

3 Australian federalism and the COVID-19 crisis

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3.1 Introduction

Australia’s federal system handled the COVID-19 pandemic throughout 2020 remarkably well — lauded, indeed, for the unusually cooperative manner in which it functioned (e.g., Saunders 2020; Williams 2020). This was reflected in public opinion, with Australians giving their governments full marks (PRC 2020). There was certainly some friction between the Commonwealth and the States, manifestations of the inevitable tension between the necessity and the cost of prophylactic measures; however, it proved of little detriment.

Things might well have been otherwise, with the stresses of the crisis exposing yet again some of the oft-remarked debilities of federal governance in Australia.¹ In terms of pandemic threats, some health experts had earlier warned of the danger of relying on Australia’s ‘patchwork of legislative measures,’ arguing that those would prove ‘cumbersome and difficult’ in an emergency such as this (Howse 2004; also Brew and Burton 2004). Others have been more sanguine — emphasizing the degree to which the system’s complex arrangements provide a desirable level of ‘flexibility and choice’ as demonstrated in the management of the H1N1 pandemic in 2009 (Bennett, Carney and Bailey 2012).

Meanwhile, the crisis might have elicited another round of heavy-handed unilateralism from the Commonwealth government and a further ratcheting up of the secular process of centralization that has been broadly experienced by the established federations, particularly Australia, over the longer term (Dardanelli et al. 2019; Fenna 2019a). After all, this crisis came immediately on the heels of a catastrophic bushfire season where, in response to some coordination issues, the prime minister immediately called for greater Commonwealth disaster management powers (Benson and Chambers 2020; PM 2020a; RCNNDA 2020). Instead, though, Australia’s handling of the pandemic showcased the continuing importance of the States and a surprising degree of popular support for their individual actions. It also demonstrated some of the ways in which divided jurisdiction can be an asset in crises of this nature (Table 3.1).

Table 3.1 Key Statistics on COVID-19 in Australia to 31 December 2020

<i>Cumulative Cases</i>	<i>Cumulative Cases per 100,000 Population</i>	<i>Cumulative Deaths</i>	<i>Cumulative Deaths per 100,000 Population</i>	<i>Case Fatality Percentage</i>
28,405	112.1	909	3.6	3.2

Source: World Health Organization Weekly epidemiological update – 12 January 2021. Geneva: WHO, 2021. Available from <https://www.who.int/publications/m/item/weekly-epidemiological-update>

3.2 Impact of COVID-19 in Australia

Australia's first case, a passenger arriving from China, was confirmed on 25 January 2020 (McLean and Huf 2020, p. 3). Cases peaked at fewer than 500 per day at the end of March and rapidly subsided to nil through May and June for a total of approximately 7,000 cases. A more severe second outbreak subsequently occurred in Victoria, leading to the declaration of a 'state of disaster' by the State government on 2 August (McLean and Huf 2020, p. 3). That 'second wave' peaked at 700 cases per day in late August and subsided more slowly through September, driving total cases up more than three times what they had been and increased deaths sevenfold. Three quarters of those deaths occurred in aged-care facilities (RCACQS 2020, p. 2). With a population of 25 million, Australia had 28,405 recorded cases of COVID-19 and 909 associated deaths in 2020 — a very modest rate of 35 per million.

Economically and fiscally, the cost of the containment measures was substantial. Three decades of economic good fortune in Australia finally ran out as the lockdowns induced the largest quarterly decline in gross domestic product (GDP) on record — falling 7 percent in the April–June period — and ushering in the country's first recession since 1990–1991. On the fiscal side, 2020 was to have been a year of celebration for the conservative 'Coalition' parties holding office in Canberra, with the Commonwealth budget scheduled to return to surplus for the first time since the Global Financial Crisis (GFC) of 2008–2009. Instead, the budget went from a projected surplus of \$8bn to a deficit of \$92bn over the 2019–2020 financial year (Frydenberg and Cormann 2020), and the deficit for 2020–2021 was budgeted at \$214bn (Treasury 2020a). At 11 percent of GDP, that is more than twice the size of the deficits run during the GFC by an avowedly Keynesian Labor government in Australia (Fenna 2010; Treasury 2009). Continuing deficits for the foreseeable future were projected to drive Commonwealth net debt from 25 percent to 44 percent of GDP and budgets in the worst-hit States were also thrown into deficit.

3.3 Emergency management in the federation

Australia is famously a 'land ... Of droughts and flooding rains' (Mackellar 1911), not to mention other natural disasters such as bushfires and cyclones. While responsibility for emergency management lies with the States, resource limitations, spillovers, national dimensions, and external border issues create a role for the Commonwealth.

3.3.1 *The constitutional structure*

In design, Australia is a classic 'dual' federation made up of the six founding States and the Commonwealth. The States were granted the full range of powers and responsibilities they possessed prior to federating other than those expressly denied them (s. 107). The Commonwealth, meanwhile, was assigned a limiting list of specific enumerated powers, mainly concerned with ensuring the common market and managing Australia's border and external relations (ss. 51 and 52). Few of those are exclusive, but for the concurrent ones, the Commonwealth is granted primacy (s. 109). The States shoulder responsibility for most service delivery.

While thus decentralized by design, a century of centralization has greatly expanded the role and influence of the Commonwealth (Fenna 2019a). The Commonwealth's enumerated powers have been given broad interpretation by the High Court, and it has

assumed a position of fiscal dominance allowing extensive use of the ‘spending power’ (Fenna 2008). Controlling the three main tax bases and raising 80 percent of all the tax revenue in Australia, the Commonwealth has financial resources far in excess of its program requirements, while the States are dependent on the Commonwealth for almost half their revenue needs. Reform is periodically mooted, but almost never achieved (Fenna 2017). Under Section 96 of the Constitution, the Commonwealth is at liberty to apply ‘such terms and conditions’ as it ‘thinks fit’ to those transfers on which the States depend, and conditional or ‘tied’ grants make up more than half of the amount the States receive in transfers (Treasury 2020b). This has allowed the Commonwealth to indulge in ‘opportunistic’ or ‘coercive’ federalism and has made Australia part of that tendency whereby ‘officially dualist regimes are being pragmatically, casuistically, informally, and partially transferred into integrated or hybrid ones’ (Poirier and Saunders 2015, p. 492).

There is also a high degree of fiscal equalization, such that each State and Territory enjoys the ability to deliver services of an equivalent standard. These realities reflect the extent to which Australia is a culturally homogeneous federation, and there is broad support for the principle of a common citizenship.

3.3.2 *Responsibility for emergency management*

The Commonwealth’s enumerated powers do not include any explicit authority to legislate for civil emergencies. “Recently, however, the Commonwealth Parliament has passed laws that purport to give it significant control over the management of a certain type of civil emergency, a ‘biosecurity emergency’” (Lee et al. 2018, p. 171). Using its assigned authority for quarantine (s. 51.ix) and sundry other provisions, the Commonwealth’s recently overhauled statutory framework for dealing with disease threats to plants, animals, and humans, the *Biosecurity Act 2015* asserts sweeping control powers.² ‘During a human biosecurity emergency period, the Health Minister may determine any requirement’ and ‘give any direction, to any person, that the Health Minister is satisfied is necessary’ for containing the spread of the disease, according to the Act (ss. 477 and 478).

Insofar as the Commonwealth has significant infrastructure for responding to emergencies, that is either the Australian Border Force or the Australian Defence Force (ADF). The Commonwealth’s one service delivery responsibility directly relevant to this crisis is aged care (RCACQS 2020, p. 2).

It is the States that operate the public hospitals, the government school systems, and the police and emergency services agencies. They also have primary jurisdiction over public health as well as criminal and civil law; they license and regulate the operation of the thousands of businesses, facilities, and services that are potential sites of contagion, and they provide thousands more public amenities of their own that likewise present risks. The States each have their respective public health and emergency management Acts (McLean and Huf 2020). Reflecting these constitutional and practical realities, the Commonwealth has consistently acknowledged that ‘state and territory governments have primary responsibility for the management of communicable disease emergencies’ (Health 2018).

3.4 Australian federalism in the crisis

Leaving aside the question of how competently individual governments responded, the issue here is how, and how well, did Australian federalism respond to the crisis?

Was there an effective division of responsibilities? Did governments have capacity commensurate with their responsibilities? Did divided jurisdiction provide any benefits? Were the potential disabilities of divided jurisdiction avoided? On that last point, many commentators have emphasized the importance of *coordination* in federal systems — which may have the dual benefit of reducing policy incoherence and protecting constituent units from coercive unilateralism (Schnabel 2020, p. 49). ‘The COVID-19 outbreak is an extraordinary situation that requires this essential inter-governmental framework to function extremely well,’ averred the OECD (2020a).

3.4.1 *Managing the crisis*

Australian border restrictions were implemented in response to emerging signs of the pandemic, beginning with a restriction on foreign nationals from China on 1 February. Further tightening occurred, and with the declaration by the Commonwealth of a ‘human biosecurity emergency’ under the *Biosecurity Act* on 18 March, the country’s borders were closed to non-residents. To minimize the problem of returning travellers, the Commonwealth also moved soon after to impose a ban on residents leaving Australia and quarantining requirements on those returning. All States except New South Wales (NSW) declared a ‘state of emergency’ (McLean and Huf 2020, p. 8). As discussed further below, four of the six States then closed their domestic borders. In tandem, measures were imposed to limit human contact, including bans on mass gatherings, closure of restaurants and other services, and more contentiously, schools. Aside from external border control, most of the response was initiated and organized by the States — though, as discussed below, in the context of intergovernmental coordination.

3.4.2 *The intergovernmental relations context*

Like most other federations, Australia has an extensive array of arrangements through which intergovernmental relations in the form of ‘executive federalism’ are practised. At the apex of these is the first ministers’ meeting, which, in 1992, was formalized as the Council of Australia Governments (COAG). COAG was a ‘summit meeting’ of Australia’s heads of government together with the president of the Australian Local Government Association that met infrequently and for brief moments, on terms dictated by the prime minister (Anderson 2008; Phillimore and Fenna 2017). On the next tier down are the portfolio-based ministerial councils, which have a long history in Australia.

While a relatively dense network, Australian intergovernmental relations have a low level of institutionalization. Neither COAG nor the ministerial councils have any statutory basis, and despite the frequent use of intergovernmental agreements in Australia, they have not been formalized via that means either. On various occasions, suggestion has been made that a more defined ‘institutional architecture’ would enhance the functioning of Australian federalism (e.g., PMC 2015). There is little incentive, though, for the Commonwealth to tie its hands in that way. This reinforces the vertical and Commonwealth-dominated nature of cooperative federalism in Australia (Phillimore and Fenna 2017). Meanwhile, there is virtually nothing by way of horizontal arrangements to provide a counterbalance — the Council for the Australian Federation (CAF) being the main, but only very briefly effectual, exception.

Commonwealth hegemony was reflected in the fluctuating fortunes of COAG: being enlisted energetically when the government of the day needed a high level of cooperation from the States to advance its agenda and neglected when no longer needed. In the mid-1990s, the Commonwealth sought sweeping micro-economic reform in areas of State responsibility and was obliged to adopt a collaborative approach (Fenna 2019b; Painter 1998). Similarly, COAG became the ‘engine room’ of the federation during the frenetic Rudd government years of the GFC (Fenna and Anderson 2012).

Under the auspices of COAG, Australia’s governments established a framework for roles and responsibilities in the event of a threat such as COVID-19, beginning over a decade ago with the *National Health Security Act 2007*, the *National Security Health Agreement*, and model arrangements (COAG 2008b). A range and succession of emergency planning documents followed.³ In 2018, for instance, State and Territory health ministers and the intergovernmental emergency management committee signed off on the *Emergency Response Plan for Communicable Disease Incidents of National Significance: national arrangements*, the ‘National CD Plan.’⁴ In 2019, the Commonwealth and the States and Territories signed the *Intergovernmental Agreement on Biosecurity*. In general, these agreements ‘reinforce that the States are primarily responsible for exercising special powers in response to civil emergencies, whereas the responsibilities of the Commonwealth generally lie in providing logistical and financial support as required’ (Lee et al. 2018, p. 174; also Home Affairs 2019). This was similarly the message of the *Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19)*, released in the early stages of the pandemic. One way in which the Commonwealth plays that supporting role is through its maintenance of the National Medical Stockpile, established for States to draw on in times of emergency (ANAO 2020). The other role consistently identified for the Commonwealth in these planning documents was coordination — though quite what that entails is an open question.

3.4.3 Loose coordination through ‘national cabinet’

At its meeting on 13 March 2020, COAG announced the *National Partnership Agreement on COVID-19* (Australia & States and Territories 2020; COAG 2020). This reaffirmed the division of labour laid down in existing framework documents and provided extra Commonwealth funding to support health services. It was immediately followed by the prime minister’s (2020d) announcement that a new intergovernmental forum would swing into operation: ‘National Cabinet,’ a cabinet-style meeting of the first ministers.⁵ This innovation attracted particular — and typically very favourable — attention as embodying an elevated spirit of cooperative federalism in Australia.

National Cabinet was not a cabinet in any proper sense of the term; it was executive federalism in a fresh and more dynamic guise. Most importantly, as with other intergovernmental meetings in Australia and elsewhere, decisions cannot be made binding. At the same time, it is more than just COAG re-badged: at the height of the first wave, National Cabinet meetings were held weekly and were apparently characterized by genuine discussion and consensus decision-making — ‘co-design,’ as the Victorian government (2020) very approvingly expressed it. Reflecting National Cabinet’s *raison d’être* here, its main supporting body has been the Australian Health Protection Principal Committee [*sic*], comprising Commonwealth and State chief

medical officers. The idea has been that Australia's governments collectively and individually follow the best available expert medical advice from across the federation.

National Cabinet provided *loose coordination*. Collective decisions were made, but the States remained at liberty to implement them as they saw fit. 'Each and every state and territory that is represented here is completely sovereign and autonomous in the decisions that they make,' declared the prime minister (2020d), albeit with some exaggeration. This collegial quality helps explain why the premiers were so enthusiastic. 'The National Cabinet has been effective because it has established national principles that recognize the sovereignty of states and territories to implement policies according to local circumstances' (Victoria 2020). For some commentators, though, this was a lamentable deficiency — with announcements like early May's 'roadmap' out of the pandemic being derided as a mere 'menu' from which the States could choose at whim, the result being no end to the 'confusion' (e.g., Crowe 2020).⁶ Such flexibility would seem, though, to be consistent with the OECD's (2020b) advice and indeed with the ethos of federalism more generally: 'Consider adopting a "place based" or territorially sensitive approach to exit-strategy implementation and recovery policies.' It was, after all, a 'roadmap,' not a set of driving instructions.

3.4.4 *Coordination on the ground*

Quite distinct from the question of peak level political coordination is the practical coordination that may be required at the administrative or service-delivery level. Various mechanisms for that purpose were activated as soon as the nature of the threat became apparent such as the National Coordination Mechanism in the Commonwealth Department of Home Affairs.

While many aspects of this crisis were readily handled by jurisdictions acting autonomously, coordination was necessary at points where the two levels of government intersected. One such intersection was the maritime international border point, where States control the ports and have responsibility for public health, while the Commonwealth has control over customs, immigration, emigration, and quarantine. Passengers disembarking in Sydney from the Ruby Princess cruise ship in March were one of the main vectors of infection in NSW. A NSW commission of inquiry subsequently found, however, that the main issue was not poor coordination between relevant Commonwealth and State services, but rather procedural lapses within the relevant State government agency (SCIRP 2020).

A particularly important point of intersection, given the locus of mortality, was that between Commonwealth responsibility for aged care and State responsibility for public hospitals.⁷ This does appear to have been an area where inadequate coordination contributed to the problem (RCACQS 2020, pp. 3, 11 and *passim*). It is also reflective of a broader and oft-noted operational tension in Australian federalism arising from the way responsibility for different aspects of health care and aged care have come to be somewhat promiscuously divided between the Commonwealth and the States (Fenna, Phillimore and Ramamurthy 2021).

Finally, there was the quarantining débâcle in Victoria that sparked the much-more severe second wave and led to imposition of an extended hard lockdown in the State. Having elected not to call on Commonwealth resources in the form of ADF personnel, the State government failed to ensure hermetic quarantining of overseas arrivals into Victoria. On the face of it, that was not a failure of federalism, but the result of poor

preparation, decision-making, and management *within* the State government (CHQI 2020). However, several commentators argued that, since quarantine is a Commonwealth enumerated power, the Commonwealth should not be leaving that important responsibility to the States (e.g., Van Onselen 2020). Management of quarantine had been identified in the H1N1 pandemic review as requiring clarification (DHA 2011; also DCSH 1988).

3.4.5 Sources of friction

As always, conflict gets plenty of attention. In this case, the main friction has been between the Commonwealth's desire to minimize the economic disruption and the States' insistence on containing the disease. This manifested itself in ongoing dispute over the stringency of lockdown measures and the closure of borders.

3.4.5.1 Economy and society

Such a conflict is to be expected: while both levels of government suffered financially from the crisis and both spent generously on tiding businesses and individuals through the crisis, it was the Commonwealth that bore the lion's share of both the economic and the fiscal burden. The OECD (2020a, 2020b) raised concerns about the fiscal impact of the crisis on *subnational* governments, but presumably that applies to systems with higher levels of fiscal decentralization. Not only is the Commonwealth the primary fiscal actor, but having responsibility for macroeconomic performance, it was also exposed to the economic fallout in a way the States were not. This was compounded by an ideological tension, where those on the right opposed strict measures on economic grounds (e.g., Wilkie 2020). In office at the Commonwealth level were the centre-right Coalition parties, whose emphasis has been on fiscal prudence.⁸ In office in the three States with whom there was the most intergovernmental conflict (Queensland, Victoria, Western Australia) was, meanwhile, the centre-left Labor Party.

Fiscally, the crisis threatened to be a disaster for the Commonwealth. The conservative parties holding office federally had built their economic strategy around restoring the public finances — public finances that were still recovering from Australia's energetic response to the last crisis, the GFC, a decade ago. To shore up the economy through the pandemic, the Commonwealth committed a vast sum to its 'JobKeeper' and 'JobSeeker' programs. The former, 'one of the largest labour market interventions in Australia's history,' was budgeted at \$130bn (Bishop and Day 2020, p. 1; Frydenberg and Morrison 2020).⁹ The longer the economy was to be kept in hibernation, the more costs would rise. As noted above, hibernation cost the economy and the Commonwealth fisc dearly. The recession also presented a fiscal challenge for a number of the States, and Victoria, the worst-hit, launched its own stimulus program. That drove the State's 2020–2021 budget into substantial deficit. Though large, at 5 percent of gross state product Victoria's deficit was less than half the Commonwealth's 11 percent of GDP (PBO 2020; Treasury 2020a).

The States have been at the frontline of the pandemic and containment was their dominant concern. It was the States who pushed in National Cabinet for stronger measures to contain the spread of the virus, and it was they who led the way. Once it became apparent that the measures were succeeding, the Commonwealth made clear its desire

to see them unwound as quickly as possible, but the States were more cautious. The resumption of face-to-face classroom teaching in Australia's schools was a particularly contentious point. In the middle of April, the prime minister (PM 2020c) announced that "National Cabinet agreed with the AHPPC health advice that 'on current evidence, schools can be fully open.'" At one point, the Commonwealth education minister took the dispute public only to be forced into a backdown — going from 'raging bull to mewling kitten,' it was said (Murphy 2020). Despite ongoing rhetorical pressure from the Commonwealth, the States continued to make their own, more circumspect, decisions.

3.4.5.2 *Border wars*

Another flashpoint was State government border closures, which commenced in March and in several cases continued as other lockdown measures were being eased in May. These were not unprecedented, having occurred in response to the Spanish Flu epidemic a century earlier (Cumpston 1978; Hyslop 1998). However, such action is, on the face of it, in flagrant violation of s. 92 of the Commonwealth Constitution, which stipulates that 'trade, commerce and intercourse among the States ... shall be absolutely free.' As in 1919, though, these have been exceptional times, and the border closures were hugely popular with voters. The closures were deplored by the Commonwealth, which joined a constitutional challenge but withdrew at the 11th hour when the second wave accelerated. On 6 November, the High Court dismissed the challenge, declaring that, under the circumstances, border closures were valid emergency measures consistent with s. 92.¹⁰

3.4.5.3 *An asymmetric power*

The *Biosecurity Act* equips the Commonwealth with potentially enormous powers to close things down, but that was not much use in this crisis since the States needed no prompting in that regard. What the Commonwealth so conspicuously lacked is the power to force the States to open things back up. The Commonwealth exercised a modicum of brute power to get its way: using its dominant fiscal position to bribe Australia's extensive array of private schools into reopening (Karp 2020). This was a rather minor invocation of its power, however, because the private schools are *de facto* within Commonwealth jurisdiction. The Commonwealth has not hesitated in the past to use its spending power to coerce the States in regards to schooling more generally, but it refrained in this crisis. In part, this no doubt reflected the high degree of public support enjoyed by the State governments; in part, it reflected the clumsy nature of such an instrument in these circumstances.

3.5 Discussion and conclusion

Australia's federal system proved adept at handling this crisis through 2020 and, if anything, to have been enhanced by it. Federalism demonstrated the advantages of subsidiarity and of what is sometimes pejoratively termed 'balkanization,' with States calibrating their measures to the local severity of the problem and using their borders as a barrier to the spread of the virus. At the same time, collegial national leadership and loose coordination provided collective decision-making where necessary and an overall sense of national direction and purpose.

3.5.1 *Loose coordination: a system suited for pandemic*

Australia's intergovernmental arrangements had laid the basis for coordinated action when called for — particularly given the investment over the preceding decade or so in establishing emergency *modus operandi*. At the peak level, COAG transitioned effortlessly into National Cabinet, where more rapid, collegial, and informal decision-making could occur. National Cabinet proved such an impressive exercise in collaborative intergovernmentalism because the Commonwealth had little choice but to rely in the main on the States for management of the crisis.

With the exception of some operational areas, tight coordination was not necessary since the approach of State-by-State management and jurisdictional quarantining was well-suited to controlling the spread of infection. This was particularly so given the large geographical size of the Australian States and the limited number of points where population centres are on or near borders. Much more so than the bushfires, a pandemic lends itself to the kind of decentralized and non-coordinated response federalism can provide. Borders, in the form of State regulatory diversity, have been a major target for federalism critics in Australia. This has particularly been the case for business — determined that there be, in COAG's words, a 'seamless national economy' (BCA 2008; COAG 2008a). In 2020, though, borders, were back. Unlike fire, the virus requires human vectors, so can be contained through such simple means. Individual jurisdictions, meanwhile, can calibrate their response to local conditions, and, since the main suppression mechanism is regulatory, resource limitations are not a major factor.¹¹

Insofar as adverse spillovers occurred, they primarily took the form of economic ramifications for the rest of the economy in cases where major jurisdictions adopted a full lockdown approach, as Victoria did during the second wave. Finally, if as was frequently alleged, the second wave was the consequence of policy and administrative mis-steps by the Victorian government, then federalism might also be seen as having delivered on its promise of quarantining poor politics or policy to individual jurisdictions. The need for rapid response combined with indeterminacies in the transmission of the virus, however, left little scope for federalism to demonstrate its much-touted potential for policy experimentation and learning — though there was some evidence in the respect of contact-tracing methods where NSW seemed to operate so much more effectively than Victoria (LSIC 2020; Paynter 2020).

3.5.2 *National cabinet: a new normal?*

Because National Cabinet has been such an unusual case of collaborative leadership and joint decision-making, it has been hailed as unprecedented and as representing a step forward in Australian federalism. Propelled by its success, the prime minister and premiers announced towards the end of the 'first wave' that the new arrangement would be made permanent and the 'COAG model' would be abandoned (PM 2020b).

Superseding COAG was to be an annual meeting bringing together National Cabinet, the Council on Federal Financial Relations, and the president of the Australian Local Government Association. A new label was, in turn, coined for this meeting: the National Federation Reform Council. 'This new model' was touted by the prime minister as 'a congestion busting process that will get things done' (PM 2020b). However,

not only does much of the work of intergovernmental relations depend upon bureaucratic processes, but COAG also had its celebrated episodes of energetic ‘reformism’ when that was the zeitgeist, and it is difficult to avoid the conclusion that National Cabinet should be seen as a crisis mode, rather than a new mode, of intergovernmentalism. The complex and conflictual realities of intergovernmental relations, as well as the top-down nature of Australian federalism outside of such exceptional crisis times, will surely lead the ‘new normal’ to look awfully similar to the old normal.

3.5.3 *Getting the balance right?*

There was certainly friction, but there is little indication that it was an impediment to effective action and no indication that it escalated into real conflict. Quite possibly, the balance between the Commonwealth’s insistence on minimizing fiscal and economic damage and the States’ preoccupation with minimizing infection ensured a good compromise. State government prudence was regularly criticized for inflicting excessive economic harm, and if they had more fiscal autonomy in the federation, perhaps the States would have acted differently. However, one cannot readily know whether that would have been for the better. In many ways, as well, their assertiveness was a healthy sign that the States retain some ability to act in defiance of the Commonwealth — a crucial trait of a federal system, particularly one such as Australia’s where so much centralization has occurred. Through the first year of the pandemic it would seem that the ‘patchwork’ that is Australian federalism did not work too badly.

Notes

- 1 Some of these were canvassed in the abortive Reform of the Federation White Paper process of 2014–2015 (RFPW 2014).
- 2 It is a motley collection of provisions including everything from the external affairs and trade-and-commerce powers to the “postal power”; see s. 24.
- 3 Including the *National Catastrophic Natural Disaster Plan*, *National Health Emergency Response Arrangements*, and the *Australian Government Crisis Management Framework*.
- 4 The Emergency Management Committee reported to the Ministerial Council for Police and Emergency Management — which, in turn, reported to COAG. That ministerial council was replaced in October 2020 by the National Emergency Management Ministers’ Meeting.
- 5 Minus the ALGA representation that was a feature of COAG.
- 6 *Roadmap to a COVID-Safe Australia: A Three-Step Pathway for Easing Restrictions* (8 May 2020). <https://www.pm.gov.au/sites/default/files/files/covid-safe-australia-roadmap.pdf> [Accessed 8 March 2021].
- 7 It is one of the anomalies of Australian federalism that the Commonwealth has assumed responsibility for aged care — a *de facto* extension of its mandate under s. 51 (xxiii) to provide ‘invalid and old-age pensions.’
- 8 That is the coalition between the Liberal Party and the National Party with Liberal leader Scott Morrison as prime minister.
- 9 Providing ‘the equivalent of around 70 percent of the national median wage’ meant that it equated ‘to a full median replacement wage’ for ‘workers in the accommodation, hospitality and retail sectors.’ Treasury subsequently revised the estimated cost down substantially. Research by Bishop and Day (2020) suggests that the program was very effective.
- 10 *Palmer and Anor v. State of Western Australia and Anor*, HCA (2020).
- 11 Resource limitations were a factor in some important respects — the decision by the Victorian government to employ private contractors to supervise quarantine rather than taking the Commonwealth up on its offer of ADF personnel being a case in point.

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