

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol | Constitutional and Legislative Affairs Committee

Ymchwiliad: Llais cryfach i Gymru: ymgysylltu â San Steffan a'r sefydliadau datganoledig |

Inquiry: A stronger voice for Wales: engaging with Westminster and the devolved institutions

IGP009

Ymateb gan: Y Pwyllgor Materion Cyfreithiol a Chyfansoddiadol, Y Senedd, Awstralia

Response from: The Legal and Constitutional Affairs Committee, The Senate, Australia

The Australian Senate Standing Committee on Legal and Constitutional Affairs Committee is pleased to provide the following information to the Constitutional and Legislative Affairs Committee of the Welsh Parliament, relating to the inquiry 'A stronger voice for Wales: engaging with Westminster and the devolved institutions'.

### **The committee**

Established as a standing committee in 1970, the Legal and Constitutional Affairs Committee (the committee) can inquire into legislation and other matters as they are referred by the Senate. The committee routinely enquires into matters associated with family law, constitutional law, criminal law, and administrative law. A number of times each year the committee also takes evidence from the Attorney-General's Department and associated agencies, and the Department of Immigration and Border Protection, as part of the Senate estimates process.

A database of all inquiries completed by this committee can be found here: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries).

### **Outline**

This paper will outline the relations between the Australian Commonwealth State and Territory Governments, as well as the Commonwealth Government's inter-institutional relations in the Asia-Pacific region and beyond.

**Establishing the Commonwealth of Australia**

In 1900 the British Parliament passed legislation to establish the [Australian Constitution](#), which enabled the six then-colonies to govern themselves as the Commonwealth of Australia. The Act came into force on 1 January 1901. The British Monarch (as represented by the Governor-General) is Australia's head of state, and is vested with the executive power of the Commonwealth. In practice, executive power is exercised by the Prime Minister of Australia and Cabinet, and the Governor-General acts based on their advice.

Australia's Constitution establishes the parameters for the way in which the Commonwealth Government interacts with State and Territory Governments. It establishes that the Commonwealth Government can only legislate in relation to matters set out in the Constitution (primarily in section 51). States have plenary power to legislate. Section 51(xxxvii), known as the 'referral power', enables the Parliament of any State to refer matters to the Parliament of the Commonwealth, but so that the law shall only extend to States which referred that matter, or which afterwards adopted the law in question.

### **Intergovernmental relations between the Commonwealth, State and Territory Governments**

The Commonwealth Government interacts with the State and Territory Governments in a number of ways. Two of the formal means by which this takes place are through meetings of the [Council of Australian Governments](#) (COAG), and the [Commonwealth Grants Commission](#) (CGC).

The CGC was established in 1933 to help address the imbalance in access to revenue sources between the States and Territories, the barriers of which were drawn up with a limited understanding of Australia's geography and natural resources. The CGC can advise the Commonwealth Government that particular States should be given Financial Assistance Grants for government services, to help ensure that citizens can access comparable levels of schooling, health care, justice and transport regardless of where they live. COAG is the peak Australian intergovernmental forum. COAG members include the Prime Minister of Australia, the first Ministers of each State and Territory, and the President of the Australian Local Government Association. COAG typically meets twice a year to discuss matters of national significance, and other matters which require coordinated action from all Australian governments. Where COAG makes a formal agreement, this may be contained within [intergovernmental agreements](#). Such agreements have included agreements relating to the funding of public hospitals, the sharing

of criminal history information, disability insurance, counter-terrorism, and consumer law. In some instances an intergovernmental agreement may be a precursor to legislation, for example, in the case of the development of Australia's (now) national consumer law system.

As explained above, the Commonwealth Government, and State and Territory Governments may work cooperatively in order to legislate in relation to matters which require a concerted effort (for example, matters in relation to which the States have the power to legislate, but only in relation to their State alone). In such instances, the State Governments may negotiate to:

- refer their power to legislate to the Commonwealth Government so that a national scheme can be implemented; or
- agree to adopt one single piece of model legislation.

Such negotiations typically take place via the COAG forum.

### **Commonwealth Government inter-institutional relations**

The Commonwealth Government maintains close relationships with other nations via diplomatic channels, and through the sharing of information relating to global security, trade, and the environment.

The Commonwealth Government [connects with governments and institutions](#) in the Asia-Pacific Region (and beyond) in a number of ways, including via:

- Asia-Pacific Economic Cooperation (APEC) forum;
- Association of Southeast Asian Nations (ASEAN);
- ASEAN Regional Forum;
- Asia-Europe Meeting (ASEM)

Australia also engages with a number of other international organisations, including the United Nations, G20, Commonwealth of Nations, World Trade Organization, and OECD.

### **Closing remarks**

Australia's formal legal relationship with the United Kingdom differs vastly from that of Wales. While Australia retains its formal legal relationship with the United Kingdom, and the British Monarch is Australia's Head of State, in practice, the Monarch's representative the Governor-General acts on the advice of the Prime Minister and his or her Ministers. By contrast, the Welsh National Assembly and Welsh Government have gradually gained law-making powers from the British Parliament, including a recent vote in 2011 to give the National Assembly greater law-making powers.

The committee thanks the Constitutional and Legislative Affairs Committee of the Welsh Parliament for the opportunity to provide this information. If you have further questions we would be pleased to discuss these with you.