

Reflections on the Australian Federal System of Government: Operations, Benefits and Limitations

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Abstract

Federalism in Australia is an enduring system of government which has served Australia, a large and diverse nation of more than 25 million people, for 125 years. Six states and two territories operate under a written constitution, which does not include local government.

Its operations have been tested and it is not always popular, but it is durable. There is now little serious elite inclination to introduce large-scale reform, though efforts have been made in the past. The system is settled for the moment.

The federal system has survived wars, pandemics, and natural disasters with mixed success. Its operations have evolved to meet new circumstances and the aspirations of different political leaders and political movements and parties. This evolution has only rarely involved formal constitutional change, but rather has come about through judicial interpretation and executive cooperation.

Its benefits include the flexibility to deal with regional differences, including economic and financial disparities, and to respond to local cultural differences and varying needs. Mechanisms exist to meet the different needs of regions and to balance economic disparities.

Its limitations, demonstrated during the recent Covid-19 pandemic, can involve inter-jurisdictional gaps and conflicts and an inability to resolve regional self-interest in pursuit of a common good. While the system encourages regional innovation, the downside can come in failures in national leadership and coordination at times of crisis.

Speaking Paper

Introduction

Federalism in Australia, enshrined in writing in the Commonwealth of Australia Constitution of 1901, is an enduring system of government which has served the nation well.

The essence of the system is the relationship between the federal government, based in the capital city Canberra (founded in 1913), and the six states: New South Wales (NSW), Victoria, Queensland, Western Australia, South Australia, and Tasmania. The states are diverse in many ways. The two largest states by population are NSW and Victoria, which make up about two-thirds of the population of c. 25 million. Queensland and Western Australia are two big wealth-producing states relying on mining and rural production. The other two, Tasmania and increasingly South Australia, are smaller, sometimes mendicant states, reliant on the federal government.

There are in addition two territories, the Australian Capital Territory, seat of the federal parliament and many other national institutions including the High Court, and the Northern Territory. They have legislative rather than constitutionally enshrined powers. Local government exists across the nation, but it has no constitutional powers.

The system of government is the Westminster system of parliamentary government (sometimes called the 'Washminster' system in Australia because of federalism), and the nation is a constitutional monarchy in which the Head of State, the Queen, is represented by a Governor-General. Each government is elected for a three-year term.

In the bicameral federal parliament the lower house, the House of Representatives, represents the community by population in 150 single-member electorates. Two-thirds of members come from NSW and Victoria. Government is decided in this People's House.

The 76-member upper house, the Senate, is known as the States House. Each state elects 12 senators for six-year terms. Each territory elects two senators for three-year terms. All legislation must pass both houses of parliament and be ratified by the Governor-General on the advice of their ministers in the Executive Council.

Strains on the System

The federal system has been tested and is durable though not always popular. There is now little serious inclination to abolish the system or to introduce large-scale systemic reform, though there have been efforts made in the past. The system is settled, though it remains possible that the territories may become states.

The shape of the system has been threatened. The first threat was of secession by Western Australia in the early 1930s. The second threat came from advocates of new states in the 1950s, especially in NSW and northern Queensland. Such new states would divide existing states into smaller areas to increase closer accountability and to address regional grievances.

S.128 of the Constitution contains the method of formal constitutional change by popular referendum. This method necessitates a legislative proposal passed by both houses of parliament then being passed by a double majority of the electorate (by states and by population). This method has proven to be quite unsuccessful. Only eight of 46 attempts have passed, the most recent almost 50 years ago in 1977. Recent failures include the inclusion of local government in the constitution (1988), the introduction of a republic (1999) and the inclusion of an Indigenous Voice to Parliament and Government (October 14 2023). Some conclude that the constitution is 'frozen'.

While public opinion is not enthusiastic about the federal system that is not the main concern of the public. The higher priority of the public is its falling trust in government as a whole and its widespread scepticism about the contribution of all political parties and all political leaders to community well-being.

Key Ingredients

There are at least four key ingredients to the Australian system.

The system depends on cooperative federalism as many of the powers are shared, as are financial resources. No one sphere of government can govern alone.

There is considerable financial horizontal and vertical imbalance within the system. This leads to federal government dominance over the state and territory governments and to competition between the states. Balance is difficult to achieve.

The High Court is the adjudicator through constitutional interpretation. It has consolidated federal government power, especially ruling in the 1940s in wartime that the Defence power gave the federal government primary control over income tax. It has also limited the powers of the state governments to levy indirect taxes.

The daily business of federalism is executive federalism, conducted by ministers and bureaucrats in a myriad councils and informal relationships. The highest level of such executive federalism is the new National Cabinet, previously known as the Council of Australian Governments (COAG) and known prior to that as the Premiers Conference.

One of the weaknesses of such executive federalism is lack of transparency. Citizens are increasingly unable to hold their governments accountable because the locus of power over policies is unclear. Even parliamentarians often find it difficult to hold their own governments accountable after policy enters the federal-state intergovernmental sphere and disappears into a 'black hole'.

Coping Mechanisms and Benefits

Advocates of the benefits of federalism argue that it provides for effective innovation within the system both at the federal and state level.

At the federal level horizontal imbalance was dealt with from the 1930s by a body known as the Commonwealth Grants Commission. Its guiding principle was equity in government services for the Australian citizens regardless of their location within the federation. The idea was that no one would be forgotten or treated inequitably.

The Howard government (1996-2007) introduced a 10% General Services Tax (GST) to bolster the financial independence of state governments. It remains unaltered.

Policy development within the federal system tends to take place by a 'contagion' effect over time. Legislation is introduced step by step across the nations. This tends to happen with state government policy taxation initiatives, such as death taxes and stamp duty taxes. This has also happened over the past sixty years with social policies such as abortion law reform and, over the last decade, with voluntary assisted dying legislation. Environmental policy is highly contested between states, controlling land and agriculture, and the federal government.

Major Recent System Tests

The limitations of the federal system can involve inter-jurisdictional gaps and an inability to resolve regional self-interest in pursuit of a common good. While the system encourages regional innovation, the downside can come in failures in national leadership and coordination at times of crisis.

Two current political issues illustrate the operation of the federal system.

Relations with China:

Foreign relations increasingly test the ‘grey areas’ of the Australian federal political system. One of the characteristics of federal systems is contested responsibility and lack of clarity in accountability. This has occurred in various recent issues to do with the Australia-China relationship. These issues have caused tensions and taken months if not years to resolve.

The conduct of international university research, including the employment of research staff, the sharing of research findings, and attendance at international conferences, is torn between federal and state government responsibility.

State and Territory governments have taken initiatives in the Australia-China relationship which have concerned the federal government. These include the signing of the Belt and Road initiative by the Victorian government and the leasing of the Port of Darwin to a Chinese government entity for 99-years by the Northern Territory government. The Victorian government was forced by the federal government to withdraw from the first initiative, and after a federal government review the latter agreement was confirmed.

Managing the Covid-19 Pandemic:

The recent pandemic proved to be an enormous test for the Australian federal system. Australia’s health escaped relatively well from the worst of the pandemic, but this may primarily have been because the federal government quickly closed Australia’s borders.

Governments sought to address these concerns by the initiation of a new National Cabinet and by intense federal-state politics. There were many accusations and blame shifting. State governments retreated behind their own borders and the federal system fragmented. Citizens demanded answers and governments bickered. There were accusations of lack of preparation and inadequate government responses all round. Powers were tested several times in the High Court.

The federal government led the financial intervention response to economic decline, but state governments provided support. Support for unemployed individuals and struggling companies was shared but largely federal.

The federal government objected to many state actions, especially border closures and local lockdowns, but were often left powerless to intervene. This also applied to the school closures implemented by the state governments but opposed by the federal government.

One major problem was shared jurisdiction and lack of clarity as to which level of government was responsible for various problems. These policy areas included aged care and hospitals, both public and privately owned, which were central to the policy responses to the pandemic. Many deaths occurred in aged care and private hospital services were commandeered. Another area was inward-bound air travel which was controlled by the federal government, though airports were privately owned or in state or local hands. Care and monitoring of passengers after arrival fell to state and local governments, some of which were open to travellers while others had strictly locked borders.

Conclusion: ‘Two Cheers for Federalism’

My reflections are based on many years of observation of Australian federalism and some knowledge of other federal systems. I have noticed that the face of federalism in Australia changes on a regular basis. It is never static, which makes final judgements difficult.

I say “Two Cheers for Federalism” because the federal system that I know is a flawed but adequate system. Its participatory and ‘smaller government’ ideals are attractive even though it is often battered in practice by popular opinion and expert argument. In an era of falling trust in all systems of government that should not be surprising.

Federalism provides a feast for political scientists and constitutional lawyers. My best advice is for participants to work within the system to improve its operations where they can, building on its advantages, while always remaining aware of its potential limitations and weak points.

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