compromises where necessary, but not to the extent of diluting the objectives of reform, as well as providing appropriate, positive incentives.

References

Argy, F, 1992. 'A Long Term Economic Strategy for Australia An Interim Report for CEDA', Longman Cheshire\CEDA, Melbourne.

Boekelman, K, 1996. 'Federal systems in the global economy: Research issues', *Publius*, Vol. 26, Iss. 1.

Bradstreet, P.J. (1992) *Regulation Reform, Competition, and Competitiveness: Some Australian Reflections*, A Paper prepared for the Public Management Service, OECD, November.

Braithwaite, J, 1993. 'Improving Regulatory Compliance Strategies and Practical Applications in OECD Countries,' by John Braithwaite, The Australian National University, *Occasional Papers in Public Management, Regulatory Management and Reform Series,* No. 3, OECD: Paris.

Carroll, P, 1995. `Mutual Recognition: Origins and Implementation', *Australian Journal of Public Administration*, vol 54, no 1.

Carroll, P, Painter, M, (eds), 1995. 'Microeconomic reform and federalism', Federalism Research Centre, ANU, Canberra.

COAG, 1992. 'Communique', as at 26 July 2006, at http://www.coag.gov.au/about.htm

______, 1995. 'Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies', as at 28 July 2006, at http://www.coag.gov.au/meetings/250604/coagpg04.rtf

______, 2006a. 'Communique', as at 26 July 2006, at http://www.coag.gov.au/meetings/100206/index.htm

______, 2006b. 'Communique', as at 26 July 2006 at http://www.coag.gov.au/meetings/140706/docs/coag140706.pdf

Coghlan, P, 1995. ‘Curbing regulatory inflation: a view from Australia’, prepared by Paul Coghlan of the IAC’s Office of Regulation Review, Australia, for PUMA, OECD Publications, Paris, 15–16 June Meeting.

Edwards, M, Henderson, A, 1995. ‘Council of Australian Governments – a vehicle for reform’, in Carroll and Painter (eds), ‘Microeconomic reform and federalism’, Federalism Research Centre, ANU, Canberra.

Fels, A, 1995. ‘Competition Policy, the Council of Australian Governments and the Future’, pp 101-10, in Carroll, P, Painter, M, ‘Microeconomic Reform and Federalism’, Federalism Research Centre, ANU.

Galligan, B, Caplin, M, ‘Beyond the protective state: the political economy of Australia’s manufacturing industry policy’, Cambridge, England, Cambridge University Press.

Galligan, B, Wright, J, 2002. ‘Australian Federalism: A Prospective Assessment’, *Publius*, Vol 32, Iss 2.

Greiner, N, 1992. ‘That Obstructive Spirit of Provincialism Has Been Curbed’, Federalism Research Centre, Discussion Paper No 11, January, Australian National University, Canberra.
Harman, E, 1996. ‘The National Competition Policy: A study of the Policy Process and Network’, *Australian Journal of Political Science*, vol 31, No. 2, pp. 205-223.

Heritier, A, Knill, C, Mingers, S, 1996. ‘Ringing the Changes in Europe: Regulatory Competition and the Transformation of the State. Britain, France, Germany’, Berlin, Walter de Gruyter.

Hawke, R, 1987. *Commonwealth Record*, 11(36), 1598.

Industry Commission, 1995. ‘ Annual Report, 1994-95’, AGPS, Canberra.

IAC, 1988. ‘Annual Report 1987-88’, AGPS, Canberra.

IAC, 1989. ‘Annual Report 1988-89’, AGPS, Canberra.

Majone, G, (ed), 1990. ‘Deregulation or Reregulation? Regulatory Reform in Europe and the United States’, St Martin’s Press, New York.

McAllister, I, Moore, R, 1991. ‘Party, Strategy and Change’, Longman Cheshire, Melbourne.

Moran, M, 2000. ‘From Command State to Regulatory State?’, *Public Policy and Administration*, 15(4): 1–13.

________, 2001. ‘The Rise of the Regulatory State in Britain’. *Parliamentary Affairs* 54 (1):19-34.

——---—. 2003. ‘The British Regulatory State’. New York: Oxford University Press.

NCC, 1995. ‘Competition Principles Agreement’, as at 28 July 2006, at http://www.ncc.gov.au/pdf/PIAg-001.pdf

____, 2006. ‘NCP Payments’, as at 28 July 2006, at http://www.ncc.gov.au/articleZone.asp?articleZoneID=40

Nelson, H, 1992. ‘Recipes for uniformity: The Case of Food Standards’, *Australian Journal of Political Science*, vol 27 (Special Issue), 78-90.

OECD, 1987. ‘Structural Adjustment and Economic Performance’, OECD, Paris.

OECD, 1992a. ‘Regulatory Management and reform: Current Concerns in OECD Countries’, Occasional Papers, PUMA (Public Management Service) OCDE/GD(92)58, Paris.

OECD, 1992b. ‘Regulatory Reform, Privatisation and Competition Policy’, OECD, Paris.

OECD, 1993. ‘Improving Regulatory Compliance Strategies and Practical Applications in OECD Countries,’ by John Braithwaite, The Australian National University, *Occasional Papers in Public Management, Regulatory Management and Reform Series,* No. 3, OECD: Paris.

OECD,1994. ‘Public Consultation in Regulatory Development: Practices and Experiences in Ten OECD Countries’, PUMA/OECD.

______ 1994a. ‘Regulatory Co-operation for an Interdependent World’, PUMA, OECD, Paris.

______ 1995. ‘Background Note to the OECD Reference Checklist for Regulatory Decision-Making’, *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation*, PUMA, Paris, 9 March.

_______1995a. ‘Control and Management of Government Regulation’,12th Session of the Committee, Château de la Muette, PUMA (95)9 , Paris, October.

_______1995b**.** ‘Recommendation on Improving the Quality of Government Regulation’, adopted by the Council of the OECD, Paris, 9 March.

ORR, 1995. ‘Regulation and its Review, 1994-95’, ORR, AGPS, Canberra.

ORR, 2006. ‘Annual Reports’, as at 28 July 2006, at http://www.pc.gov.au/orr/reports/annrpt/index.html

Painter, M, 1998. ‘Collaborative Federalism – Economic Reform in Australia in the 1990s’, Cambridge University Press.

Productivity Commission, 2005. ‘Review of National Competition Policy Reforms’, Report no. 33, Canberra.

Radaelli, C, 2004. 'The diffusion of regulatory impact analysis – Best practice or lesson-drawing?', *European Journal of Political Research*, Vol 43, Iss 5, pp 723-47.

Sarna, A, 1981. 'International Guidelines for Industrial Adjustment Policies', *Journal of World Trade Law*, Vol 15, No 6, p 490.

Weller, P, 1996. 'Commonwealth-State Reform Processes: a Policy Management Review', *Australian Journal of Public Administration*, vol 55(1): 95-110.

Zimmerman, J, 2002. 'Interstate Cooperation: Compacts and Administrative Agreements', Westport CT, Praeger Publishers.