Addressing a meeting of the Committee for the Economic Development of Australia (‘CEDA’), Lindsay Tanner, the Commonwealth Minister for Finance and Deregulation, declared that ‘[a]cross Australia there is recognition that our federation is a mess’. He went on to confess that he had once been an advocate of abolishing the States but now thought that this was neither practical nor desirable. Nevertheless, he professed his certainty that a much more centrally directed federation is necessary in a technologically advanced and globalised economy. The Minister’s comments were made in response to outcomes of the Rudd Government’s 2020 Summit which saw federalism, and especially ideas for its reform, take centre stage in the deliberations about shaping a long-term strategy for the nation’s future. Not surprisingly, federalism preoccupied the Summit’s Governance stream, which identified the reinvigoration of the federation as one of its ‘five big ideas’. However, it had also been identified as a ‘priority theme’ for the group considering the Future of the Australian Economy, and featured unexpectedly (and more colourfully) when Tim Fischer, the convenor of Future Directions for Rural Industries and Rural Communities, began his report to a plenary session with the comment ‘we almost abolished the states’. Clearly, the existing structures and procedures of federalism were regarded by most of the delegates as problems to be overcome if Australia was to progress economically and socially.

Suggestions for a way forward included a ‘clean sheet of paper’ review with an expert Commission to lead reform, either in the shape of a new Federation Commission or an expanded version of the Productivity Commission. A new intergovernmental umpire in the shape of a National Cooperation Commission was mooted. Nationwide harmonisation and
standardisation of regulation were seen as urgent. Overall, the common theme was the need for a new mix of responsibilities between the Commonwealth, the States and local government, but one in which national objectives and the requirements of the national economy would be paramount.\(^6\)

The outcomes of the Summit reflect the extent to which discussions of Australian federalism have moved from the realm of politics and constitutional law to become focused on its capacity to support a fully national economy and underpin economic prosperity. This development highlights the increased involvement of corporate Australia in debates on the future structure and operation of the federation, in particular through the work of the Business Council of Australia (‘BCA’).\(^7\) For the BCA it is clear that ‘[t]he extent of the problems and dysfunctions of the current system of federal–state relations … is such that it has become a major barrier to future prosperity. The challenge of reforming federalism has now become an economic imperative’.\(^8\)

There is a common theme emerging in these recent public discussions of federalism. On the one hand, there is recognition of the constitutionally embedded nature of Australian federalism and perhaps even a willingness to accept that it provides an important diffusion of power within the national governmental system, as well as a means of encouraging policy diversity and facilitating regional balance across the continent. On the other hand, there is an assumption that federalism is inherently inefficient. The result is growing support for a modern form of the federation which might be described as ‘conditional federalism’. ‘Conditional’ in the sense that it should be maintained as a system of government so long as it meets the conditions necessary for an efficient national economy; also, because its operation should be regulated by ‘conditions’ imposed by the central government.

In the case of the 2020 Summit, this led to calls for new constitutional arrangements or the establishment of new extra-constitutional structures or agreements which can re-design the roles and relationships between governments within the federation. However, very real changes in the extra-constitutional machinery of governance which have been developing over the past decade are moving the federal relationship in the direction that the Summiteers and other reformers believe desirable.

With the exception of a provision to establish an Interstate Commission to deal with matters relating to trade and commerce, the founders of the *Australian Constitution* did not establish formal machinery to deal with the interaction of Commonwealth and State programs. However, the need for extra-constitutional machinery was soon apparent. In the case of

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\(^6\) Commonwealth, above n 3.


\(^8\) Ibid iv.
government borrowing, it was formalised by way of the establishment of the Australian Loan Council, initially as a voluntary arrangement in 1923 and then as a formal arrangement after the successful referendum in 1928 which enabled the Commonwealth to ‘make agreements with the States with respect to the public debt of the states’. While meetings between the Prime Minister and the Premiers and the Commonwealth and State Ministers predated Federation, they continued to develop in step with the political agenda of the day to become part of the broader structure of governance within the framework of our Constitution.

This paper argues that the Council of Australian Governments (‘COAG’), which developed from the Special Premier’s Conferences in the early 1990s, has brought depth and strength to the extra-constitutional machinery of federalism. Further, it suggests that COAG is particularly significant for the governance of the Australian federation because it has simultaneously reinforced cooperation between the Commonwealth and the States, while at the same time embedding the conditional nature of the federal relationship.

The conjunction of a new Commonwealth Labor Government facing Labor administrations in all of the States and Territories has brought new prominence to COAG and given it new authority in its role of ‘driving a new wave of economic and social reform through cooperative federalism’. In the current political circumstances its role in the governance of the federation is perhaps taken for granted. However, despite his initial reluctance to engage with COAG, former Prime Minister John Howard had a significant role in shaping this new system of governance. Howard’s unexpected embrace of COAG set the ground for its central role under the incumbent Prime Minister Kevin Rudd; this has seen it become a key coordinating and agenda-setting institution in relations between the Commonwealth and the States, and thus a key institution of federalism.

Part II of the paper begins with a discussion of federal governance under John Howard. Then, using material from recent research, Parts III and IV examine why COAG came to suit John Howard’s agenda as well as the needs of the States. Part V draws attention to the growing network of working parties and committees of officials operating across State borders that are growing around the COAG meetings, which might be characterised as a ‘nascent bureaucracy of the federation’.

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13 Interview with anonymous senior Commonwealth official (Canberra, 9 February 2007).
concludes by noting that COAG, which began as a means for encouraging cooperative federalism, has in fact become a vehicle for what might be described as cooperative centralism and one which has played a part in entrenching executive federalism. In this respect, it is suggested that federalists may have to accept that while federalism will remain as the basis for national governance, it will increasingly be played out in a conditional federation regulated from the national level.