# UNIT 6 FEDERALISM IN AUSTRALIA

**Structure**



## 6.1 INTRODUCTION

Australia, like India and Canada, is both a federal and parliamentary democracy. In 1900 when Australia adopted a federal constitution, there was a history of economic and political independence in the federating colonies. Australia's founding fathers, while trained in the working of British Westminster model, were quite attracted to the American federal model. Thus six self-governing British colonies, while becoming constituent states of the federal system, ensured that the rights of the states would not be subordinated to the central power and there was equal representation in the senate. Accordingly, the constitution provided that the Commonwealth would have only such powers as were expressively conferred upon it, leaving all the residual powers within the exclusive authority of the states. However, from the very beginning there emerged a national sentiment for strengthening and augmenting the central government powers. There came up a gradual expansion of the central government. This was achieved partly by constitutional amendments, partially by High Courts interpretations and to some extent by the consent of states in a formal manner during the two World Wars. Since mid 1970s the process of regionalism has also emerged. Australia, as such, has been facing the pressures of both centripetal and centrifugal force but the system has been able to maintain a balance between the two. In this unit, you will

read about the nature of Federalism in Australia, its working, processes of centralisation, attempts for reforms and present status.

## 6.2 OBJECTIVES

After reading this unit, you should be able to:

- describe the division of powers in the Australian Federalism;
- delineate the financial powers of the Australian Commonwealth and the States;
- explain the trend towards centralisation till 1970s;
- understand the New Federalism under the governments of Fraser and Hawke; and
- define the mechanisms of intergovernmental bodies like Council of Australian Governments and Leader's Forum.

## 6.3 THE BACKGROUND

At the time of the framing of Australia's constitution in the conventions of 1891 and 1897-1898, support for a federal rather than a unitary constitution was almost unanimous. An alternative system of unitary government and a sovereign national Parliament was championed by some of the rising Labor Party leaders. But the Labor party had no say in the founding conventions and had little influence over the making of the constitution. In fact, as Brian Gilligan suggests, the federal model seemed tailor-made to most Australians at the time because it enabled the establishment of a new sphere of national governance while preserving the established colonial system of self-government including local government. Federalism was an extension of democratic governance that accommodated existing colonies of similar political culture and structure, but of unequal size. Another possibility would have been for the colonies to remain as separate quasi-independent states and join an imperial federation that some were championing at the time. But this had little public or popular support in Australia or, indeed, within the British Empire.

While the support for federalism was almost unanimous, it was not a philosophical response to the kinds of ethical and sociological challenges thrown up by diverse cultural, ethnic, linguistic, religious and political differences among the colonies in the nineteenth century. According to Alan Patience, the system did not arise from a search for a political compact that would guarantee the moral and communitarian integrity of such diversities within a democratic constitutional framework. Far from it, it amounted to little more than a set of pragmatic, legalistic and administrative compromises intended to shore up parochial interests imagined by men of influence in the Australian colonies at the end of the nineteenth century. According to Patience, the Founders, at best were practical men, some ambitious and vain, some principled and reasonable, a few inspired by a dream of a greater Australia, some with various levels of legal understanding, most with the minds of small businessmen, not a few with ambitions exceeding their capabilities, one or two who were truly great. He further points out that while the most powerful reasons for federation arose from perceived economic advantages and defence vulnerabilities, the decision for a federal over a unitary system of government was substantially a consequence of two quite practical conclusions that loomed large in the finite intellects of most of the founders of the Commonwealth of Australia.

First, self-interest directed the founders to look to a federal arrangement. Most of them were singularly under-whelmed by the thought of sacrificing their local power bases on the alter of a unitary system of government. While offering a grand stage for them to strut upon -not a few of

them expected, than their colonial power bases - a unitary central government that took over all powers of the six colonial parliaments that would provide fewer plumbs to be picked by the politically ambitious in the colonies. In addition to the seats in the Upper and Lower Houses of the State parliaments, these plumbs would come in the form of additional seats in the House of Representatives, or in the Senate where a title was to be had as well. A federal system would give them advantages at the local as well as federal level. What was the better bet: one central parliament (as in New Zealand or Great Britain), or six State parliaments and a Commonwealth parliament? Federal proposals that guaranteed seats in State parliaments, plus the Commonwealth parliament, held out the real possibility of more jobs for the boys (and, rather later, the girls). It continues to do so to this day.

Second, as Geoffrey Blainey (1968) has explained, distance was a major formative factor that helped influence the political leaders in the Australian colonies to look for a federal compact at the end of the nineteenth century. In their limited ways of seeing the issue, the founders concluded that vast geographical distances were regional differences - i.e., unique parochial imaginings of place and identity; specifically local loyalties deserving (in their somewhat grandiose view) respect and protection; differences that could not be accommodated outside a federal arrangement. Of course, this kind of rhetoric also provided a convenient rationale for the absolute self-interest, the private ambitions, that compelled colonial politicians to favour maximising their chances for parliamentary careers within an expanded federal system.

This was despite the fact that the new Commonwealth was to be based on an unswerving determination to be racially, culturally, and politically homogenous. As Helen Irving notes, the issue of 'colour' was not just unequivocally a racist issue, but it was much more than this. It was a type of cultural strategy in the process of nation building'. This strategy was aimed, first and foremost, at creating a white and British society and polity within an indissoluble Commonwealth under the British crown. The language would always be English. The customs and values would be indubitably Anglo-Saxon, if not Anglo-Celtic. The political and legal institutions would all be derived from British traditions. A culturally homogenous people-ostensibly a white British race-spread thinly over the vast distances of the Australian continent were to be politically and geographically arranged within a federal system of government. It was not so much a question of democratically managing cultural or social diversity within a framework of republican political unity rather than reacting unimaginatively to the 'tyranny of distance'.

## 6.4 NATURE OF FEDERALISM AND DIVISION OF POWERS

In designing the Australian constitution, the founders embraced and reworked the federal model, copied mainly from the American Constitution. They combined this with the institutions of Parliament and responsible government familiar from British and colonial practice, producing a hybrid of Parliamentary and Federal Government. Federalism in Australia, thus, as Brian Galligan writes, was a timely extension of self-governance to the national sphere. It preserved the colonies as States along with their established systems of local government, and continued Australia's membership of the British Empire. Local government was not mentioned in the Constitution because it came within state jurisdiction-a fact that some would like to have reversed through constitutional recognition. Imperial membership coloured the way in which the executive was structured in formal monarchic terms with a vice-regal surrogate, making the task of modern republicanism technically complex. It also affected the way in which the Executive's power over

foreign affairs and treaties was left unconstrained because it was to be exercised by the British Imperial government, as was the case until the 1940s.

Within the continuing tradition and arrangements of Australian colonial governance, Federalism, according to Brian Galligan, was a process of nation building on a federal basis. The federal system adopted by the founders divided the powers of government between the federal and national (in Australia called Commonwealth) sphere and the sub-national or provincial sphere (in Australia called State). The National government was given defined powers-either exclusive or concurrent-whereas the States retained the residual. Where there was an overlap, the Commonwealth laws were to prevail to the extent of any inconsistency. By adopting a written Constitution, notions of Parliamentary sovereignty were confined by the terms of the Constitution itself. Unlike Westminster, the Commonwealth Parliament was not supreme. Rather the people had sovereign authority over the constitutional system and participate as citizens in two spheres of government.

### 6.4.1 Division of Powers

As per the general principles of federalism, the Australian Constitution provides for division of executive, legislative and to some extent judicial powers between the Commonwealth (central government) and states. Borrowing largely from the American model the founding fathers gave to the central government defined powers - either exclusive or concurrent - whereas the States retained the residual. What the Australian colonies originally agreed to was a weak central government with few and limited powers in the common interest, leaving the self governing powers of the colonies untouched in most matters.

The Australian Constitution accordingly assigns enumerated powers to the Commonwealth (section 51), leaving the residue to the states. Forty listed Commonwealth powers cover essential national functions, including: defence and external affairs; major commercial functions ranging from inter-state and overseas trade and commerce to the resolution of inter-state industrial disputes; immigration; trade; currency and some social functions, including marriage and matrimonial causes. Most Commonwealth powers are concurrent, in the sense that the states also may exercise them. The states retain jurisdiction over the matters they controlled before joining the federation, including public security, urban development, housing and transportation. Section 106 and 107 of the Constitution make it clear that the Constitution of each State of the Commonwealth, shall, subject to the Constitution of Commonwealth, continue as the establishment of the Commonwealth, or as at the admission of the State, as the case may be, until altered in accordance with the Constitution of the State. While from the constitutional provision it seems that Commonwealth powers are limited during the course of working of federalism, its powers have tended to expand, through usage and judicial interpretation. In sub section 6.4, you will read more about the process of centralisation.

### 6.4.2 Financial Relations

With regard to financial powers, as per the Constitution the Commonwealth and the States have full powers to tax for their own purposes, with few exceptions. These are: (1) the power to impose customs and excise duties belongs exclusively to the Commonwealth. (2) Commonwealth tax laws cannot discriminate against States or parts of States (3), neither sphere of government can tax the other's property. (4) Neither level of government can tax to impose a discriminatory burden on inter-state trade. (5) The states cannot impose tax beyond their limits.

From the very beginning the Australian federation was characterised by fiscal imbalance. This has worsened over time. According to Cheryl Saunders, initially the cause was the inability of the

states to impose customs and excise duties. Two factors in particular exacerbated the imbalance. The first was the expansion of the definition of duties of excise through judicial interpretation to preclude the states from imposing any taxes on goods. The second was the de facto transfer of income tax to the Commonwealth following the Second World War. The Commonwealth Income tax monopoly was imposed by the centralist, chiefly Labor government, and a supporting Parliament in times of war, and extended to the subsequent period of post war reconstruction. Though, after the war initially this was opposed, over the time it was consolidated as the Commonwealth's uniform tax regime and as a permanent feature of the Australian fiscal federalism. The Parliament's effective power to monopolise Income taxation during peacetime was confirmed by the High Court in the Second Uniform Tax case in 1957. The second revenue pillar of the Commonwealth's fiscal dominance is the preclusion of the States from levying taxes on the sale of goods that are a standard and significant source of revenue for state governments in most other federations. This exclusion is based on the High Court's interpretation of its power over excise duties that is one of the few exclusive powers allocated to the Commonwealth by the Constitution (Sec. 90). With this, Cheryl Saunders suggests, that the mechanism for fiscal transfers from the Commonwealth to the States has also became more important. In this, the major issues have been : (1) correcting the relatively extreme fiscal imbalance arising from the considerably greater centralisation of revenue raising; (2) fiscal equalisation among the states taking into account not only the differential revenue capacities but also differential expenditure needs; and (3) co-ordination of public borrowing.

There is a vague constitutional requirement for the distribution of surplus revenue, which became a dead letter within the first decade of federation. Successive transfer arrangements have taken the form of both general and specific purpose grants and varied between formula based arrangements and tax sharing. The distribution of general revenue funds between the states is calculated according to revenue – raising capacity and expenditure needs. Most of the institutions and processes for the adjustment of the Australian federal financial relations are not directly grounded in the Constitution, but have evolved over the century of the federation's functioning. Exceptions were the formal constitutionalisation by amendment in 1927 of the Loan Council, first established in 1923 to co-ordinate public borrowing; and the inclusion in the Constitution, from the beginning, of Section 96 that explicitly extends the federal spending power to include payments to the states. There also has been a much stronger tendency to establish formal institutions to facilitate these intergovernmental processes. Notable have been the establishment of such formal bodies as the Loan Council (1923 and constitutionalised in 1927), the Commonwealth Grants Commission (1933) and the Council of Australian governments (1992).

The most contentious aspect of Australian federal relations, according to R.L. Watts has been the extreme vertical fiscal imbalance. This has been the result of two factors. First as a result of judicial interpretation of the Constitution, the federal government has retained a monopoly over income taxation after the Second World War; second, the exaggerated judicial interpretation of "excise duties" has prevented the states from levying broad-based consumption or general sales taxes. As a result, the federal government levies the lion's share of revenue and the states are heavily reliant on federal transfers to meet their expenditure needs. Although the proportion has varied over time, in recent years, virtually half of these, Prof. Watts points out, took the form of unconditional general-purpose assistance transfers. These unconditional transfers have ensured some state autonomy in their application. Nevertheless, the states have no autonomous control over the size of these transfers. In an effort to address this vertical imbalance, when the federal government in 2000 instituted the new GST (goods and services tax, a form of VAT), it was agreed that the proceeds should be transferred to the states. While the revenue generated has

assisted the states, accountability for its levy remains out of state hands since the federal government levies the GST. The development of financial equalisation in Australia, thus, has gone through a number of stages and there have emerged several formal procedures and institutions for the adjustment of federal-state financial arrangements.

### 6.4.3 Dual Judiciary

In the sphere of Judiciary also the Australian constitution provides for a dual system of courts, except in two respects. First, the High Court of Australia, as Australia's highest courts, is the final court of appeal in both federal and state jurisdiction (Section 73). It also has an extensive original jurisdiction in significant federal matters, including constitutional matters. Second, the constitution allows the Commonwealth Parliament to confer federal jurisdiction on state courts (Section 77, iii). The power was used extensively during the first 70 years of federation, but towards the end of the twentieth century, its use decreased as the Commonwealth implemented a court hierarchy of its own. This departure from a dualist model, coupled with the appellate role of the High Court, has had significant effects. The High Court has held that the constitution provides some protection for the integrity of state courts, as potential recipients of federal jurisdiction. The court structure also has contributed to the view that Australia has a unified common law, although statutory law varies between states.

## 6.5 TOWARDS CENTRALISATION

Australia's founding fathers, it seems, were more committed federalists. As Peter H. Russell writes, they certainly knew more about federalism. Among other things they had the Canadian model to compare with the American model. They were most attracted to the American model because, in form, it seemed so much truer to the requirements of federal theory. They eschewed those provisions of the British North American Act of Canada that appeared to make the Canadian provinces a subordinate, not a co-ordinate, level of the government-the central government's disallowance and reservation with respect to provincial legislation, its power to appoint provincial Lieutenant-Governors and the judges of the higher provincial courts and its responsibility for protecting minority rights in the provinces. Australia's constitution-makers established an American style Senate with an equality of representation for the States, while in dividing the legislative powers, reversed the Canadian arrangement by leaving the residual power with the states.

Despite the clear rejection of a unitary state in favour of a federation in the constitutional convention and subsequent referendums that adopted the Australian Constitution in the last decade of the nineteenth century, there began tension between the state and federal levels of government, particularly with regard to economic and fiscal matters. The radicals of the 1890s, the trade union and political leaders, and others ideologically committed to the demands of social justice in a collectivist Australia were in favour of centralisation. The emergence of the Australian Labor Party soon after the creation of federation became a formal source in favour of centralisation. These Australian left-wing centralists, with little influence on the making of Australia's Constitution, formed a national government within a decade of the country's founding. Constitutional amendments, judicial decisions and establishments of conventions have achieved the gradual expansion of the Commonwealth government.

### 6.5.1 Constitutional Amendments

The amendment procedure provided by the Australian Constitution is reasonably difficult. It requires the passage of a referendum by a majority of voters nation-wide and a majority of voters in at least four of the six states. Only eight out of thirty six proposed amendments submitted

to referendum have passed into law. Some of these, however, have increased Commonwealth power in one way or the other and some significantly. The first amendment approved rather minor house keeping changes in terms of the election of senators. The second (1910) empowering the Commonwealth to take over state debts whenever they occurred was of greater significance. But the next step in 1928 and 1946 made major changes in the Australian federalism. The 1928 amendment gave constitutional status to a Commonwealth state agreement replacing per capita grants to the states with Commonwealth contributions to the discharge of their debts and establishing Loan Council to co-ordinate borrowing by the two levels of government. The Loan Council gave the Commonwealth government a means of controlling state budgetary policy - perhaps more than was appreciated at the time. The 1946 amendment, approved with multi-partisan support, extended the powers of the Commonwealth parliament in the social welfare field to maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits.

The four amendments approved in 1967 and 1977, while not so important as the last two, still brought about some significant changes in the federation. The 1967 grant of power to the Commonwealth to legislate with respect to aborigines, albeit a power possessed by the parliament of Canada since 1867, gave the central government an opportunity to exert leadership in resolving Australia's serious human rights problem. The 90 per cent approval recorded for this amendment is by far the highest any proposal has ever received. Of the three amendments, adopted in 1977, the first one established the retirement age of 70 (rather than 75) for federal judges. A second simply filled a gap in the original Constitution by giving territorial electors a vote in constitutional referendums. But the third dealt with one of the causes of the 1975 constitutional crisis by requiring that a casual vacancy in the Senate be filled by a person of the same political party as the Senator whose resignation or death created the vacancy.

The expiry of the income-guarantee, according to J.C. Banon, saw the Commonwealth increasing its power of the purse and the states becoming increasingly dependent. The creation of the Loan Council in 1928, the Premiers plan to tackle the depression of the 1930s, and the dismissal of a state government not toeing the line in financial matters were important demonstrations of the Commonwealth supremacy. This was consolidated in the Second World War when the sweeping use of the defence power allowed the Commonwealth to bring about the surrender of the states income-taxing power in 1942, inaugurating the so-called "coercive federalism" and created the basic element of the system that Australia has today.

### 6.5.2 Judicial Support

In the formative years of the Commonwealth, the majority of the High Court construed the Constitution largely in the manner intended by the founders. They held that as the Constitution was a federal one, it followed that the Commonwealth and the states were free from the interference and control of each other. As a result of this doctrine known as "implied immunity", it was held that a state could not levy income tax on the salaries of Commonwealth officers, and the Commonwealth could not subject state railways to the machinery of federal industrial arbitration. Leslie Zines points out that the constitution did not explicitly lay down these principles, but the judges regarded them as "necessarily implied in a federal constitution". The doctrine of implied immunities did not, in principle, favour central or state governments, but was designed to protect each from the other. Another doctrine, however, was aimed at ensuring that the states retained a substantial area of exclusive government power over domestic affairs, including all local trade and industries. On the doctrine of reserved state powers, Leslie Zines points out that the early judges read the constitution as if it granted exclusive power to the states to make laws with

respect to local matters. As a result of the doctrine of reserved powers, it became necessary to reconcile the specific Commonwealth powers with the implied grant to the states.

Among the judges there was a minority view that construed the Commonwealth power broadly, without regard to what residue of power remained within the state authority. Soon the minority view started becoming the majority view. In 1920, the Engineer's case brought about a decisive change in the construction of the Constitution. The effect of this change according to Leslie Zines is comparable in many ways to that which occurred in the United States at the beginning of Franklin Roosevelt's second term of office. It opened the way to a considerable expansion of central power. The particular issue in the case concerned only the doctrine of implied immunity. Could the states be made to subject to the industrial arbitration legislation of the Commonwealth in respect of industrial disputes between them and their employees? The majority answered in the affirmative. But in the process they discarded both the immunities doctrine and the doctrine of the reserved powers of the states.

The overthrow of the doctrine of reserved power, to quote Zines again, inevitably enhanced central power, because it was no longer necessary to choose a limited meaning of the Commonwealth power in order to preserve certain subjects for the states. Indeed the presumption was now reversed. It was accepted that-as the Constitution was intended to endure for a long time and it was difficult to amend-it was appropriate that its language be interpreted broadly in order to allow for future development that could not be foreseen. The overruling of the immunities doctrine also had that effect, because even if it were accepted that the states could now make laws binding on Commonwealth servants and authorities, it was open to the Commonwealth to override those laws under Section 109, which provided that where a Commonwealth law was inconsistent with a state law the former prevailed. The state, on the other hand, had no means of protecting itself from Commonwealth law. Whereas the old doctrine had been based on mutual immunity, the new position emphasised the federal supremacy. In answer to the argument that the Commonwealth could abuse its power so as to injure the states, the court said that that was a matter for the electorate to decide rather than the judiciary.

In some other cases also the courts' judgements found the basis of Commonwealth de facto control of matters beyond its constitutional powers. The Second World War, of course, resulted in the Commonwealth centrally controlling many new areas of life. It was agreed by a majority of the High Court that the defence power could not be cut down by reference to the reserved powers of the states, and they gave a very wide interpretation to the power. It enabled the Commonwealth to engage in far more extensive controls of the economic and social life of the community. During the five years or so from the end of Second World War, the High Court frustrated a number of major policies of the Commonwealth government. But from 1950 onwards the court in general tried to maintain a balance between the two.

In addition, the nature of party system in Australia has also contributed to this. Martin Painter suggests that federalism in Australia, unlike the United States, is accompanied by strong rather than weak party systems as also by the Westminster forms of political and administrative executive. This produces distinctive patterns of intergovernmental arrangements in which, for instance, the role of officials is more central and that of legislators less important. At the same time, the role of the parties in shaping inter-governmental relations among political executive can, on some issues, be crucial. Particularly in the mid-twentieth century, it was perceived that political parties represented the forces of resistance and the forces of initiatives, rather than being identified with a specific region.

### 6.5.3 Powerful Commonwealth

In general the trend towards centralisation has continued, particularly till the 1970s. Twenty three years of conservative government (1949-72) did little to change the balance established under Labor during the war. The Gorton Coalition (1967-71) and the Whitlam's Labor (1972-5), governments according to J.C. Bannon, took this process much further by the use of specific purpose payments-payments made to the states under Section 96 of the Constitution. The period saw them grow from 30 to 40 per cent of the Commonwealth outlays and from 18 to 33 per cent of state budget expenditure. Such programmes, theoretically negotiated with the states, greatly increased the ability of the Commonwealth to determine priorities in areas where their jurisdiction was shared or excluded. Confronted with the "take it or leave it" offer of money for specific programmes, the states invariably took it.

The centralisation of revenue-raising in Australia was justified on grounds of national defence and national interest, consideration of more efficient economic management and greater facility in providing social welfare policies. As already mentioned, according to the Constitution, the income tax is an area of concurrent jurisdiction. It was primarily the domain of the States until the First World War. The Labor Party's proposed tax monopoly was rejected outright by the States when Treasurer Chiefly first proposed it at an inter-governmental conference. It was then legislated by Parliament as necessary for the more efficient prosecution of the Second World War at a time of national emergency when Australia was threatened by Japanese invasion. It, according to Galligan, was a heavy-handed measure that entailed taking over the state taxation offices, imposing a uniform high national income tax, requiring the payment of Commonwealth income tax before any state income tax, and imposing prohibitive/penalties on the states by way of laws of the tax reimbursement grants to keep them from reinstating state income taxes.

Numerous theories have been cited to explain the centralising trend in Australia: some relate to the political economy, others focus on socio-economic factors. Bruce W. Hodgins and others suggest that Australian federation was the effective and technically impressive achievement of a generation of professional politicians motivated by a need to confront the changing economic realities empowered by middle class anglophiles who were prepared to accept only a limited form of 'national government. If economic interest and a balance of local and national gain or loss were the deciding factors, none of the founding fathers could have known how the federal union would eventually affect the role of the individual component states. A "spirit of nationalism" upon which the colonial politicians were able to build their nation certainly existed, but there were also intense local patriotism. Thus, the federal system, with its theoretical inputs from the United States, Canada and Switzerland, was grafted onto a set of Westminster-style state constitutions. In this, Australians have tended to attach greater significance to social status and class, creating a certain degree of homogeneity in partisan loyalties encompassing both levels of government. The absence of a distinct bicultural heritage also seems to have facilitated class polarisation, which in turn appears to be at least partly responsible for the gradual shift towards a more centralised federation.

Some critics point out that Australian federalism has undergone such a sustained process of centralisation that it can scarcely be called a federal system any more. The growth in federal dominance in federal-state financial relations is frequently cited disapprovingly as, more recently, has been the High Court's expensive interpretation of the external affairs power during the 1980s and early 1990s. At the same time it is also said that such developments, however, are the consequence of the design that the founders put in place quite deliberately. This entailed leaving key issues such as long-term provisions for taxation and fiscal sharing to future Parliaments to

determine. Politics, including inter-governmental politics of competition and cooperation with the States, would decide future policies and hence, the shape of federalism.

## 6.6 NEW FEDERALISM

Till early 1970s, the process of centralisation continued in one or the other way. Though there were voices against it, the twenty-three years of conservative government (1949-72) did little to change the balance established under Labor during the war. The Gorton Coalition (1967-71) and Whitlam Labor (1972-75) governments took this process much further by the use of specific purpose payments-payments made to the States under Section 96 of the Constitution. Whitlam called his action as New Federalism. According to the Parliament of Australia's Federal-State Relations Committee (Report on Australian Federalism: The Role of the States), this was opposed by most state governments of the time as a centralist restriction on their financial and policy autonomy, Prime Minister Fraser (1975-83) promised to reverse the centralisation of the Whitlam years, and to restore autonomy to the States, with his New Federalism Policy to be implemented in two stages.

During the first stage, the States were to receive a direct share of personal income tax received by the Commonwealth. Such a guaranteed share would give the states access to a significant growth tax. The States' share was specified to be the ratio of 1975-76 Financial Assistance Grants. This ratio was calculated and applied as 33.6 per cent, although subsequent verification revealed the true ratio to be 33.3 per cent. In October 1977, the Premiers Conference agreed to alter the States' share of income tax, to 39.87 per cent of the previous year's income tax collections. This alteration enabled the States to plan better budgets, without concern for a possible shortfall in estimated Commonwealth tax collections.

This arrangement was combined with a guarantee that no State would receive less than the amount which would have been payable under the Whitlam government's State Grants Act 1973-75. This Act had provided for significant increases in Financial Assistance Grants. By 1979-80 all States were receiving the guaranteed amounts, rather than the amounts the first stage arrangements would have yielded. A new arrangement was therefore reached at a June 1981 Premiers Conference, which agreed to apply, from 1982-83, a factor of 20.72 per cent to total Commonwealth tax collections of the previous year, to determine the level of Financial Assistance Grants.

During the second stage, the States were to be given the power to impose an income tax surcharge, or to return a tax rebate, within each of their jurisdictions. However, the Commonwealth did not alter its own rates of income tax, nor did it reduce the level of Financial Assistance Grants, and no State implemented such a regime. The Government of New South Wales, under Nick Greiner, had been considering the introduction of an income tax rebate in the late 1980s, but the legislation implementing this second state - the Income Tax (Arrangements with the States) Act 1978 - was repealed by the Commonwealth in 1989.

Other elements of Fraser's New Federalism, as reported by Federal State Relations Committee, included:

- An equalisation formula to ensure that less populous States would not be at a disadvantage:
- A Council for Inter-Government Relations, comprising members from all levels of government to look into problem areas and responsibilities;

- A Minister for federal Affairs, to improve co-operation and consultation between the State and Local Governments

Overall, Fraser's New Federalism failed to grant to the States adequate financial autonomy.

### 6.6.1 Hawke's New Federalism

Unlike the initiatives of his predecessors, Hawke's initiatives in the 1990s were a response to external economic pressures on the Australian federation. The changes that have resulted from Hawke's New Federalism and the effects of these changes on the Australian federal system make it the most significant of the three New Federalisms. Indeed, the bodies developed as part of Hawke's New Federalism, and the changes they have produced, together constitute the most comprehensive attempt at public policy change by intergovernmental means since federation.

In the 1980s and 1990s many federal systems around the world have attempted to change the management of their intergovernmental relations. In doing this, they have been pursuing the following objectives:

- The creation of a more integrated and cohesive single economic market;
- The provision of a more flexible and decentralised delivery system of economic and social programmes;
- The enhancement of the ability of governments to make joint decisions.

In Australia, these goals have been characterised as microeconomic liberalisation, and as reforms of the Commonwealth and the State's roles and responsibilities, including federal fiscal relations.

These goals are reflected in the agenda that was put forward in two speeches delivered in July of 1990 to the National Press club. The Prime Minister's speech - "Towards a Closer Partnership" - set in motion his first Special Premiers Conference:

The time has come to form a closer partnership between our three levels of government - Commonwealth, State and local.

### 6.6.2 The Significance of Intergovernmental Bodies

Achieving the aims of Hawke's New Federalism, according to Federal-State Relations Committee, would require the extensive agreement of all levels of government. Progress on many individual issues would be linked to progress on others. Australia's intergovernmental relations have not always been suited to the concerted intergovernmental efforts and careful negotiations as they would require.

Changes were therefore necessary, both to enable intergovernmental relations to produce the desired public policy results, and to improve the ability of intergovernmental institutions to function effectively in an ongoing way. Unlike previous New Federalisms, Hawke's New Federalism had a focus on mechanisms of intergovernmental co-operation, commencing with a special Premiers Conference in October of 1990.

In developing Australia's mechanisms of intergovernmental relations, Australian governments took advantage of the full range of instruments available to them. Techniques were adapted from past practice in Australia, as well as from abroad. Australian governments were open to the examples of innovative decision-making procedures set since the mid-1980s by the European Community.

There had been special Premiers Conferences for a variety of purposes in the 1970s but by

1990, the only regular Heads of government forum was the annual Financial Premiers Conference (at which also were convened meetings of the Australian Loan council). These meetings tended to focus solely on short-term financial matters, with little prior preparation.

Following a particularly acrimonious Financial Premiers Conference in June of 1990, Prime Minister Hawke stated his commitment to improving intergovernmental decision-making. Hawke's first step was to propose a number of procedural changes to the Premiers Conference itself, intended to reduce its adhoc nature, and to allow consideration of options and greater preparation prior to the meetings.

Hawke's second step was to convene a new series of Special Premiers conferences, with himself as chair. These new meetings allowed the Heads of government to deal with a broader and longer term agenda concerning the state of the federation, during discussions at financial Premiers Conferences which was henceforth to be confined to short term financial matters. During Hawke's term three such conferences were held.

All three of these Special Premiers Conferences, according to the committee report, were attended not only by the Heads of Governments themselves, but also by some of their cabinet colleagues, and numerous senior officials. These senior officials were drawn principally, but not exclusively, from the Commonwealth Department of Prime Minister and Cabinet, and the State Departments of Premier and Cabinet. A steering committee of senior officials met more frequently between Special Premiers Conferences, and Ministerial Councils and Working Groups of officials were mandated to consider issues and report back to the Heads of Government.

### 6.6.3 The Council of Australian Governments

The Special Premiers Conference process continued under Prime Minister Keating, but with some important differences in the agenda. Keating convened his first Heads of Government meeting in May of 1992. It was called a 'Heads of Government' meeting rather than a Special Premiers Conference, distinguishing it from the meetings chaired by his predecessor. That meeting reached agreement to create a more formal Council of Australian Governments.

The Council of Australian governments was to include the Prime Minister, the six State Premiers, the chief Ministers of the Northern territory and the Australian Capital Territory and the President of the Australian Local Government Association. It was agreed that the Council of Australian Governments would meet at least once a year, and would have the following role:

- Increase co-operation among governments in the national interest;
- Pursue reforms that aim to achieve an integrated, efficient national economy and single national market;
- Continue the structural reform of government and review of relationships among governments;
- Consider other intergovernmental or whole-of-government issues.

The Council of Australian Governments quickly established itself as the pinnacle of, and the management forum for all Australian intergovernmental relations, at least until 1996.

Under Prime Minister Howard, the Council of Australian governments has covered a broad range of issues. Continuing agenda items have included environmental protection, gas pipeline access and health care. Changes which have taken place in these policy areas have been natural extensions of the earlier developments. Other issues include native title, illicit drugs, gun control

and marine safety. Perhaps most significantly for the States, in 1997 the Commonwealth Government returned the issues of taxation and federal fiscal relations to the Council of Australian Governments agenda.

The June 1996 meeting of the Council of Australian Governments agreed to the establishment of a Treaties Council, to meet at least once a year. Consisting of the Prime Minister, the State Premiers and the Territory Chief Ministers (but not the President of the Australian Local Government Association), the Treaties Council has an advisory role on matters concerning treaties and other international instruments. The work of the Treaties Council is supported by a body of Commonwealth and State senior officials, the Standing Committee on Treaties.

### 6.6.4 The Leaders' Forum

As the State Premiers and Territory Chief Ministers became more focused on the discussion of national issues, it became evident that it was appropriate for them to meet on a regular basis without the Prime Minister. They therefore established the Leaders' Forum - a meeting of State and Territory Heads of Government - in July of 1994, and agreed to meet twice a year.

The Leaders' forum has discussed Commonwealth - State and national issues, including the progress of the Council of Australian Governments agenda. These discussions allow the State and Territory Heads of Government to develop joint positions on national issues, and to advance the position of the States in negotiations with the Commonwealth.

The Leaders' Forum has also dealt with a variety of issues in state jurisdiction alone, including policy areas in which consistency between states is desirable, such as the regulation of non-bank financial institution.

### 6.6.5 Ministerial Councils

In addition to the above intergovernmental bodies in Australia, there also are Ministerial Councils. The Ministerial Councils consist of Ministers from the States, the Territories and the Commonwealth meeting to discuss particular policy areas. Their principal objective is intergovernmental co-operation, including a co-ordinated approach to policy development and the resolution of common problems having regard to national concerns. Ministerial councils have long played a role in relations between the Commonwealth government and the governments of the states and territories. They are one of the intergovernmental mechanisms that have contributed to the survival of the federal system in Australia. Since 1990, there have been two important changes in the operation of Ministerial Councils.

First, a review of Ministerial Councils by the Council of Australian governments resulted in an express rationalisation of their role and use. The number of Ministerial Councils was reduced from 45 to 21, and a protocol was established, together with a set of principles for their 'efficient and effective operation'.

The second change, the Federal - State Relations Committee observes, has been more far-reaching. In a number of cases, State and Commonwealth governments have agreed on a formal decision-making role for Ministerial Councils. Each Ministerial council's decision-making functions are set out in a formal intergovernmental agreement, which has been given legal standing through legislation passed by the Commonwealth Parliament and the State and Territory Parliaments. This legislation makes the Ministerial Council decisions binding on both State and Commonwealth Governments.

In most cases, the agreement establishing the decision-making mandate for a Ministerial council also establishes voting rules. These rules provide for majority decisions binding on all parties. The nature of the majority required varies from agreement to agreement. The various types of majority include: a simple majority (fifty percent or more); a qualified majority (most often two-thirds); a simple majority of weighted votes (for example, on the Ministerial Council for the Australian National training Authority, the Commonwealth gets two votes plus the casting vote).

Binding decision-making by majority voting preserves intergovernmental collegiality, while permitting decisions to be made which go beyond the consensus agreements usually produced by non-binding procedures. Decisions may be taken which meet the needs of a majority (or 'supermajority') of the parties without necessarily satisfying all of them. While there is no evidence of votes actually occurring in Australian Ministerial councils, the fact that they can occur is likely to have changed the behaviour of governments.

Voting rules in intergovernmental bodies are not new to Australia: they have been in place for the Australian Loan Council since its inception in 1927. But it is only in the 1990s that they have adopted these rules anew.

These joint decision-making institutions contrast with the Heads of Government meetings. Except when meeting as the Australian Loan Council, the Australian Heads of government operate by consensus decision-making. Each decision which is taken, and each intergovernmental agreement which is reached, is a political commitment, which must be backed up by an Order-in-Council or legislation within each jurisdiction if it is to acquire legally binding force.

As such since 1980s both the Federal and State governments have been working for maintaining a proper balance between centralisation and decentralisation. No doubt, in Australia, the economic issues rather than the cultural or ethnic issues have been the determining forces behind federalism. There is now a feeling that in the present international economic order, decentralisation perhaps is more conducive for Australia's economic interests. It can, therefore, be said that the process of federal working had remained a dynamic one and not static merely on the one time adopted constitutional structures. This has provided necessary resilience and stability to Australian Polity as a whole.

## 6.7 SUMMARY

Australian constitution was based both on British Parliamentary and American Federal systems. All the present states already existed as self-governing colonies. They favoured retaining their existing powers. The founders of the Constitution, therefore, gave defined powers to the central government (Commonwealth) and rest were left with the States. Soon after the adoption of the Constitution, there started a process of centralisation. The reach of Commonwealth power was consolidated through the decades of 1940s and 1970s, prompted initially by the dictates of national defence and subsequently by post war reconstruction and nation building. The Commonwealth Parliament, encouraged by long periods of liberal interpretation of Commonwealth legislative and executive powers by the High Court of Australia, widened its influence, at the expense of the States. From 1960s there also emerged a process of regionalism and dissatisfaction with centralisation. From mid 1970s, there started an attempt to change substantially the relationship between the Commonwealth government and State governments. The process known as 'New Federalism' went through three generations of Prime Ministers: Gough Whitlam, Malcolm Fraser and Bob Hawke. Australia, as a result has developed important intergovernmental bodies, like Premiers Conferences, Council of Australian Governments, The Leaders Forum, Ministerial

Councils etc. Australia, as such, through a century of nationhood has developed and been consolidated as a federal Commonwealth within its original framework, but in ways that were not foreseen by the founders. It represents a case of dynamism going through the processes of change but confining firmly to the basic principles of federalism and dual government.

## 6.8 EXERCISES

1) Analyse the philosophical background of Australian Federalism and nature of division of powers between the Commonwealth and States.

2) Why and how has the process of centralisation taken place in Australia?

3) Describe the recent attempts made to maintain balance between the Commonwealth and the State governments with special reference to the role of intergovernmental bodies.

## SUGGESTED READINGS

Dean Jaensch, *The Politics of Australia, Chapter 4*, (South Yarra: Macmillan Publishers, 2001), 69-95.

John Summers, "Federalism and Commonwealth-State Relations"; Haig Patapan, "The High Court" in John Summers, Dennis Woodward, and Andrew Parkin, eds., Government, Politics, Power and Policy in Australia (NSW: Pearson Education Australia, 2002), Pp. 89-117; & 119-134.