Forum of Federations

Federalism and the COVID-19 crisis: An Australian Perspective

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In Australia, as in most of the rest of the world, the institutional arrangements for responding to COVID-19 are necessarily dynamic and need to adapt rapidly to deal with emerging issues across a wide range of subjects: Health, public order, employment, education, supply of goods and services, movement of people etc. Public policy resembles nothing so much as a game of "whack-a-mole".

The scope and speed of the spread of the virus has produced number of extraordinary policy responses. But, at least in Australia, the underlying architecture of governance responses is - from the perspective of federalism - not all that different from the response to other emergencies such as natural disasters. Fundamentally, Australia has used the machinery of "executive federalism" to decide on and coordinate action. Councils of Ministers and Officials are the machinery of "executive federalism" in this context. The key council of ministers is the Council of Australian Governments (COAG) which consists of the Prime Minister and the Premiers of the States and Chief Ministers of the two Territories. COAG has effectively been designated as the "National Cabinet". It has much more to do and meets more regularly. It is COAG on steroids. The National Cabinet is a body which is determining and coordinating Australia's strategy across all jurisdictions. Major issues are brought to the Cabinet but then implemented by individual jurisdictions or, in some cases, referred to Health Ministers, Education Ministers, Chief Medical Officers or Police Commissioners etc. who, in turn, meet and decide on more detailed policy.

Legislators have thus far been unusually irrelevant to the COVID-19 response. Indeed, the convening of parliament has been problematic. The Federal parliament in Canberra has met infrequently to pass key pieces of legislation; laws to appropriate money to support the economy and the health system. The marginalisation of legislators has been a source of criticism of "executive federalism". In this case that criticism has, to date, been muted. The Oppositions around Australia have adopted a bi-partisan position on almost all issues. And there appears to be a public expectation that this crisis should not be politicised. The National Cabinet includes leaders from both sides of the political spectrum, and political differences are playing virtually no role.

A distinctive feature of the COVID-19 crisis is that it is not only a health crisis - it is also an economic one. In the case of Australia, that has meant that the Federal Government is squarely and directly engaged, if for no other reason than its preeminent responsibility for macroeconomic and fiscal policy. In most crises, such as natural disasters, the role of the Federal Government is mostly one of coordinating the response of the States and providing funding for response and recovery. The main responsibility for crisis management belongs to the States and Territories. This is also true of a public health crisis. The constitutional responsibility and the majority of the machinery for dealing with an epidemic or pandemic sits with the States and Territories. Indeed, much of the current legislation, and particularly the draconian powers included under public health legislation, can be traced back to the Spanish Flu epidemic of the early twentieth century. But the Federal Government's role in crisis management has increased to the extent that it would now be seen as a shared responsibility, with the Federal Government playing at least a key coordinating role, if not a leadership role.

The health system itself is a shared responsibility. The States and Territories own and run the public hospital system which provides most hospital services in Australia. The Federal Government provides about 50% of funding for those hospitals. Outside the public hospitals, medical and allied practitioners are private professionals, but their fees are substantially funded by the Federal Government though a national health scheme (Medicare). There is also a significant private hospital sector which is funded through

Medicare and private health insurance. All this highlights the critical importance of robust mechanisms for joint decision making – the National Cabinet. Each jurisdiction has a "Chief Medical Officer", who advises that government on public health issues. As in other countries around the world, this role is critical in determining the epidemiological strategy to be pursued, not only with regard to the medical measures but also the social and economic strategies that should be adopted. The Chief Medical Officers operate as a coordinated group under the leadership of the Federal Chief Medical Officer and provide the National Cabinet with a (mostly) unified view on key issues.

The implementation of the national plan or strategy cleared through the National Cabinet is a matter largely for the States and Territories. The rate of infection has varied across jurisdictions and the capacity of health systems varies across jurisdictions. So, although a common approach has mostly been adopted, there have also been local differences. One key feature of the response has been the effective closing down of State and Territory borders – restricting the movement of citizens across these borders. The rationale for this is not entirely clear. Is it a form of social distancing, or is it to protect scarce health resources? For now it has been accepted as one of many extraordinary impositions on free movement.

So far the economic measures have largely been focused on supplying funds for critical health and public order functions, and providing support and incentives for companies and businesses; effectively putting many of them on "life support" and trying to preserve people's jobs and livelihoods. The scale of expenditure is unprecedented, albeit designed as a series of "one off", short term measures. The Federal Government is largely responsible for this expenditure and has tried to utilise existing functions such as taxation and social security in taking this action, rather than devising new programmes or institutions.

It is dangerous to make assessments in such a volatile environment. Currently Australia appears to be faring quite well in terms of numbers of deaths and infection rates by world standards. Whether that has anything to do with the Federal machinery at work is impossible to say. However, it can probably be said that Australia has at least obviated some of the problems that might have arisen as a result of clashes or disagreements between federal jurisdictions. Nevertheless, there have been some areas of decision making which have highlighted problems of coordination between jurisdictions. The clearance of passengers from cruise ships is one prominent example. And there is little doubt that there will be much to learn and improve on down the track.

Unwinding all of these arrangements and policies and moving to deal with an economic recession will give rise to a whole new set of problems that will equally engage issues of Federalism.