

# Constitutionalism, Federalism and Reform? *Pape v Commissioner of Taxation & Anor*<sup>1</sup> - A Conversation with Bryan Pape



**Bligh Grant and Brian Dollery<sup>2</sup>**

On 18 February 2009 the *Tax Bonus for Working Australians Act (No 2)* came into force, providing that the Commissioner of Taxation pay a tax bonus to eligible Australian citizens – amounting to \$7.7 billion for 8.7 million taxpayers – as part of the Rudd Government's three-pronged \$42 billion Nation Building and Jobs Plan designed to ameliorate the impact of the 2008-09 global economic retraction. The validity of the Act was challenged by Bryan Pape, Senior Lecturer in Law in the University of New England. On 3 April 2009 a majority ruled that the Act was valid but in doing so said the Court's reasons would be published at a later date. The majority was revealed to be a 4: 3 decision when the reasons were published on 7 July 2009. In this conversation with Bryan Pape, this paper explores the reasons of the judges and their implications. While the case can be read as demonstrative of the political division between conservative federalists and progressive centralists, we suggest that the case invokes revisiting of the nature of Australian federalism.

## Introduction

Mr Pape, thank you for agreeing to discuss with us the ramifications of the High Court's reasons in *Pape v Commissioner of Taxation* and to discuss your work more generally in light of these reasons. It is difficult to overstate the gravity with which the High Court judges – in particular the dissenting judges – framed their reasons in this case. Justices Hayne and Kiefel (260) stated:

The constitutional questions presented in this matter are deeper and more enduring than the particular and urgent circumstances that caused the enactment of the particular law. They raise issues that are fundamental to the constitutional structure of the nation, and transcend the immediate circumstances in which the questions were posed.

Further, Justice Heydon (397) stated:

The preferred arguments of the defendants in these proceedings advanced wide constructions of s 61 of the Constitution read with s 51(xxxix)] and of s 81 read with s 51(xxxix). These were arguments capable of producing very extreme results. If correct, they would cause the 'incidental' legislative power in s 51(xxxix) to be wider in its effects than any of the non-incidental legislative powers, and perhaps wider than all of them taken together. What s 1 of the Constitution calls a 'Federal' Parliament would have a power to enact legislation of the kind usually associated with non-federal parliaments.

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Moreover, in summing up, Chief Justice French (10) stated:

Future questions about the application of the executive power to the control or regulation of conduct or activities under coercive laws, absent authority supplied by a statute made under some head of power other than s 51(xxxix) alone, are likely to be answered conservatively.

We will arrive at these controversies in due course. By way of introduction, we note that its approving account of the Full Court's decision published 12 August 2009, *Spectator* magazine described you as 'a punctilious law academic from the University of New England'. You may – or may not – be this, but before we proceed to the case and its ramifications would you be so kind as to tell us something about yourself? Many barristers have a passion for a particular element of the law – for some it's aggressive litigation, for others criminal, commercial, and so forth -- but Constitutional law? Surely this speaks of a political background as well as a legal one?

**BP:** *True. I was member of the State Council of the NSW Division of the Liberal Party for 12 years. I was twice President of its City of Sydney Special Branch. For 10 years I was a member of the NSW Nationals and Chairman of its New England Federal Electorate Council for six years and State Treasurer for two years. All up I had an active involvement with both the Liberals and the Nationals for 30 years. I continue to agitate for more States as provided by Chapter VI of the Constitution. Like Deakin I am an advocate of a policy in search of a party rather than a member of a party in search of a policy.*

Plainly stated, what was the basis of your objection to the *Tax Bonus for Working Australians Act (No 2) 2009*?

**BP:** *My objection was that Parliament had overreached its powers under the Constitution.*

And on this basis, in the space of just over one month, you found yourself in front of a Full Bench of the High Court. No doubt it is important for our understanding of the case to understand how this eventuated. Can you take us through the procedure?

**BP:** *Because the proceedings involved the interpretation of the Constitution I invoked the original jurisdiction of the Court.*

*On Thursday 26 February my solicitor, Mr Richard Pegg filed in the Sydney Registry of the High Court a Writ of Summons and Statement of Claim, which I had drafted, alleging that the Act was invalid. First, on the ground that it was not a law with respect to taxation under s 51(ii) of the Constitution because it was properly characterized as a gift. And secondly that there was no valid appropriation of money for the purposes of the Commonwealth within the meaning of ss 81 and 83 of the Constitution. The Act had come into force in the previous week on 18 February. This writ was served on the Commissioner of Taxation on Friday 27 February. Because the dispute involved the interpretation of the Constitution notices were then served on the Attorneys-General for the States and Territories.*

Next, a summons for directions was filed which sought amongst other directions that the matter be heard by way of a special case. This was heard before Justice Gummow in Sydney on Friday 13 March. He directed that the case be heard by way of a special case before the Full Court in Canberra. The Commonwealth was joined as a defendant. The special case required answers to four questions. These questions were:

- 1: Does the plaintiff have standing to seek the relief claimed in his writ of summons and statement of claim?
- 2: Is the Tax Bonus for Working Australians Act (No 2) 2009 (Cth) valid because it is supported by one or more express or implied heads of legislative power under the Commonwealth Constitution?
- 3: Is payment of the tax bonus to which the plaintiff is entitled under the Tax Bonus for Working Australians Act (No 2) 2009 supported by a valid appropriation under ss 81 and 83 of the Constitution?
- Question 4: Who should pay the costs of the special case?

In a paper to the Samuel Griffith Society (Pape, 2005) as well as elsewhere (Pape, Dillery and Byrnes, 2006), you have claimed that the same objections could have been raised to a suite of other legislation, including the Regional Partnerships Programme, the *Roads to Recovery Act (2000)* (C'th) and the *Australian Sports Commission Act 1989* (C'th). So the States have treated all these programmes (Pape, 2005: 8) as 'windfall gains' by 'putting the Nelsonian telescope to the blind eye'?

**BP:** Yes. *The objection against the use of s 81 to authorise the spending of money on these activities could have been upheld, if the States had been prepared to contest its validity. Unless a citizen could persuade an Attorney-General of a State to bring a relator action, the unauthorised spending of such moneys would go unchallenged. An individual citizen neither has standing or a justiciable issue to begin such proceedings.*

*Now that the High Court has conclusively held that s 81 does not authorise such spending, it is permissible for a citizen to commence prosecution proceedings in accordance with s 13 of the Crimes Act 1914 (Cth) that a Minister was 'misapplying' or 'improperly using' public money within the meaning of s 14 of the Financial Management and Accountability Act 1997 (Cth). A conviction carries a term of imprisonment for 7 years. Of course it would be preferable for the Australian Federal Police to investigate. If an offence was considered to have been committed then to refer the matter to the Commonwealth Director of Public Prosecutions to decide whether to prosecute.*

In this context it is useful to provide a concise summary of the High Court's decisions. The Full Bench upheld the legislation by a majority of 4 to 3. The reasons were handed down in four sets: First, those of Chief Justice French; second, those of Justices Gummow, Crennan and Bell; third, those of the dissenting Justices Hayne and Kieffel and finally, the extended and dissenting reasons of Justice Heydon. It is therefore possible to represent the reasons by way of a matrix:

Table 1: Decisions by the High Court in *Pape v Commissioner of Taxation* [2009]

Questions	Chief Justice French	Justices Gummow, Crennan & Bell	Justices Hayne and Kiefel	Justice Heydon
Does the plaintiff have standing?	Yes	Yes	Yes	Yes
2. Is the Act valid because it is supported by one or more express or implied heads of legislative power under the Commonwealth Constitution?	'The Tax Bonus Act is supported by s 61 of the Constitution and by the incidental power. (136).	The Bonus Act is a law with respect to matters incidental to the execution of a power vested by the Constitution "in the Government of the Commonwealth" (s 51(xxxix)), being the executive power of the Commonwealth recognised by s 61, vested in the Queen and exercisable by the Governor-General.	'The Act is a valid law of the Commonwealth to the extent to which it provides for the payment to a person entitled to a tax bonus of the lesser of the amount of the person's adjusted tax liability for the 2007-08 income year and the amount of the bonus fixed in accordance with that Act. <b>Otherwise, no.'</b>	<b>No</b>
3. Is payment of the tax bonus to which the plaintiff is entitled under the Act supported by a valid appropriation under ss 81 and 83 of the Constitution?	For the reasons set out in the judgement of Gummow, Crennan and Bell, I agree that the requisite appropriation was effected by s 16 of the Taxation Administration Act read with s 3 of the Tax Bonus Act.	There is an appropriation of the Consolidated Revenue Fund within the meaning of the Constitution in respect of payments by the Commissioner required by s 7 of the Bonus Act.	Yes	'Does not arise'
4. Who should pay the costs of the special case.	'In accordance with the agreement of the parties announced on the second day of the hearing of the special case, there is no order for costs'.			

Of course, this really does belie the complexities of the reasons handed down. Nevertheless, it serves as a useful guide for exploring the reasons. For example, we can note with respect to Question 4 that precisely the same answer was given, namely: 'In accordance with the agreement of the parties announced on the second day of the hearing of the special case, there is no order for costs'. For some, this may appear self evident; for others, perhaps, not so. Can you give provide us with the reasons for this decision?

**BP:** *The Court was saying that it didn't have to make an order for costs because the parties had agreed this issue between themselves. Whatever the outcome, each party had agreed to bear its own costs.*

Secondly, and referring again Table 1, we note that the four reasons handed down agreed that you had standing in the High Court. In your previous work (Pape, 2005) you have pointed out – and indeed lamented – that in other circumstances this has not been the case.<sup>3</sup> Yet as was noted in all four reasons, the defendants, namely the Commonwealth joined by various states, submitted that you, the plaintiff, had standing to challenge the payment of the bonus to you, but not with respect to anybody else – that is, you were not entitled to challenge the validity of the Act. Would you care to comment on how this submission was received by the Court? Why did Chief Justice French (46) label the submission by the defendants ‘an unattractive one’? And why did Justice Heydon (401) comment incredulously as to the defendants contemplating ‘that bizarre and unimaginable state of affairs with remarkable equanimity?’

**BP:** *The Commissioner of Taxation, the Commonwealth and the intervening States, NSW, WA and SA did not seem to fully appreciate that the issue of standing was irrelevant because it had been subsumed into the issue of whether I would be obliged to repay the tax bonus if the legislation was declared invalid. As indeed would all other citizens who received it, would have been required to do.*

### The Full Bench Responses to Questions 2 & 3

Turning now to the other, considerably more complex reasons provided by the Court in dealing with questions 2 and 3. The Commonwealth, joined with the states, sought to support the validity of the Act with what Chief Justice French (43) referred to as ‘the following broad propositions’:

1. The Tax Bonus Act read with s 16 of the Taxation Administration Act is supported by ss 81 and 51(xxxix) of the Constitution.
2. In the alternative the Tax Bonus Act is supported by legislative powers identified as:
  - (i) Section 51(xxxix) of the Constitution read with ss 61, 81 and 83.
  - (ii) The Trade and Commerce Power – Constitution, s 51(i).
  - (iii) The External Affairs Power – Constitution, s 51(xxix).
  - (iv) The Taxation Power – Constitution, s 51(ii).

If we deal with the categories of Table 1 in turn, we can see that Chief Justice French found that the Act was a valid law of the Commonwealth because it was ‘supported by s 61 of the Constitution and by the incidental power’. Can you explain the basis of this decision?

*Relevantly s 61 and 51(xxxix) of the Constitution provide as follows:*

S 61

*The executive power of the Commonwealth is vested in the Queen ....., and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.*

S 51 (xxxix)

*The Parliament shall, ....., have power to make laws for the peace, order and good government of the Commonwealth with respect to: matters incidental to the execution of any power vested by this Constitution ....., .. in the Government of the Commonwealth, .....*

<sup>3</sup> You have previously commented: ‘As McHugh J. has remarked, “the ultimate judicial umpire is the High Court. Its judgments ultimately define the powers and functions of the federal and state governments”. However without standing, the citizen is barred from challenging legislation which is beyond the power of the Commonwealth Parliament to enact. Where the States abdicate their responsibilities and acquiesce in what may be an abuse of power by the Commonwealth, the citizen has at present no legal remedy. This is of particular concern where there has been a tacit *inter se* arrangement cobbled together through political expediency. “The existence of consensual arrangements of this nature should not be used to justify the restriction of standing rights.” (Pape, 2005: 2-3).

*The underlying approach taken by French C.J. is reflected in his remarks at para [127] that the executive power is not a locked display cabinet in a Constitutional museum. In short, because it is there, it must have some work to do. He said:*

*It is not limited to statutory powers and the prerogative. It has to be capable of serving the proper purposes of a national government. On the other hand, the exigencies of "national government" cannot be invoked to set aside the distribution of powers between Commonwealth and States and between the three branches of government for which this Constitution provides, nor to abrogate constitutional prohibitions.*

*He went on to hold at [para 133]*

*The executive power extends, in my opinion, to short term fiscal measures to meet adverse economic conditions affecting the nation as a whole, where such measures are on their face peculiarly within the capacity and resource of the Commonwealth Government.*

*Such short term measures have been availed of by recourse to the taxation power in the past. For example the adverse economic conditions arising from the 1961 'credit squeeze' caused the Menzies Government to give a 5% rebate of tax starting in March 1962 and ending on 30 June 1964. The rebate flowed directly to taxpayers by an adjustment to the PAYE ('pay as you earn') tax scales. This was a greater fiscal stimulatory measure than the tax bonus of \$900, albeit that the latter was to be paid as a lump sum.*

In examining the issue of appropriation of moneys from a Consolidated Revenue Fund, Justice French discussed [i] the historical background of the separation of appropriation on the one hand and expenditure on the other as it pertains to the idea of responsible government; [ii] the working of appropriation in the Convention Debates and [iii] in particular, the interpretation of s 81 in the *Pharmaceutical Benefits Case*, more specifically the 'broad' or alternatively 'narrow' understanding of the phrase 'for the purposes of the Commonwealth' in s 81. He commented that 'th[ey] are words of constraint', and approvingly cited Justice Stephen's reasons (93) in the same case, namely, 's 81 was not a source of substantial legislative power'.

Yet the Chief Justice finally stated that: 'the expenditures made under [the Act] are authorised by an appropriation made in conformity with ss 81 and 83'. Moreover, he stated (135) that 'for the reasons set out in the judgement of Justices Gummow, Crennan & Bell, I agree that the requisite appropriation was effected by s 16 of the Taxation Administration Act read with s 3 of the Tax Bonus Act'. Justices Gummow, Crennan & Bell concluded with respect to question 3 that: 'There is an appropriation of the Consolidated Revenue Fund within the meaning of the Constitution in respect of payments by the Commissioner required by s 7 of the Bonus Act'.

The issue of appropriation is obviously crucial here. Can you explain the (eventual) reasoning of the four Justices, despite Chief Justice 'belling the cat' – to use a phrase you have deployed in the past – with respect to appropriation?

**BP:** *Gummow, Crennan and Bell JJ said at para [178].*

*Once the nature of the process of parliamentary appropriation is appreciated, the sections of the Constitution which provide for it **do not serve as a source of a "spending power"** by the width of which is determined the validity of laws which create rights and impose obligations or otherwise utilise the supply approved by an appropriation.*

Importantly at para [180] they went on to say

*The holding of the invalidity of the legislation largely was based on a minor premise. This assumed that s 81 conferred a “spending power” but constrained it by the phrases “for the purposes of the Commonwealth” in s 81 or “by law” in s 83. However, the result in Pharmaceutical Benefits should be supported by denial of the major premise,*

*The Court was invited by the plaintiff ‘to take out a clean sheet of paper’ to analyse s 81. In doing so the Court held that the previous approach in assuming that there was a spending power in s 81 was wrong. To use the words of Jacobs J in the AAP case ‘it is no more than an earmarking of money. Because the major premise was wrong in the earlier cases, (the Pharmaceutical Benefits case and the Australian Assistance Plan case) consideration of the minor premise ‘for the purpose of the Commonwealth’ did not arise. The so called Garran doctrine as set out in para [182] is dead.*

Justices Gummow, Crennan & Bell found it convenient to deal with the issue of appropriation first (question 3) before moving to consider question 2, namely whether or not the Act was supported by one or more express or implied head of power in the Constitution. In this regard, they concluded (213):

The Bonus Act is a law with respect to matters incidental to the execution of a power vested by the Constitution “in the Government of the Commonwealth” (s 51(xxxix)), being the executive power of the Commonwealth recognised by s 61, vested in the Queen and exercisable by the Governor-General.

Therein, they launched a strong defence of the idea of the Executive implied in the Constitution, and asserted (214) that s 119 of the Constitution supports ‘the existence and conduct of activities by “the Executive Government of State”’; further, that the phrase (215) ‘maintenance of the Constitution’ ‘conveys the idea of the protection of the body politic or nation of Australia’. They explored the history of High Court cases, citing Griffith, Barton and O’Connor in Commissioner of Taxation (NSW) v Baxter (218):

The object of the advocates of Australian federation, then, was not the establishment of a sort of municipal union, governed by a joint committee, like the union of parishes for the administration of the Poor Laws, say in the Isle of Wight, but the foundation of an Australian Commonwealth embracing the whole continent with Tasmania, having a national character, and exercising the most ample powers of self-government consistent with allegiance to the British Crown.

Moreover, they defined the relationship of Commonwealth power to state power as such (223):

State laws of general application may regulate activities of the Executive Government of the Commonwealth in the same manner as persons generally and, by the exercise of its legislative powers, the Commonwealth may affect the executive capacity of a State, but the States do not have power to affect the capacities of the Executive Government of the Commonwealth.

All of this prescribes an extremely strong role for the federal executive. Could you comment on this view?

**BP:** *I doubt whether this is so other than in circumstances which answer the description emergency situations. As was said by the United States Supreme Court in the Schechtel Poultry case, ‘emergency does not enlarge constitutional power’. On the other hand it has been said that ‘emergency may rise to the exercise of constitutional power’. In the tax bonus case it must not be forgotten that there was no dispute as to the constitutional facts. It proceeded as special case on agreed facts. Where the facts of the so called crisis are in dispute then the exercise of the executive power in combination with the incidental power may not be warranted.*

Turning now to the reasons of the dissenting judges, and first to the reasons of Justices Hayne and Kiefel. We have already noted in our introduction the gravity with which these two Judges held the potential ramifications of the case. If we refer to Table 1 above, we see that with respect to Question 2 they concluded (395):

The Tax Bonus for Working Australians Act (No2) 2009 (Cth) is a valid law of the Commonwealth to the extent to which it provides for the payment to a person entitled to a tax bonus of the lesser of the amount of the person's adjusted tax liability for the 2007-08 income year and the amount of the bonus fixed in accordance with that Act. Otherwise, no.

Moreover, their answer to the question of valid appropriation under ss 81 and 83 is an unequivocal 'Yes'. So in what sense are their reasons dissenting?

**BP:** *Hayne and Kieffel JJ would have upheld the impugned Act under the taxation power but only if part of the Act was severed. Essentially they held that the quantum of the bonus should be limited to the lesser of the 2008 tax liability and the amount of the bonus of \$900, \$600 or \$250. So if a taxpayer had a liability of \$1 for 2008 the amount of the bonus would be limited to \$1 not \$900. In short there was no gift, only a refund of tax previously paid. In their view the Act was suffering from gangrene but could be saved by amputating one of its legs. Gummow, Crennan, Bell and Heydon JJ would not have severed. If there had been a severance, the Commonwealth estimated that 11% of taxpayer would have had the bonus significantly reduced.*

In examining their reasons in more detail, they note (278) that the argument about s 81 and the incidental power in s 51 (xxxix) 'may be dealt with briefly. The Impugned Act is not a law whose making is incidental to the execution of a power vested by the Constitution in the Parliament to appropriate moneys'. Can you elucidate the Justices reasons in this regard?

**BP:** *The Court had no need to consider this submission because they took the view that s 81 was not a spending power as such. All it did was ' earmark' moneys to be appropriated from the Consolidated Revenue Fund.*

It is to the dissenting reasons of Justice Heydon to which we now turn. Justice Heydon's dissent was comprehensive. Glancing at Table 1 above, we see that his answer to Question 2 is a simple 'No'. Could you comment?

**BP:** *In short, Justice Heydon while agreeing with the other Justices that s 81 did not authorise the Commonwealth to spend money, he went on to hold that there was no warrant for the Parliament to legislate in the present case by relying on the executive power under s 61 and the incidental power under s 51 (xxxix). In the present circumstances there was also no work for the so called nationhood power to do.*

## Possibilities of Reform

Despite the cautionary salvo that the High Court has now fired across the bow of the current Federal government, we are still left with the situation, to paraphrase Justice Callinan, where the 'benefit of the doubt' has consistently been given to federal government (Heydon, 417) to the extent that, as Menzies (1967: 91-92) noted, 'in the revenue field, the Commonwealth has established an overlordship' and ushered in 'a major revolution without any formal constitutional amendment at all'. Moreover, as you yourself have noted (Pape, 2005: 18), the Federal government may be drawing itself into a 'financial vortex' by pursuing policies such

as Roads to Recovery, the Regional Partnerships Program and now the Tax Bonus for Working Australians. As such, your objections are grounded in pragmatism as well as what some might regard as a conservative defence of the Constitution. Yet we arrive at the question of what is to be done with this federalism of ours.

Before we consider your work in this regard, and not withstanding the theoretical complexities of federalism as a subject of inquiry in its own right (see, for example, Inman and Rubinfeld, 1997; Levy, 2007) do you have any comment on what might be labelled the bipartisan endorsement of so-called 'cooperative federalism' recently endorsed by Tony Abbot (2009), Anna Bligh (2009) and others, as well as forming the basis of the previous federal government's approaches to federalism?

**BP:** *All Commonwealth Governments have been centralists. Frankly, the idea of co-operative federalism has proven to be an unprofitable exercise. It exists because of the excessive vertical fiscal imbalance. Here the Commonwealth raises more than 80 cents in the dollar of all taxation in Australia. This has to be contrasted with the fact that nearly 90% of the physical assets of the country are owned or operated by the States and Territories. For example the schools, universities, hospitals, roads, railways, ports, power stations, courts and police stations are all run by the States. The primary physical assets of the Commonwealth are its defence assets, which is as it should be. To get the fiscal relationship back into balance the States must be responsible for raising their own taxes to finance their responsibilities. In short the position is a mess. If further evidence is needed, then look no further than the Prime Ministers admission of his Government's delinquency in the administration of the home insulation program. Neither the Commonwealth nor the States have shown any courage to fix the problem. The Commonwealth won't give up its taxation revenue and the States don't want the odium of raising it. We need a new political party to implement sound federal fiscal policies at the State and Federal levels, which match taxing and spending responsibilities. Alternatively, if Australians want Canberra to run everything then amend the Constitution as provided by s 128.*

It is in your paper 'Federalism for the Second Century' (Pape, 2006) you seek to demonstrate very concisely the degree of what Dollery (2002) described as 'a century of vertical fiscal imbalance' in Australia<sup>4</sup>, arguing that it may have discouraged the introduction of new states into the Federation, that it is allocatively inefficient as well as producing large duplicate bureaucracies. However, these arguments are perhaps *more* familiar than those which support the introduction of new states. It is these arguments which are of most interest in this context, as they both coincide with and significantly strengthen arguments for a 'new regionalism' as the basis for government (see, for example, Brown and Bellamy, 2006; Dollery and Crase, 2004). Could you outline these arguments?

**BP:** *My basic contention is that in peacetime decision making should be made at the lowest possible level, so that those most affected by the decision are responsible for its financing and administration. It serves to encourage self reliance which makes for a healthy country. It also works to improve society through innovation. United States Justice Brandeis remarked long ago that States are laboratories for new ideas.*

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<sup>4</sup> You also demonstrate (Pape, 2006) that 'It is wrong to assert that the Australian Taxation Office collects GST as an agent for the States and Territories. For good measure the Australian Bureau of Statistics treats the GST as a Commonwealth tax for government statistic purposes'. [A position now accepted by the present Commonwealth Government] #

The history of new state movements, speculation as to where they might be hewn from and the economic consequences of new states are all interesting topics discussed by you in your 2006 paper. However, more pertinent in the context perhaps is the institutional design of the governments themselves. Could you sketch these in this context?

**BP:** *In short, the new States could be modelled on the present arrangements in the ACT Parliament or the Scottish Parliament. Unlike the Scottish Parliament they must be responsible for raising their own taxes. I have no objection to the Commonwealth acting as an administrator to collect the State's personal income taxes but the rates must be set by the State Parliament. Such arrangements open up interesting possibilities, including an elected Governor and members of the executive not being members of the legislature, part-time members of parliament and limited sitting times (e.g. Texas). ##*

Finally, (Pape, 2006: 20) you also suggest some terms of reference for a Royal Commission of Inquiry 'ideally with the support of the Council of Australian Governments (COAG). Could you reiterate these here?

- (a) to review the working of the federation, with reference to whether dualism of sovereignty exists; and
- (b) to examine the feasibility of redividing the Commonwealth into additional

States and Territories with reference to:

- (i) the desirable and practicable number of States and Territories;
- (ii) the fixing of boundaries so as to optimise the protection and sustainable management of natural resources;
- (iii) the distribution of powers between the State Parliaments and the Commonwealth Parliament, including whether specific powers should be vested in the State Parliaments, with the residue vested in the Commonwealth Parliament together with provision for their interchange;
- (iv) ways and means to guarantee the financial independence of the States and what kind of tax system is appropriate to the federal union?
- (v) the establishment of single chamber new State Parliaments;
- (vi) the number of Senators for each State and whether the House of Representatives should be composed of twice the number of Senators
- (vii) the establishment of an integrated Australian court system;
- (viii) minimizing the cost of Government, with particular reference to the elimination of waste and the avoidance of duplication of functions;
- (ix) identifying the kind and extent of :
  - (a) subsidies granted to residents of capital cities; and
  - (b) the costs of providing and maintaining the necessary infrastructure, e.g. power, roads, transport, hospitals;

and to determine how those subsidies and costs might be reduced.
- (x) the provision of more precise and simplified means for the creation of new States and Territories;
- (xi) whether individually or cumulatively the above matters would work to overcome the decline in population growth and to build a stronger domestic economy; and
- (xii) consequential amendments to the Constitution.

Thank you for agreeing to discuss this with us, Mr Pape.

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