In October 2005, the Chief Minister of the ACT, Jon Stanhope, was criticised by the Prime Minister for placing on his website draft anti-terrorism legislation which the Commonwealth had made available to the States and Territories for their comment. This followed in-principle agreement by members of the Council of Australian Governments (COAG) to the provisions of the proposed legislation. Stanhope argued that he would not sign off on the legislation without consulting the people of the ACT, whom he represents.

His concern exposes one of the problems with the management of intergovernmental relations in Australia, namely the accountability of intergovernmental policy-making institutions. In addition, there has been an increasing trend towards centralisation of policy making, both within State governments towards central agencies and within the federal relationship towards the Commonwealth. Finally there are varying levels of transparency associated with intergovernmental policy bodies.

The formation of COAG in 1992 signalled a new era in Commonwealth-State cooperation. It provided a high level forum for intergovernmental cooperation on issues of national strategic importance and cross-jurisdictional concern. Policies developed through COAG include the implementation of the national competition policy, an intergovernmental agreement on the environment and the National Water Initiative.

Underpinning COAG are ministerial councils and similar bodies which address more specific, sectorally-based policy issues. Since the establishment of the first sectoral ministerial council, the Australian Agriculture Council, in 1934 this type of consultative arrangement has proliferated. In 2005 the Department of Prime Minister and Cabinet identified over 40 such fora. The councils generally comprise the ministers from each jurisdiction with portfolio responsibility for the policy area
covered by the council. For example, the Primary Industries Ministerial Council has responsibility for intergovernmental consultation in the area of the primary industries and the Commonwealth-State Ministers’ Conference on the Status of Women seeks to coordinate and develop policies which affect the status of women, particularly on issues which cross borders between jurisdictions.

Although COAG and the ministerial councils facilitate intergovernmental cooperation and policy coordination, as the Stanhope example shows they raise some questions about the transparency of decision-making. COAG can limit parliamentary scrutiny of key national policy positions as Premiers and Chief Ministers commit their governments to action without first exposing policy positions to examination by their respective legislatures, and by extension to the broader community.

The increase in executive power over the policy agenda has been facilitated since the 1990s when State governments strengthened the role of the so-called central agencies, such as Departments of Premier and Cabinet. Portfolio ministers attending intergovernmental meetings are increasingly required to have executive clearance of their policy positions before attending such meetings. The involvement of heads of government in policy areas formerly handled by portfolio ministers has been reflected in COAG’s interest in issues which were previously the responsibility of ministerial councils. A good example is the National Water Initiative which, while being implemented by the Natural Resource Management Ministerial Council, is a policy initiative of COAG.

The centralising trend that results is exacerbated by the nature of COAG. As the Prime Minister decides if and when COAG is to meet and what will be discussed, the Council’s priorities are more likely to align with the Commonwealth’s policy agenda than the concerns of the States.

The ministerial councils and COAG vary in the level of the transparency of their deliberations. Some councils offer detailed records of their meetings and others simply issue press releases or communiqués with brief reports of policy decisions. COAG’s reporting is limited to the provision of a communiqué summarising the decisions taken.
There is considerable overlap between the policy interests of the two levels of government and a clear need for some form of consultation and cooperation, particularly in areas which cross State/Territory borders. However, the operation of COAG and the ministerial councils is ‘notoriously opaque and hard to access for the public, with conventions of secrecy and bureaucratic habits of confidentiality dominant most of the time’\(^1\). As COAG takes control of more policy issues, there is a risk of the policy process becoming more centralised and less transparent with reduced opportunity for parliamentary scrutiny of important national policy decisions.