Institutions of Multi-Level Governance and the Choice of Environmental Policy Instruments: the Case of Australia

Martin Painter and Janet Ramsay

Critics of Australian governments’ environmental policy performance include federalism as a reason for what they see as weak policy capacity, noting the fragmentation of responsibilities and the complexities of intergovernmental relations (Economou 1993). Their main point is that federalism is partly responsible for the lack of firm, national environmental strategies, with the Commonwealth stymied at various points by the complexities of the division of powers and the adversarial nature of federal politics. At the level of the states, the “weakest link” creates the standard through a “race to the bottom”, or via lowest common denominator outcomes.

Such a story could plausibly be told about the current preference for softer, more light-handed and less intrusive environmental policy instruments, relying on self-regulation and looking to make use of market forces through various incentive mechanisms. The federal state, it could be argued, being weakened by its division, has stepped back from strategies that entail firmer applications of the public power. This account would have a grain of truth, in that it would acknowledge the importance of federal factors in shaping the character and content of policy. But in the crude form just outlined, the argument would be fundamentally misleading, for two main reasons. First, it confounds accusations about “weak policy” with propositions about “weak government”; and second, in so doing it incorrectly associates effective policy with the use of one type of instrument rather than another. The relationship between institutions, instruments and outcomes is worth exploring, but from different starting points.

In any case, does federalism necessarily weaken national environmental policy capacity? Arguably, the record in this respect also suggests a more complex and multi-faceted story. Recent events, in which we find a coincidence of “federal experiments” – that is new ways of handling the complexities of intergovernmental relations and the problems of divided and shared powers – with “policy experiments” in the application of new environmental policy instruments (NEPIs), provide an opportunity to explore these arguments and propositions in a more thorough manner. Without presuming a necessary causal relationship between federal forms and the choice or evolution of NEPIs as a preferred instrument, the possibilities of such a relationship should be investigated.

The plausibility of a connection is strong. First, the distribution of powers and the manner in which they are shared introduces some potential biases in instrument choice. Crudely put, the Commonwealth has the money, while the states have the legislative powers; the Commonwealth has the advantage of full, national coverage of the field, and of being at the centre of political communication, while the states are partial in coverage and at the periphery; and the states have the greater capacity to control and regulate local, physical resources while the Commonwealth has the capacity to manage the manner in which external forces impinge on them.

Second, the complexities of coordination and harmonization of separate state policies could be expected to militate against effective regulation that relies on legal instruments and uniform state administration. The Commonwealth is naturally reluctant to set up parallel systems of administration and management and must rely on state agencies, which are mandated by state, not Commonwealth, laws. The rational strategy in this context for any stakeholder, whether governmental or non-governmental, might well be to minimize the uncertainties of achieving such harmonization by proposing alternative approaches.

Third, the political risks and uncertainties of Commonwealth unilateral action against the opposition of state governments is likely to impose a restraining hand on centrally imposed forms of uniform regulation
and management, even when the constitutional powers might exist. In these circumstances, national environmental policies might be expected to deploy a preponderance of money, information and coordinating activity, as against instruments of authority-based compulsion. Not only does the logic of instrument choice work in this direction, so too does the logic of the process by which such choices are made, because of the difficulties of reaching firm, binding agreements on uniform policies among governments.\(^1\) Forms of policy and administration that co-opt stakeholders to reach agreement on self-regulation, and delegate enforcement and monitoring to industry and community actors, are likely to be preferred because they offer a way of filling the vacuum left by deadlocks among the law-makers.

In pursuing this line of argument, we explore recent environmental policy initiatives in Australia, in particular the cases of national policy on used packaging materials, and the development of a national greenhouse strategy.\(^2\) Both involve the use of NEPIs in a framework of legal instruments of various kinds, and both are inextricably bound up with the complexities of intergovernmental relations. Both also have prompted close and detailed negotiations with industry stakeholders and, in particular in the case of the national greenhouse strategy, have aroused considerable political heat and controversy.

**Australian Federalism and Contemporary Environmental Policy**

Australian federalism is an essentially collaborative system, with a Constitution defining Commonwealth powers and reserving the residual rights and responsibilities to the states, but resulting in a system in which most powers are in practice concurrent rather than neatly divided. The broad pattern for powers relevant to the environment is that the states have the primary responsibility for control and management of natural resources, and so for most of the development-related functions impinging directly on the environment. At the same time, the Commonwealth claims responsibility for the environment through such ‘heads of power’ as trade and commerce with other countries and among the states, taxation, and external affairs. The ‘external affairs power’ establishes the right and responsibility of the Commonwealth to make and fulfill international agreements, such as that concerning World Heritage sites, and has been of particular importance in allowing it to assert jurisdiction over environmental affairs. Section 96 of the Constitution adds to these the power to make ‘special purpose’ financial grants to the states on whatever terms and conditions the Commonwealth sees fit (Zines 1985, 13-14; Galligan and Fletcher 1993, 8-11; Yenken and Wilkinson 1996, 8). Local government is not a major player in federal politics and environmental policy, although it is responsible for areas of planning and service delivery often relevant to environmental issues. Both the Commonwealth and state governments recognize the relevance of local government activities to environmental outcomes, and have used a range of policy approaches to draw councils into delivery of their policy objectives (Galligan and Fletcher, 1993, 28-30; Mamounney 2000, 14-15).

Environmental policy at various points has been a subject of fierce intergovernmental conflict in Australia, in large part due to the Commonwealth’s assertion of a role in advancing its environmental policy objectives over resistant state governments. The Hawke Labor Government in the 1980s engaged in such unilateral assertions of its powers, most famously in the case of the Franklin Dam controversy, when it called on its external affairs and other powers to override plans by the Tasmanian Government to build a hydro-electric scheme in a pristine wilderness (Zines 1985, 17-23). Efforts to institutionalize a more concerted form of central management of environmental policy making in the 1980s were not particularly successful, however. The Resource Assessment Commission and the Ecologically Sustainable Working Groups produced limited results, and the limits to effective Commonwealth control over state government land use, development and environmental management policies and practices were not overcome. A number of other failures in federal management prompted the Hawke Government in 1990 to initiate an era of “cooperative federalism”, with the setting up of the Special Premiers Conferences, succeeded in 1992 by the Council of Australian Governments (COAG). The clearest achievements of the COAG process were a series of microeconomic reforms around the setting of national standards and agreements about

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\(^1\) In referring to “instrument choice”, we are adopting a convenient shorthand expression. The process of instrument selection is a combination of choice, habit and learning (Howlett and Ramesh 1993; Linder and Peters 1989). Here, we suggest that there may be a structural or institutional logic that shapes such choices.

\(^2\) The case studies draw on a variety of data sources, including a series of interviews conducted with some 25 state and commonwealth officials between February 2000 and March 2001. We wish to acknowledge the generous assistance of these people, whose comments were provided on the basis that they were non-attributable.
rationalizing public utilities, and the agreement of a National Competition Policy, hard driven by the Commonwealth and its powers of compensatory funding (Painter 1998, chs 1 and 2; Galligan and Fletcher 1993).

Environment policy was high on the agenda of the SPC/COAG. Among the products were an Intergovernmental Agreement on the Environment (IGAE), finalized in February 1992, a National Strategy on Ecologically Sustainable Development and a National Greenhouse Response Strategy, both agreed in 1993, following the 1992 UN Conference on Environment and Development in Rio de Janeiro. Australia signed the Conventions on Climate Change and Biological Diversity adopted by the Rio Conference and committed itself to the principles of the other two major Rio documents, the Rio Declaration and Agenda 21 (Haward 1992; Galligan and Fletcher 1993, 21-22; Yenken and Wilkinson 1996, 5).

The IGAE, which came into effect on 1 May 1992, was undertaken to provide a cooperative national approach to the environment; a better definition of the roles of the respective governments; a reduction in the number of disputes between the Commonwealth and the States and Territories on environment issues; greater certainty of government and business decision making; and better environment protection. Many in the environmental movement depicted it as a retreat by the Commonwealth from a more assertive, pro-environment role, and as surrender to the states. The Agreement spelled out the responsibilities and interests of each level of government, mechanisms for eliminating or dealing with functional duplication and of resolving disagreements, and agreed principles of environmental policy. The Agreement also included an early statement of the philosophy which underpins the move towards use of NEPIs as a key environment policy strategy, and locates it within the commitment to economic efficiency driving the COAG intergovernmental reform agenda. The list of Principles of Environmental Policy concludes: ‘Environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, which enable those best placed to maximize benefits and/or minimize costs to develop their own solutions and responses to environmental problems’ (IGAE 1992, 3.5.4).

Amongst other more specific matters, the governments also used the IGAE to commit themselves to a tightly managed intergovernmental process for the establishment and implementation of national environment protection standards to provide consistency across jurisdictions for the benefit of business. Yet another intergovernmental ministerial body, the National Environment Protection Authority (NEPA), would be established to see to this. To avoid the frustrations of lowest common denominator consensus processes, it was agreed that the NEPA would make decisions by a two-thirds majority. This arrangement provided one of the contexts for the waste packaging case study developed below (IGAE 1992, Schedule 4).

In Schedule 5, the governments acknowledged ‘the need for Australia to participate in the development of an effective international response to meet the challenge of greenhouse enhanced climate change’ and recognized that such a response would require ‘coordinated and effective action by all levels of government and the community’. A National Greenhouse Steering Committee was set up to prepare the National Greenhouse Response Strategy. This work was firmly established within existing intergovernmental structures by instructions to the Steering Committee to work through relevant ministerial councils and their standing committees, and to finally report to the First Ministers. The establishment of COAG provided the location for this (IGAE 1992, Schedule 5).

With the change to the Howard (conservative) Commonwealth Government in 1996, a subtle set of changes in strategy towards federal relations eventuated. Howard turned away from COAG when a meeting set to put the final seal on his triumph in reforming gun laws turned into a walk out by Premiers over public health funding. The language of cooperation with the states changed from ‘collaboration’ to ‘partnerships’, with an apparent expectation that the Commonwealth would deal with individual state governments as it would with any other individual industry or community interest group. Apart from the announcement of broad national funding decisions, policy detail was negotiated in a series of bilateral agreements with individual states. In the background, as COAG virtually ceased to meet, essential intergovernmental policy negotiations continued between senior state and federal bureaucrats, and the Senior Officers Group of COAG, the Departmental Heads of the central agencies, grew in significance.

In a policy arena like the environment, with its complex interweaving of portfolio areas and levels of
government, with ten or so relevant intergovernmental ministerial councils meeting regularly, COAG has been sorely missed.iii State bureaucrats comment on the lack of a means of ‘signing off’ on their ministers’ deliberations. The joint work on national areas of significance and what was to be done about them was left in mid-stream. Negotiation of new policy issues like the management of genetically modified organisms and related food standards, about which the community feel very strongly, have turned into states-rights stand-offs between a Commonwealth driven by industry concerns and state ministers acting through ministerial councils. Collaborative federalism has been both reasserted and tested.

John Howard appointed as the Commonwealth Minister of the Environment and Heritage a South Australian Senator, Robert Hill. Hill has initiated two major strategies that cut right across established federal processes and expectations, in that they revive images of centralism and unilateralism. One is the massive ($1.5 billion) grants-oriented funding program, the Natural Heritage Trust (NHT). The other is a sweeping piece of federal legislation, the Environment Protection and Biodiversity Conservation (EPBC) Act. Opinions still differ amongst state governments and bureaucrats and green organizations as to whether these represent examples of run-away centralism, outrageous political opportunism, ‘green barrelling’, or effective and innovative federalism (Krockenberger 1998, chs 1 and 2; Crowley 1999). The NHT and the EPBC Act illustrate the Commonwealth engaging in some very familiar forms of political unilateralism, applying conventional instruments of Commonwealth power and policy. The NHT is unusual, however, in that it sees the Commonwealth using its spending powers in a set of direct relations with community groups and industry, cutting the states out of the loop in a way that is not unprecedented, but is unusual with such a large spending program. The EPBC is a venture into somewhat old-fashioned law making in a field where previous attempts have proven difficult to manage in a federal context, and it is potentially a minefield of future contention and further confusion. It has already aroused hostility and complaint from all directions.

It can be seen from this survey of recent developments that federal politics in Australia involves a variety of strategies, and is hard to encapsulate in a single formulation. Many of the stereotypes turn out to be misleading – for example, that a conservative government is more likely to respect “states’ rights” and be less confrontational. Conflict-generating unilateralism and cooperation co-exist across different issues, or are to be seen over time as governments develop their strategies in relation to an issue. The first case we look at in detail reflects a cooperative approach.

Case Study One: The Management of Waste Packaging

Ordinary Australian householders have long found packaging recycling to be a cheap, painless, direct and accessible way of assuaging individual guilt about the decline of the natural environment. Local and state governments have been left with the dilemmas of making recycling a cost effective option. The perception of ‘need for a nationally consistent approach to the lifecycle management of packaging and paper’ emerged during the 1990s as a result of industry concerns about the state of the industry, as articulated by the industry organization, the National Packaging Council. National recycling policy had a stop-start beginning. The process began, as it continued, under the auspices of the ANZECC ministerial council during the flush of collaborative federal environmental work in the early 1990s. National Packaging Guidelines were endorsed by ANZECC in 1991, followed by the National Waste Minimization and Recycling Strategy, and the National Kerbside Recycling Strategy in 1992. These were followed by the signing of national ‘material specific’ waste reduction agreements. When these expired in 1995, some but not all were re-endorsed by ANZECC. After the experience of the complexities and uncertainties of these processes, and in a context of fluctuations in prices for recycled goods, it is not surprising that the industry

iii The following ministerial councils are directly concerned with environment related policy issues: the Australian and New Zealand Environment and Conservation Council (ANZECC), the Agriculture and Resource Management council of Australia and New Zealand (ARMCANZ), Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA), the Australia and New Zealand Minerals and Energy Council (ANZMEC), the National Environment Protection Council (NEPC), the Australian Transport Council ATC and a group of smaller councils coordinating policy between the Commonwealth and relevant states, namely the Great Barrier Reef Council (Commonwealth and Queensland), the NSW World Heritage Properties Ministerial Council (Commonwealth and NSW), the Tasmanian Wilderness World Heritage Area Ministerial Council (Commonwealth and Tasmania) and the Wet Tropics Ministerial Council (Commonwealth and Queensland)
was interested in a new approach to arriving at an agreed national arrangement. (National Packaging Covenant - NPC)

The idea for a National Packaging Covenant, essentially a scheme of self-regulation by the industry backed by a nationally consistent legislative framework, emerged from the industry and was approved in principle by ANZECC in 1997. In December 1998 industry made available $17.45 million over three years to support the Covenant, on the condition that governments provided a matching contribution. The Covenant was agreed to on 2 July 1999 (NPC; NEPC media release 2 July 1999). The Preface to the Covenant describes it as ‘a collaborative approach between all sectors of the packaging supply chain and all spheres of government - Commonwealth, State/Territory and Local’ and as ‘a self-regulatory Agreement based on the principles of product stewardship and shared responsibility’. Product stewardship is described as ‘an ethic of shared responsibility’ through which ‘all participants in the packaging chain... accept responsibility for the environmental impacts associated with their sphere of activity’. Robert Hill has described this life-cycle approach as, ‘...rather than simply aiming to reduce the waste impacts of a product ‘from cradle to grave’, we want to ensure that ‘waste’ never reaches the grave - that it returns to the ‘cradle’ as a resource for another product' (NPC; Robert Hill speech, 5 June 1997).

In making the Covenant, the actions agreed to by industry and government included producing Action Plans; adopting appropriate waste management pricing policies and providing financial and other support for assist kerbside recycling systems; to develop best practice systems; to co-ordinate community education and promotion programs; and to report regularly to the Covenant Council (see below). The Commonwealth, State and Territory governments made a particular commitment to develop and implement a National Environment Protection Measure (NEPM) on Used Packaging Materials. The NEPM strategy was very much a condition for industry involvement in the Covenant. It is described in the Covenant as ‘incorporating a regulatory safety net for those parties who decide against becoming signatories to the Covenant to ensure they do not gain a competitive advantage as a result.’ Those deciding against joining the covenant are described in the NEPM as ‘free riders in the kerbside recycling collection system’(NPC; NEPM). The NEPM sets guidelines requiring brand owners to undertake the same good practice processes of recovery and recycling as do businesses who have signed up to the Covenant. If they do not, it is envisaged that local government should have powers to recover from such a brand owner the costs of dealing with its packaging through the kerbside system. The same cost recovery is held over signatories to the Covenant, should they fail to satisfy the Covenant Council that they have effectively implemented their Action Plans. The NEPM was decided and announced simultaneously with the Covenant, at a joint meeting of the NEPC and ANZECC, on 2 July 1999. (NEPM; NPC Web Page; NEPC media release 2 July 1999)

Organizations that sign up to the Covenant pay an annual contribution to the cost of the scheme. This contribution is coordinated and managed by a body specifically set up for the purpose, the National Packaging Covenant Industry Association, and is based on the organizations place in the packaging supply chain and its turnover in packaging-related sales. The National Covenant Council has been set up to manage and oversee the operations of the Covenant. It comprises representatives from industry, ANZECC and local government. It maintains a register of signatories, reviews and monitors action plans, runs a system of audits, develops performance indicators and handles complaints. It reports annually to the industry and to ANZECC. (NPC; NPC on EA Web Page)

The system as a whole is a clever set of checks and balances of both processes and interests. The Commonwealth and state governments have achieved a very visible and popular environment measure, without having to meet the full cost or to do all the administration. Local government gets to do the job of recycling, and so receive the up-front public recognition for it, without the councils or their ratepayers having to meet all the costs, or to have worries about the economic uncertainties of recycling. The packaging industry has saved itself from the effects of changing and uncertain government policies by taking partial ownership of the system, and by insisting that the governments take action to provide protection from free riders.

The NEPM that underpins the Covenant was approved by the National Environment Protection Council (NEPC), which operates under legislation agreed to as part of the IGAE in 1992. Set up through COAG and the collaborative federalism effort of the Hawke/Keating years, the NEPC system was very much a product of central agency intervention in the vagaries of ministerial council policy processes. The agreement that once the NEPC has made a NEPM, the governments would automatically adopt it also brings in Cabinets
and central agencies at an early stage. NEPC representatives can only proceed to decision making with the approval of their governments. The procedures agreed for NEPC decision making ensure a more certain process than in most other ministerial councils. The provision that decisions are taken by a two-thirds majority removes the danger of the veto. Moreover, the processes for drawing up and authorizing a NEPM are strictly prescribed so as to maximize transparency. They include a public consultation period of at least two months, and consideration of public submissions before the Council decides on a NEPM. Implementation procedures for NEPMs are then left to state governments (NEPC web page, How NEPMs are Developed; Streets and Di-Carlo 1999).

These provisions provided the level of credibility, certainty and predictability to the process of providing a legal framework for the Covenant, without which the conditions for the scheme of self-regulation would not have been possible. Conversely, the clear support for the Covenant from the industry through its representative body provided each jurisdiction with the “cover” that it needed to enable them to reach an agreement. Industry financial contributions were a key part of this. In addition, the scheme does not require complete uniformity or administrative standardization, but allows for each state and territory to apply its own methods of managing the recycling process. The open ended state decisions about implementation, including non-compliance sanctions, has been seen as a weakness, but it is better read as a flexible strength, as it allows states to integrate the NEPM with existing procedures.

The Covenant/NEPM arrangement appears to have been a success. By the end of 2000, 130 companies, governments and industry associations had joined the Covenant, and seven of them were functioning as mentors to small business. The companies which had joined included retail chain Coles Myer and the recycling company Visy Recycling. Altogether it was reported that 85% of steel can producers, 100% of liquid paperboard and aluminium can producers, 95% of cardboard box manufacturers, 80% of PET manufacturers and 92% of the soft drink market had signed the Covenant. In January 2001, the report was released of an independent review of the system, commissioned by the National Packaging Covenant Council. It concluded that the recycling system is ‘providing high net benefit to the community compared with other possible systems for management of the domestic waste stream’ (NPC 2001, 90). The average net financial cost was found to be $26 per household per year, and the environmental benefits to be almost three times as large. Around 800,000 tonnes of materials were found to be recycled annually from households. The study concluded that the benefits extended beyond avoided landfill to include substantial environmental savings in greenhouse emissions and the preservation of natural resources. (Hill media releases 15 June 2000, 28 July 2000, 20 November 2000, 17 January 2001; NPC 2001).

Case Study Two: a National Greenhouse Strategy

This is a much more complex story than the first case study. The intricate melting pot of issues, interests and policy implications that make up the greenhouse dilemma require an equally intricate interweaving of policy responses. All of the governments, federal, state and local, are involved. All of them share the world wide knife-edge of knowing that their constituents expect to see them taking action, but that they also share an interest in maintaining the development, both industrial and agricultural, that threatens atmosphere and climate (Parker 1999, 63). All of them face consequent struggles between their portfolios, as well as with each other, in producing policy. At the same time, the industry interests and investments involved are much greater than in the matter of packaging waste recycling.

The Kyoto Protocol

Environment Minister Hill represented Australia at Kyoto and at The Hague, and has been credited with winning Australia the breathing space of a special circumstances Kyoto target (no more than 108% increase in greenhouse emissions by 2008 to 2012), and introduction of the so-called ‘Australia clause’ recognizing ‘carbon sinks’ and the significance of uncleared land (Sydney Morning Herald (SMH) 15 November 2000, 20). These outcomes followed Australia joining, and chairing, the so-called ‘Umbrella Group’, which used the precedent of the ‘European Bubble’ strategy, establishing differential emissions targets for individual European countries, to negotiate recognition for their own different circumstances (Kellow 1998, 292-293). As Robert Hill himself has put it, ‘the special clause had recognized Australia’s unique position as a hydrocarbon-dependent economy… You’re not going to achieve a good greenhouse outcome if you devastate your economy and at Kyoto … everyone accepted that’ (SMH, 24 November 2000, 5). The use of greenhouse sinks and land clearance reductions on the carbon credit side of the greenhouse balance was a
comforting message to Australian business that the Howard government was heading for a carbon credit rather than a carbon tax regime.

Commonwealth-State Arrangements

The Commonwealth’s international responsibilities and its financial clout (for example, via the NHT) give it the prominent role in leading and coordinating greenhouse initiatives. Similar factors evident in the previous case suggest the possibility of a symbiosis between federal decision-making process and the adoption of NEPIs. But federalism alone has not determined that the Commonwealth approach to greenhouse would be built so enthusiastically on ‘no regrets’ and ‘partnership’. The other determinant has been the stringently neo-liberal philosophy of the current Commonwealth government, and, in particular, their conviction that the international competitiveness of the Australian economy, and hence the long-term interests of the country, depend on the minimization of business costs. This was not a government ever likely to consider, for example, the imposition of a carbon tax (Parker 1998, 102-105). On the other hand, the ‘no regrets’ approach is not exclusive, and the greenhouse policy mix has a carefully balanced minor theme of the use of legislation, regulation and taxation to provide either incentive or control.

Paradoxically, the Commonwealth’s financial dominance is as much a policy burden as an advantage. In the case of the Howard Government, which has been strongly focused on maintaining a budget surplus and highly suspicious of any expenditure plans, the capacity of the Environment Minister to claim financial resources is highly constrained. A case in point, which also demonstrated the alignment of political forces surrounding the greenhouse issue, was the issue of land clearing in Queensland. In December 1999, the Queensland Labor government introduced legislation (the Vegetation Management Act) to restrict clearing on freehold land in Queensland for the first time. The legislation would bring Queensland into line with other states on the protection of native vegetation. But Premier Beattie refused to proclaim the legislation until the Commonwealth agreed to provide $103m to add to the $111m his government was providing to compensate farmers. Beattie was protecting his government from the strong Queensland rural electorate by noisily attempting to ‘blackmail’ the Commonwealth into coughing up to save their international greenhouse credibility. Eight months later the matter was still unresolved, and farmers all over Queensland were panic clearing in the face of the loss of part of what they believed to be their freehold right. At the same time, it was revealed that unprecedented approvals were being given for the clearing of leasehold land (SMH 21 June 2000, 5; 22 June 2000, 3; 1 August 2000, 11; Robert Hill media releases 8, 10, 14 and 21 December 1999). As panic clearing rolled over Queensland, Hill was rolled in Cabinet in his efforts to win approval to pay the compensation (SMH 22 August 2000, 8; 24 August 1999, 2).

The Commonwealth’s greenhouse approach has been built upon two major policy structures. These are the National Greenhouse Strategy (NGS), which attempts to build a national, federal, response to climate change around the Commonwealth’s policy priorities; and the Australian Greenhouse Office (AGO), which is the research, administration and monitoring agency for the whole enterprise. While the NGS (a product of the 1992 IGAE) was started under the previous Labor Commonwealth government, Robert Hill has recreated it in his own style. The AGO is a more recent initiative.

Rather than creating a bureaucratic unit inside his own department to deliver his greenhouse policy, Hill used new Howard Government legislation (the Financial Management and Accountability Act 1997) to create a ‘prescribed agency within the Environment and Heritage Portfolio’ (AGO 1999, 2). This means both that the Office is primarily accountable directly to him, and that it also has a funding and governance relationship with the other portfolios relevant to greenhouse policy. The Chief Executive Officer (CEO) of the AGO is accountable to the Ministerial Council on Greenhouse, through the Minister for the Environment and Heritage as Chair. The other regular members are the Commonwealth Ministers of Agriculture, Fisheries and Forestry and of Industry, Science and Resources. Bureaucratic support for the Ministerial Council is provided by the Secretaries’ Committee on Greenhouse, which is chaired by the Secretary (CEO) of Environment. (AGO 1999, 2).

The AGO plays a leading role in administration of the NGS. The Strategies in the AGO business plan include responsibilities to ‘lead, coordinate and evaluate the National Greenhouse Strategy as the prime policy framework for coordinated action on greenhouse’ (AGO 1999, 12). The NGS itself is a federal inter-governmental agreement endorsed by the Commonwealth, State and Territory governments in November 1998. This was essentially a re-endorsement of the redesigned National Greenhouse Response Strategy.
originally agreed as part of the 1992 IGAE

Both the NGS and the AGO have lengthy statements of their objectives and action plans on the AGO web page. The web page also includes the Annual Reports of the AGO and the first Biennial Report of the NGS. The content of these plans and reports is essentially the same, in particulars as well as in broad principles. Yet they read as if they reflect two separate Australian national greenhouse strategies. The difference is not in the action content but in the role assigned to state governments and federal structures. The NGS includes statements of the Greenhouse Plans of each of the state governments and is supposed to include state plans under each of the modules of the Strategy. It also recognises and includes the five major greenhouse related intergovernmental ministerial councils (ANZMEC; ANZECC; ARMCANZ; ATC; MCFFA). Each of these has its own action plan and the NGS Progress Report makes it clear that these bodies are taking responsibility for many of the measures which appear as primary Commonwealth strategies in the plans and reports of the AGO. For example, ARMCANZ, through its Energy Management Task Force has been charged with carriage of energy efficiency measures, including the development of energy performance codes and standards for domestic appliances and an associated labelling program; ANZECC produced in December 1999 a National Framework for the Management and Monitoring of Australia’s Native Vegetation; ARMCANZ has commissioned a review of levels of methane production in waste-water. In some of this work the Ministerial Councils and the AGO are working together; for example it is reported that the AGO has published a report on carbon emission rates in wood products and is conducting a review of emission accounting methods ’on behalf of MCFFA’ (NGS 2000, 25-28).

The problem is not that the AGO has no governance relationship with the state governments or the intergovernmental ministerial councils. As a bureaucratic support unit, the Office’s intergovernmental relationships are quite properly with interstate bureaucrats. Interestingly, this structure leaps over the portfolio level intergovernmental standing committees and working groups, and links the AGO straight to the central agency COAG structures. The Office has its direct intergovernmental relationship with COAG’s High Level Group on Greenhouse and the Implementation Planning Group responsible for progressing the NGS, which answers to the High Level Group. The AGO is also intricately involved in bureaucratic intergovernmental structures working to the COAG High Level Group. For example, the AGO chairs an Efficiency Standards Working Group of state bureaucrats and industry groups working on power generation standards. This group reports to the Greenhouse Energy Group which then reports to the COAG High Level Group. The AGO also chairs another group of state bureaucrats called the National Appliance and Equipment Energy Efficiency Committee, working on appliance and equipment standards. This group works under the authority of the ministerial council ANZMECC through its Energy Management Task Force. (AGO 1999, 2, 14; AGO Web Page; ESWG 2000)

All of this could well be considered a demonstration of pragmatic and efficient federalism within the Australian model. It suggests a rich pattern of intergovernmental sharing of skills and resources, with intergovernmental structures at a senior bureaucratic level holding it all together. The indicators of something more problematic are the virtual absence of recognition of the reality and necessity of this intricate intergovernmental work in the documentation of the AGO; the incomplete complement of state and territory plans under the NGS Modules (in most cases Queensland’s is the only plan to appear); the lack of acknowledgement of the important involvement of some ministerial councils with greenhouse work in the reports and communiqués of their own meetings; and the somewhat tart judgment of state government greenhouse efforts included in the first report of the NGS, prepared by the AGO. It is reported that ‘…(a)ll States and Territories have now identified, through implementation plans, actions under the NGS. AGO assessments suggests that the level of action identified in some of these plans may need to be boosted if the emission reduction from State and Territory efforts anticipated by the Commonwealth at the time of the strategy’s launch are to be delivered’ (NGS 2000, viii). It is hard to tell from all this whether the first report of the NGS is a clever piece of federal ‘PR’, weaving a scatter of poorly related programs into the appearance of federal order, or an equally ‘PR’ attempt to woo the states and territories into more federal cooperation. The committee structure suggests that the Commonwealth knows it cannot achieve its aims without state participation and the application of state regulatory powers. In either case, neither the structures nor the documents suggest an effective piece of federal coordination.

The parallel policy content of the AGO and NGS documentation provide a clear account of the Commonwealth’s greenhouse priorities and commitments. The broad areas of policy priority are scarcely surprising, given the major concerns of the international greenhouse effort. The possibilities of a system of
emission control through carbon credits, greenhouse sinks and emission trading provide the most dramatic innovation. Such questions fill the greenhouse foreground, with their technical challenges, interest for financial markets and international uncertainties. They are an important focus for discussion and development. But most of the action and expenditure has been directed to the more mundane and familiar fields of energy production, efficiency and use. The themes of the policy plans are the setting of standards for fuel quality and consumption, generator efficiency and the energy efficiency of household and office appliances and equipment and buildings; the introduction of renewable sources of energy production; and the provision of information and funding incentives to encourage householders, local governments, business and industry to recognize that they can save money by reducing their use of greenhouse expensive energy. (AGO and NGS Web Pages)

The means of doing all this are a web of compulsions and incentives, with the balance falling heavily towards ‘no regrets’ incentives. Examples are the Household Action program, the Cities for Climate Protection program and the Greenhouse Challenge. The Household Action program includes an information booklet, Global Warming - Cool It!, containing advice on the reduction of costs and gases, a community education program through the media (with television personality Don Bourke donating his appearance) and an attempt to get manufacturers and energy suppliers to offer consumers both information and motivational deals. Cities for Climate Protection is part of an international program directed at local governments. It is a combination of a motivational self-regulation process for planning and monitoring emissions reductions, with the assistance of AGO developed modules and grants to assist emission reduction projects. The Greenhouse Challenge is the Commonwealth’s showpiece voluntary partnership program with industry, and is described below. There are numerous other initiatives in the fields of energy and transport, of which a few examples are discussed here. (AGO Web Page)

Energy Efficiency: Appliances, Equipment and Buildings

This is a clear case of a strategy requiring cooperation between Commonwealth and states. However, unlike other cases, the outcome has been to continue to rely on legal standards and enforcement along with the provision of consumer information. The regulatory powers belong firmly to the states, and they have been active for some time. The Commonwealth’s contribution has been to add some coordination and further development. The outcomes have been the result of a process of regulatory harmonization, in fields where there has been a long tradition of inter-state sharing of information, learning and cooperation. Some states have been working since the 1970s on introduction of Minimum Energy Performance Standards (MEPS) and energy labelling for certain appliances, in particular refrigerators, freezers, hot water heaters, motors, packaged air conditioners and lighting systems. MEPS involve governments withdrawing the right of manufacturers, importers and retailers from supplying products which do not meet determined efficiency levels. Several states commenced mandatory labelling in the 1980s, but it was not until 1992 that a mandatory national labelling scheme was agreed and legislation in the last state and territory was not passed until 2000. (NSW Department of Energy Web Page)

The states have coordinated this work through the ministerial council ANZMEC. In 1990 ANZMEC established a working group of officials, called the Energy Management Task Force, which has continued a program of development of MEPS and labelling, which are implemented by individual jurisdictions. A further group, the National Appliance and Equipment Energy Efficiency Committee (NAEEEC), under the Chair of the AGO, has now been established to further coordinate the existing standards and labelling regulations, and to undertake further standards development. NAEEEC works to ANZMEC’s Energy Management Task Force (NGS 2000; Hill media releases 2 Oct 1996; 5 June 1997; NSW Department of Energy Web Page).

Emissions trading, carbon credits and greenhouse sinks

This combination of strategies is a Commonwealth initiative, and is perhaps the grandest NEPI of them all. The AGO web page announces emissions trading as ‘potentially a low cost policy instrument’ (AGO Web Page). It is a low cost instrument with the highest ‘no regrets’ potential, offering as it does a means of meeting emission reduction targets with minimum actual impact on industrial processes and profits. The appeal to Australia, with its high dependence on fossil fuels fired industry, of an alternative strategy based on planting trees on the nation’s notoriously cleared acres – while limiting further clearance – is obvious.
In Australia, the Commonwealth followed its success at Kyoto by setting up an Emissions Trading Team in the AGO, and an Experts Group including executive management from a range of key public and private organizations. They have been tackling the technical and policy development work involved in setting up an Australian trading system. This includes issues like the measurement, monitoring and verification of emissions, the setting of a value for carbon credits and the relationship between tree planting and credits. It also includes development of a National Carbon Accounting System ‘to provide a complete accounting and forecasting capability for human-induced sources and sinks of greenhouse gas emissions from Australian land-based systems’. Such work and its potential national and international potential also account for the enthusiasm, and major funding contribution, of the Commonwealth government for the establishment, through the National Environment Protection arrangements, of a National Pollutant Inventory. (AGO Web Page)

Another issue involved in preparing the way for a potential Australian emissions trading system is how to make sure that a future credit system would not disadvantage businesses which are already making moves to improve emission levels, or investing in potential sinks. A commissioned report on this question was released in December 2000 and is currently open for comment. The report recommends an auctioning system for allocation of greenhouse gas emission permits, but offers as an alternative permit allocation on the basis of future emissions, adjusted to a best practice benchmark. (AGO web page - Emissions Trading and Carbon Trading, Emissions Trading and Carbon Credits: General Questions; AGO media release 14 December 2000; Hill media release, 14 December 2000) The no-disadvantage issue appears to have been raised by representatives of big business, all of them members of the high profile Greenhouse Challenge, who met with Ministers Hill, Minchin and Anderson in June 2000 (SMH 21 June 2000, 5).

This intervention was a factor in the defeat of Robert Hill’s apparent attempt to add two stronger policy instruments to these carbon-trading preparations. One was the proposal for a greenhouse trigger under the EPBC Act, which would have given the Commonwealth power to intervene in environment impact assessment of proposed developments threatening production of major greenhouse emissions. The other was the possibility of the mandatory introduction of an Australian carbon trading system in advance of international agreement and ratification of the Kyoto Protocol. Both appear to have been defeated by the joint efforts of industry lobbying and intervention by Industry Minister Minchin and Deputy Prime Minister and Leader of the National Party, John Anderson (SMH 21 June 2000, 5 and 14 Nov 2000, 5; SMH 14 Nov 2000, 15).

The Commonwealth has been using the prospect of emissions trading to enhance its many vegetation, re-vegetation, land management and forestry programs. These are built primarily in terms of conservation, environmental sustainability and natural resource management and, lying as they do within state natural resource responsibilities, are heavily dependent on intergovernmental federal processes. They are largely funded by the Commonwealth through the NHT, and are often built on pre-existing programs also funded by the states, and coordinated by intergovernmental ministerial councils. Other programs with sink building potential are the National Landcare Program, another pre-Howard government intergovernmental program which now provides NHT funds to supplement local and state investment in supporting groups and landholders in solving soil, water and vegetation management problems, and Bushcare, which works on a similar basis to address remnant vegetation, re-vegetation and habit issues. (AFFA web page - National Landcare Program; EA web page – Bushcare)

The Commonwealth’s biggest innovation in this area, and the one most closely related to sink building and prospects of carbon credit trading, is the Bush for Greenhouse Program. This involves the appointment by the Commonwealth, through the AGO, of a so-called ‘carbon broker’, namely a consortium of Ernst and Young, Greening Australia and Landcare Australia. The AGO funds the carbon broker’s administrative costs and the broker is to seek out business investment to support tree planting. While investors cannot be offered a tradable carbon credit, they will be rewarded with carbon offsets, which will be recognized under the Greenhouse Challenge Program (AGO web page - Bush for Greenhouse; Hill media release 13 April, 2000).

In the meantime, and while the international issue of carbon trading was put on hold for six months at The Hague, some state level developments have been taking place. The NSW government adopted a version of pollution trading under the licensing system created by its Protection of the Environment Operations Act 1997. Under this Act, a load-based licensing (LBL) system commenced on 1 July 1999. Businesses
with the greatest potential to harm the environment are required to be licensed. These are listed as heavy industry, sewage treatment, electricity generation and waste facilities. Two kinds of license fees are required, namely administrative fees based on the type and scale of activity and pollution load fees proportional to the quantity and type of pollutants discharged. The pollutant load fees offer the incentive of fee reductions with reductions in pollutant emissions. The scheme, it is noted, also provides an infrastructure for emission trading, as those who reduce emissions find that they possess surplus emission units, which can then be sold to others. It is claimed that this trading potential broadens ‘the cost saving potential of LBL from individual premises to the control of emissions from whole groups of licensees’ (EPA NSW web page - Licensing).

The Greenhouse Challenge

The jewel in the crown of the Commonwealth’s greenhouse policy is the Greenhouse Challenge. This is a program that relies primarily on the Commonwealth’s powers for communication and coordination, and its main characteristic is that it defers to the role of the private sector in taking responsibility for greenhouse measures. The Greenhouse Challenge is described as ‘a cooperative effort of Australian industry and the Commonwealth Government to reduce greenhouse emissions through voluntary industry action.’ (AGO Fact Sheet - AGO Web Page) It has also been described as ‘a voluntary, co-regulatory alternative to a carbon tax or mandatory targets for reducing greenhouse emissions’ (Parker 1999, 63). It involves industries signing cooperative agreements with the Commonwealth government, which commit them to undertaking a six-step process. The steps are similar to those involved in most other similar voluntary agreement processes, for example the National Packaging Covenant and the Generator Efficiency Program, a scheme to produce plant specific emission efficiency standards through a five year Deed of Agreement, backed by the prospect of legislation if objectives are not met (ESWG 2000). For the Greenhouse Challenge, the steps are: establishment of an inventory of emissions; development of an action plan to minimize emissions; setting up a forecast of expected reductions; signing a cooperative agreement committing the enterprise to agreed reductions; monitoring emissions and reporting publicly on progress; and agreeing to independent verification (AGO Fact Sheet - AGO Web Page). Significantly, and, unlike the waste packaging and generator efficiency strategies, there are no sanctions for failure to comply with agreements and no ‘big stick’ to fall back on if the program fails to produce adequate emission reductions. This has been contrasted with the equivalent program in New Zealand, which set an emissions reduction target for industry and warned that a carbon tax would be imposed if the target were not met (Parker 1999, 64).

As the Challenge developed, it was extended to include a sector called Managing Energy for Profits, designed to recruit medium sized enterprises and to offer them team-based strategies (Hill, Parer and Moore media release 24 June 1997; AGO 1999, 24). Another innovation is the Greenhouse Allies Program for small businesses, which includes mentoring by large Challenge members (AGO Fact Sheet - AGO Web Page; AGO 1999, 25). In return for their participation, the Challenge members are provided with technical support from the AGO at the government’s expense, including prepared Workbooks and the technical support of a designated liaison officer (Parker 1999, 65).

Recruitment to the program has been extremely successful. The AGO Annual Report for 1998-99 notes agreements signed with 224 enterprises, with another 178 having signed letters of intent to join. Those already in the program included 98% of current electricity generators, distributors and transmitters, all cement manufacturers, all major aluminium smelters and refiners, and 78% of emissions generated by mining (AGO 1999, 24). By August 2000, 388 companies had joined the Challenge and another 234 were committed to join (Hill media release 31 August 2000). Soon afterwards, it was reported that the first 35 major Australian companies had undergone independent verification of their achievements under the Challenge. These companies included Shell, BP, Caltex, BHP, Pasminco and Western Mining and the electricity generators Macquarie Generation and Delta Electricity (Minchin media release 11 October 2000).

In fact, industry interest and lobbying was involved in the original conception of the Greenhouse Challenge. Back in 1995, industry was disturbed by rumours that the then Labor Commonwealth government was considering a carbon tax strategy. To counter this, 30 leading companies and industry associations formed themselves into the Australian Industry Greenhouse Network, and used it to approach the government with the counter-proposal to form the Greenhouse Challenge. The Greenhouse Challenge
was launched in October 1995 and the first agreements were signed in June 1996. Not surprisingly the Howard government decided to continue the program unchanged (Parker 1999, 65).

The Queensland Government has decided to use the Commonwealth program as a way of indicating its own greenhouse commitment. In May 1997 it was announced that Queensland had become the first state to sign a Memorandum of Understanding with the Commonwealth, pledging its support in encouraging companies to join the challenge. At the same time, two Queensland government enterprises, AUSTA Electric, a major electricity generator, and Queensland Rail signed with the Challenge (Hill media release 1 May 1997).

The Australian Industry Greenhouse Network continues to fulfil a ‘watchdog’ and lobbying role for industries worried by greenhouse developments. It is now (March 2001) a network of 12 peak industry associations and 24 major companies. Together they maintain a small secretariat to represent their interests. The aims of the Network are: to ensure members are fully informed of and have the opportunity to participate in climate change policy developments in Australia and internationally; and to represent the views of members of the network in dealings with Australian governments on all aspects of the climate change issue, with particular focus on the development and implementation of greenhouse response measures. The activities of the Network include providing an industry adviser on Australian delegations to international climate change negotiations and to work with Commonwealth and state governments on the implementation of the National Greenhouse Strategy (AIGN web page).

Both the strength of this Network and the much vaunted profile of the Greenhouse Challenge have enabled industry to use it as a bargaining tool with government. It was reported that at the lobbying meeting of industry with the Commonwealth in June 1999, the major Australian company BHP threatened to leave the Greenhouse Challenge if it was not given an assurance that there would be no introduction of an Australian carbon trading system in advance of international ratification of the Kyoto Protocol, and that the early emission reduction efforts of companies like itself would be recognized in any trading system that was eventually developed (SMH 21 June 2000, 5; SMH 14 November 2000, 15; SMH 14 November 2000, 2). The Cabinet in-principle decision to support a so-called ‘early credit’ system followed, with release of the discussion paper in November 2000 (Hill media release 15 November 2000; SMH 16 November 2000, 10).

Conclusions

The greenhouse strategy case tells a more complex story than the packaging case. It is clear that political and ideological factors are at work within and upon the Howard government in prompting it to lean towards some kinds of NEPIs, particularly those that entail very few constraints or additional costs on business. There is strong opposition within Australian big business to measures such as a carbon tax or mandatory targets backed by legislation and sanctions. So far the Commonwealth has heeded these signals, and has sought to achieve greenhouse targets using other, more business-friendly, measures.

At the same time, some factors deriving from the peculiar institutional constraints of the federal system, and similar to those evident in the packaging case, are in evidence. Governments continue to do only what their particular resources allow, and little effort is made to combine those resources to develop other strategies. The states in some cases have their own strategies (for example the NSW pollution load fees system), and some view the greenhouse policy arena primarily as a means of extracting financial concessions from the Commonwealth. In the absence of a set of reliable, collaborative institutions in place to set in train the kind of cooperation evident in the case of NEPMs, adversarial relations often ensue. NEPMs, while they have achieved successes such as the waste packaging case, are not popular with the participating governments. Some states see them as a way for the Commonwealth to pass off onto them the costs of formulating and implementing national policy; and all jurisdictions remain somewhat wary of a system of collaborative decision-making in which they agree in advance to surrender so much autonomy.\(^{iv}\)

\(^{iv}\) An example of such state resistance may be found in the attempt by the Commonwealth to set up a waste oil recycling scheme through a NEPM. It was eventually established as a purely Commonwealth initiative, through legislation putting a levy on oil producers and importers and using the resulting funds to offer incentives to oil recyclers. The Commonwealth also provided $15 million over four years to set up the scheme. (Hill media release 9 May 2000; PM Statement 28 May 99; EA Online - Product Stewardship Arrangements for Waste Oil)
One of the root causes of the contemporary lack of environmental policy capacity is that none of the stakeholders has any faith in the reliability or credibility of the current federal institutional arrangements as a forum for building trust and reaching binding agreements. Coherent, effective policies that require the marshalling of state capacity against the opposition of business are constrained by federal conflicts over money and jurisdiction, in part because the Howard Government has not sought to work collaboratively with the states. The unilateralism of Environment Minister Hill, coupled with the indifference of Howard towards COAG, have in some measure encouraged the kind of stratagem to be observed in the case of the Queensland Premier, with his attempt to blackmail the Commonwealth into bailing his Government out for a history of weak legislative controls over land clearing.

At the same time, the federal dimension is clearly only part of the story. The choice of “soft” strategies such as the Greenhouse Challenge is a reflection of contemporary policy priorities by a government that sees the primary need to satisfy business demands. In Australia’s open economy, there is fierce resistance to diminishing the country’s so-called “comparative advantage” of dependency on cheap fossil fuels. Measures such as a carbon tax, or strict mandatory targets, are resisted because of the sensitivity towards government-imposed business costs in a competitive international environment such as Asia, with its strongly pro-business, low tax governments.

In sum, there is evidence from these case studies that first, the nature of institutional arrangements in the federal arena matters greatly for achieving coherent national environmental policy outcomes; second, that these arrangements work particularly well when industry as well as governments provide mutual assurances as to their willingness to cooperate, that is for schemes in which voluntary restraint, self-regulation and joint monitoring are the predominant tools; third, that such schemes crucially require legislative back-up and the possibility of sanctions in order to provide assurances against free-riding, that is, the critical factor is the appropriate mix of instruments in the one scheme of policy; and fourth, that where unilateralism prevails and joint action is not possible, policy is less likely to achieve such a desirable mix of instruments due to the predispositions and biases that are built into the manner in which powers are divided and shared. Evidence suggests, for example, that the Commonwealth’s powers and resources lean it towards somewhat toothless and none too productive schemes of voluntary cooperation, whereas its unilateral attempts at statutory frameworks (such as the EPBC) suffer from lack of connection with those of the states, unfamiliarity with the state’s regulatory business, and the potential for contradictory and confusing overlaps. Conversely, the states look first to regulation, even if some have moved on to more sophisticated, policy-driven licensing and charging schemes. Their distinctive policy styles, partial coverage and vulnerability to local pressures add to the unlikelihood of effective, national systems of regulation.

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