16

How democratic is Australian federalism?

John Phillimore and Alan Fenna

Federalism is a central feature of the Australian constitution and system of government. While often seen in principle as a way of promoting greater democracy by bringing government closer to the people, federalism has also been accused of obstructing elected governments and creating closed processes of intergovernmental decision-making. In Australia, the financial dominance of the Commonwealth (federal) government has led to the centralisation of power away from the states and blurring of the lines of responsibility for government policy and performance. An earlier democratic audit (DA) argued that 'the question of how to make intergovernmental decision-making democratic, transparent and accountable remains one of the most intractable problems of Australian democracy' (Sawer, Abjorensen and Larkin, 2009, p.310). This chapter critically examines this claim, noting some important recent developments in the position of the states and peak level intergovernmental relations.

What does democracy require of Australia's federal system?

- Federalism should operate under a clear and well-adjudicated set of rules that can be changed democratically, but only via a process ensuring that the perspectives of both the national community and the constituent units are respected.
- The resulting structure should be intelligible to the people it serves. In particular, it should be reasonably apparent which level of government holds primary responsibility for any given policy responsibility or role.
- The division of tasks between tiers of government should respect the principle of subsidiarity, namely, that decisions be made at the lowest tier of government practicable for the matter in question.
- Each tier of government should have an appropriate degree of fiscal, policy and administrative autonomy and assured capacity to perform their functions adequately.
- There should be effective mechanisms and arrangements for communication, negotiation, cooperation, coordination, and collaboration between the tiers of government. Those mechanisms should embody principles of mutual respect and be as consistent as feasible with the standard democratic principles of transparency, accountability and representativeness.

How to cite this chapter:

Phillimore, John and Fenna, Alan (2024) 'How democratic is Australian federalism?', in: Evans, Mark; Dunleavy, Patrick and Phillimore, John (eds) *Australia's Evolving Democracy: A New Democratic Audit,* London: LSE Press, pp.346–364. **https://doi.org/10.31389/lsepress.ada.p**.

The Australian federal system, launched in 1901, was brought about by the individual colonies agreeing to unite while relinquishing only a minimum of their powers and responsibilities. Since then, though, the federal government has exerted a strong centralising influence, taking control of the key tax-raising powers, and leaving the states heavily dependent on Commonwealth transfers to fund their service provision (**Fenna, 2019**). That, in turn, has given rise to structures of intergovernmental relations that raise issues of accountability and transparency. However, in recent years, two important developments have run counter to these trends – a resurgence of the states' roles on salient or decisive issues; and adjusted structures of intergovernmental relations.

Recent developments – the resurgence of state governments

The apparently ineluctable process of centralisation within Australian federalism has continued in a variety of ways. Yet a recent twofold reassertion of the policy roles of the states has cut across that long-term trend. A first key area was climate change politics, where the dominance of the Liberal-National Coalition in Canberra (2013–2022) created a policy vacuum into which the states moved energetically (Fenna, 2023). The most efficient policy instrument for reducing greenhouse gas (GHG) emissions is a carbon tax of some form, and constitutionally this is only available to the Commonwealth government. However, there are numerous other mechanisms available to state and territory governments that might achieve the same goal. This is particularly the case since the leading source of GHG emissions in Australia is electricity generation, which is entirely within state jurisdiction. Particularly but not exclusively under Labor governments, the states have played an active role in promoting the switch to renewables in electricity generation, and that long-run transition is well underway. While the Commonwealth ministers resisted any commitment to net-zero-by-2050 until the very eve of COP26 in 2021, almost all states had already legislated this target.

A second key area is that the states have maintained responsibility not only for the vast bulk of service delivery to citizens, but also for most of the regulation of everyday life within their jurisdictions. Their dominant role was demonstrated very clearly when the COVID-19 pandemic reached Australia's shores in early 2020 (**Fenna, 2021**). The state governments led the way with pandemic control measures, with Victoria's prolonged lockdowns being the clearest example. The states run the health systems, and under their public health Acts, the states also regulate the operation of businesses and public space. It was the states who organised quarantine for arriving travellers (by agreement with the Commonwealth, who have authority to legislate for quarantine in the Constitution). Additionally, the states run the public-school systems and thus were the ones deciding whether it was safe for in-class teaching to continue. And if there was any remaining doubt about the states' central role in management of the pandemic, their decisions to close their respective borders to travellers from other states provided an unambiguous answer.

Throughout the crisis, Commonwealth ministers regularly objected to the enthusiasm with which states exercised their control powers, most strenuously in respect of border closures. Yet, in a notable departure from normal practice in Australian federalism, those objections carried little weight, and the states prevailed. The rediscovery of state power led to a heightened prominence for state premiers and territory chief ministers within their own jurisdictions and on the national political stage.

COVID-19 and the National Cabinet system

Immediately the COVID-19 pandemic began in March 2020, Prime Minister (PM) Scott Morrison suspended the existing mechanism for peak Commonwealth–state coordination, the Council of Australian Governments (COAG). In its place he convened National Cabinet, a more informal and collegial (and much more frequent) meeting of the heads of government, aimed at addressing the country's response to the pandemic. National Cabinet was advised from the outset on COVID-19 by the Australian Health Protection Principal Committee (AHPPC), consisting of the chief medical or health officers of the Commonwealth, states and territories), and by the National Coordination Mechanism (convened by the federal Department of Home Affairs), which worked across all jurisdictions (including also private industry and other stakeholders), to advise on non-health issues.

This more collegial approach was welcomed by the states because it introduced a measure of more consensual or collective decision-making – characterised approvingly as 'co-design' by the Victorian government (**Victoria Government, 2020**). Within two months, PM Morrison announced that the change was permanent (**Karp, 2020**; PM, 2020). The earlier COAG model would cease. In its place, National Cabinet would continue to meet regularly (at least every two weeks during COVID-19 and monthly after that) and be advised by experts such as the AHPPC.

In addition, the PM announced that a new National Federation Reform Council would meet annually, consisting of the National Cabinet, the Council on Federal Financial Relations (CFFR), comprising the Treasurers of all Australian governments, and the Australian Local Government Association (ALGA), to focus on priority issues. The Council met twice (in December 2020 and 2021).

National Cabinet met (virtually, in almost all instances) on 32 occasions in 2020 and a further 28 times in 2021, creating an unprecedented degree of personal interaction and engagement between the nation's heads of government. Post-pandemic the tempo decreased: in 2022, the incoming Labor government committed to four meetings a year, and held five in 2023 (**federation.gov.au, no date**). Despite occasional public differences over lockdowns and borders in particular, the establishment and operation of National Cabinet was generally welcomed and was regarded as an important element in Australia's comparatively successful handling of the pandemic (for example, **Lecours et al., 2021**; **Downey and Myers, 2020**). Yet Liberal-National Party ministers always sought to minimise the transparency of National Cabinet proceedings up to the government's defeat in May 2022. Subsequently, issues around its hybrid nature (not part of the rest of the cabinet system but similar in being a solely executive body) have been 'fudged' to some extent by Labor ministers also (see below).

At more detailed policy levels, National Cabinet established five Reform Committees (in the areas of Health, Energy, Infrastructure and Transport, Skills, and Rural and Regional) reporting to it. Composed of Commonwealth, state and territory portfolio ministers they were charged with supporting the National Cabinet's 'job creation agenda'. In October 2020, National Cabinet also accepted the recommendations of a review to rationalise and streamline the system of Ministerial Councils (**Conran, 2020**). These meetings of portfolio ministers had a historical tendency to grow in number and were a regular target of criticism from leaders and business for being ineffective and obstructionist. Following the review, councils were re-badged as 'Ministers' Meetings', with around 10 being ongoing, regular meetings and another 10 time-limited to a maximum of 12 months, only meeting when needed. Another 20 or so ministerial forums or councils were disbanded, although they could meet to consider one-off issues.

The incoming federal Labor government of Anthony Albanese, elected in May 2022, essentially retained these arrangements, albeit with some modifications and simplification following a review by the First Secretaries Group, the heads of the PM/premier's department in each jurisdiction (**FSG, 2022**). The term 'Ministerial Council' was reinstated; 20 such councils were mandated to report annually to National Cabinet on their work plans. Ten of these Ministerial Councils were also to report regularly on priorities tasked to them by National Cabinet. Another change was a decision to invite a representative of the ALGA to one meeting of National Cabinet per year. This partially compensated for former PM Morrison's decision to abolish COAG, of which ALGA was a member. It also meant that Morrison's National Federation Reform Council (which included ALGA) was no longer needed.

Strengths, weaknesses, opportunities, and threats (SWOT) analysis

Current strengths	Current weaknesses
The system of intergovernmental relations (embodied in National Cabinet and before that COAG) has proved to be a reasonably well-developed and flexible instrument for managing the practical policy and administration relationship between the Commonwealth and the states.	The system has lacked institutionalisation through intergovernmental agreement, legislation or constitutional provision. Critics argue that such formalisation would provide a procedural framework more conducive to genuine discussion and compromise between the two levels of government and be more democratic in nature.
Deploying the tax-raising finance capabilities of the federal government to address 'welfare state' and macro-economic issues has been a key foundation of socioeconomic progress in the post-1945 period, and it remains crucial today. The intergovernmental machinery has been a minimalist solution for ensuring that federal transfer monies are well spent and has also assisted in developing national markets in economically beneficial ways.	The extensive overlap of federal and state responsibilities, and some duplication of monitoring and policy-making capabilities, have reduced effectiveness and efficiency in a number of high-budget policy areas, such as education and healthcare. The states, meanwhile, have been made excessively dependent on Commonwealth transfers.
Heads of government have been prepared and able to work together productively in times of emergency. The apparently cooperative, serious and productive nature of National Cabinet meetings to deal with COVID-19 provided a stark contrast with previous experience.	The complexity of intergovernmental relations often resulted in opportunistic behaviour, mistrust and conflict between politicians at different tiers – often along party lines. It enabled 'blame-shifting', along with opportunistic forms of politics such as 'grandstanding' for a home audience rather than negotiating constructively. Before COVID-19, Australians (and their leaders) had come to expect this pattern from federalism and intergovernmental relations.

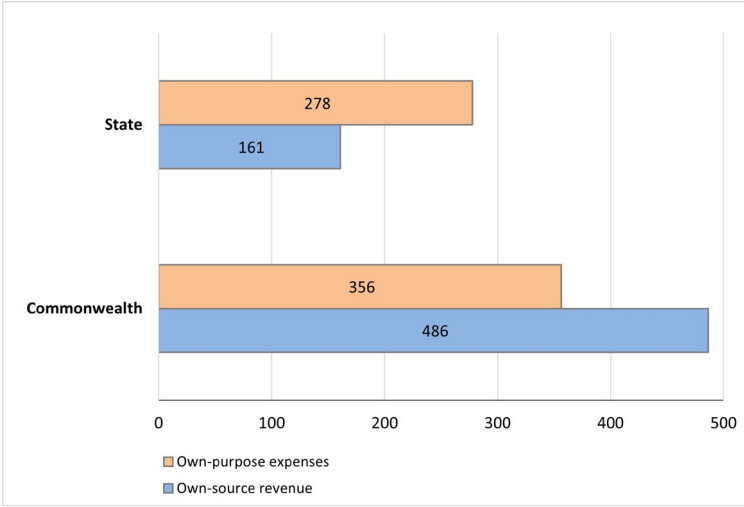
National Cabinet has recently adopted – and published – Terms of Reference, thereby introducing an element of formality to its proceedings that was formerly lacking in meetings of first ministers.	The 'National Cabinet' terminology is misleading; it is not a 'cabinet'. The PM solely controls its institutional set-up and that of its committees. And the premiers and other participants from state and territory governments are accountable only to their own parliaments and voters.
Future opportunities	**Future threats**
National Cabinet's favourable reputation in the 2020–2022 period showed that productive intergovernmental relations are possible. In an optimistic scenario, that momentum towards more constructive engagement would be maintained,	A more realistic view is that 'business as usual' federalism will progressively resume over time, with governments at both tiers seeking to maximise short-run partisan goals.
Labor has held power federally, and in all states and territories except Tasmania, since March 2023. This may offer greater opportunities for federalism and intergovernmental relations to operate in a more concerted and effective manner.	While the Morrison government's proposed Commonwealth legislation on National Cabinet lapsed in 2021–2022, the failure of both the new Labor government and of state and territory leaders to rule it out shows that efforts to give the National Cabinet's proceedings privileged status could well recur. This could unnecessarily diminish transparency and democratic accountability to citizens.

The remainder of this chapter looks in more detail at three main areas of debate around intergovernmental relations: the extent to which executive federalism has warped the constitution or made policy-making less effective; the implications of executive federalism for Australia's democracy, transparency and public trust; and proposals for reform, many of them longstanding.

Constitutional provisions and executive federalism

Australia's federal system has been operating now for over 120 years, following the decision of Britain's previously separated self-governing Australian colonies to join together in a federal union through the then-unusually democratic procedure of colony-by-colony referendums. The new constitution recognised two tiers of government, dividing powers (and thus responsibilities) between them. The states were to continue as the primary agents of governance in most domestic matters while the Commonwealth was assigned a limited list of powers, concerned in the most part with maintaining the economic union and managing the country's external relations. On that basis, the two orders of government were to operate each in their own spheres and thus no provision was made for mechanisms of cooperation between them other than the Inter-State Commission (sections 101–104), which rarely operated and is now effectively defunct. Moreover, while the Senate was designed to give states equal representation, as a popularly elected body it was not designed in a way that would provide the state governments with any direct input into national decision-making.

Figure 16.1: Commonwealth and State governments' revenue and expenses, 2018–2019 (in A$ billions)



*Source: Redrawn chart from data in Australian Bureau of Statistics (**2019**) Government Finance Statistics, Australia, 2018–19.*

Note: 'Own-source revenue' is defined as total revenue minus grant revenue. 'Own-purpose expenses' are defined as total expenses minus grants to other levels of government.

In a number of respects, Australia remains very much the federation it was originally. In others, however, it has changed greatly, evolving to adapt and respond to the enormous economic, social and political changes of the 20th and 21st centuries. It did not take long for the notion of separate spheres to give way to a reality of increasing overlap as economic and social modernisation occurred. The Commonwealth expanded its role in the federation as broad interpretations of its enumerated powers were made by the High Court, and the states were excluded from the main revenue sources, sales tax and income tax in 1942. This left the states with access to only a motley collection of minor taxes, such as stamp duty on transactions, or buying a house or car and highly dependent on transfers from the Commonwealth. A high degree of Vertical Fiscal Imbalance (VFI) resulted whereby the Commonwealth raised considerably more revenue than it required for its own functions, while the states are dependent on the Commonwealth for a substantial part of their revenue base (on average, up to half), of which half in turn comes with strings attached (see Figure 16.1). Further High Court decisions continued to whittle down what little taxing power remained with the states, notably *Ha* in 1997 and *Vanderstock* in 2023.[1] Over the decades, the Commonwealth has been able to use its fiscal dominance to make conditional, or 'tied', grants to the states under section 96 of the Constitution, underpinning a long-running process of centralisation (**Fenna, 2008**; **Fenna, 2019**). That expanded role has introduced a steadily greater degree of de facto *concurrency* into the division of powers, with both levels of government playing important roles in many policy areas that were once predominantly or exclusively the domain of state governments. It also promoted a division of labour whereby the Commonwealth imposed particular policy directions while the states continued to manage the actual service provision. Reform is periodically mooted but rarely implemented (Fenna, 2017).

As the two levels of government became increasingly intertwined, a greater premium was placed on ways of negotiating their relationship and coordinating their actions. As in other parliamentary federations, intergovernmental relations became centred on meetings between portfolio ministers and, at the peak of the system, meetings of the 'first ministers' or heads of government (Phillimore and Fenna, 2017). In 1992, the latter were formalised as COAG, comprising the PM, premiers, the chief ministers of the two self-governing territories, and the

president of the ALGA. Over the years, various Ministerial Councils were established to bring together portfolio ministers from the country's governments to deliberate on matters of shared concern. These were made officially subordinate to COAG.

COAG was not placed on any kind of constitutional or legislative basis or even modestly institutionalised through a formal agreement between Australia's governments. Thus, the extent to which it operated, and the way in which it operated, was almost entirely at the PM's discretion. COAG decisions were not in themselves binding on the various governments. Sometimes those decisions were formalised as intergovernmental agreements, which, although having a contractual or legalistic character, are not legally enforceable and are not laws. Their bindingness is political in character and their force comes from any actions taken, particularly legislative action, by the various governments pursuant to those agreements.

For example, in 1999, the Commonwealth and the states signed the *Intergovernmental Agreement on the Reform of Commonwealth–State Financial Relation*s that committed the Commonwealth to distributing all the net proceeds of the new Goods and Services Tax (GST) to the states and giving the states a right of veto over changes to the new tax (**federation.gov.au, 1999**). However, this agreement in itself had no legal force, which only came when the Commonwealth Parliament passed legislation giving effect to that agreement, the *A New Tax System (Commonwealth–state Financial Arrangements) Act 1999*. Similarly, in the years leading up to the start of the COVID-19 pandemic in March 2020, the Commonwealth and the states signed a number of intergovernmental agreements outlining how responsibilities would be divided and cooperation maintained in just such an event. Again, those provided working protocols, but not enforceable rules.

Critics have argued that the linking of Commonwealth and state governments' policy-making and its management through the closed COAG process of executive federalism had important implications for policy-making:

- Commonwealth tied grants have skewed state priorities and reduced their policy autonomy.
- Commonwealth intrusion into policy areas that were traditionally state responsibilities has led to inefficiencies and duplication.
- Fiscal dependence of the states on the Commonwealth, combined with overlapping roles and responsibilities, often led to 'blame-shifting', where politicians at one tier of government ascribed responsibility for poor policy outcomes to politicians or agencies at the other tier. This pattern is common in health, aged care and childcare. During COVID-19, the failures of the hotel quarantine system led to criticism of state governments, who in turn were critical of the Commonwealth, since quarantining of outsider arrivals is a federal enumerated power under the constitution. Similarly, both levels of government were critical of each other at various stages of the pandemic over who was responsible for the initial slow rollout of vaccines, with the Commonwealth relying on GPs and pharmacies (for which it is responsible) and the states using clinics run by their health services and hospitals.
- Fiscal imbalance can also lend itself to political opportunism that generates a lack of trust in relations between governments. While in the federations of Germany and South Africa there is an obligation for 'good faith' behaviour in the conduct of intergovernmental relations, no such requirement exists in Australia. Relations between the Commonwealth and the states have often been marked by adversarial (artificially over-polarised) politics; grandstanding (with politicians orating for their home constituents rather than negotiating effectively); last minute ultimatums setting out 'take it or leave it' policy proposals; and breaches of previously agreed fiscal and policy positions (**Rimmer, Saunders and Crommelin, 2019**, pp.15–16).

Performance accountability

The formal accountability arrangements around intergovernmental relations, policies and institutions have not been extensive. The overlap of roles and responsibilities means that traditional accountability agencies, such as auditors-general, are limited in the extent to which they can question and make recommendations to their own governments for the performance of programs that may, for example, be funded by the Commonwealth but implemented by the states.

A less commonly considered aspect is *performance* accountability. Australia pioneered the use of performance and benchmarking processes in federations (**Fenna and Knüpling, 2012**). This began in the mid-1990s with the creation of the National Competition Council and its assessments of state and territory government reform under the National Competition Policy, in return for payments from the Commonwealth. Benchmarking of state and territory service provision was also instituted by COAG in 1994 through a joint Commonwealth–state exercise, which is published annually by the Productivity Commission as the *Report on Government Services* (**Banks and McDonald, 2012**). This report provides comparative information on the efficiency and effectiveness of a range of state government services, such as housing, childcare, hospitals, prisons and schools, although its effectiveness is often questioned.

These two types of accountability were combined in the COAG Reform Council, which was established in 2006 and which under reforms introduced in 2008–2009 reported to COAG on the progress that states and territories were making toward agreed benchmark outcomes in areas covered by Specific Purpose Payment and National Partnership agreements (**Fenna, 2014**; Fenna and Anderson, 2012; **O'Loughlin, 2012**). However, following a change of government, in 2014 the Commonwealth abruptly terminated the Reform Council without any protest from the states and territories.

Independent agencies

In one important area, however, consensual policy-making has emerged and been consistent over time, operating insulated from partisan politics. Australia has a long tradition of establishing independent agencies for a host of public policy issues, many of which involve shared governance between the states and the Commonwealth (Phillimore and Harwood, 2015, p.59). The bulk of these are what Poirier and Saunders (2015, p.467) call 'joint institutions' – designed to achieve shared goals in specific policy areas and responsible to jointly established and governed bodies.

Such joint institutions have covered a multitude of roles, including evaluation (the former COAG Reform Council and National Water Commission); research and analysis (Australian Bureau of Statistics; Institute for Health and Welfare); policy advice (Food Standards Australia and New Zealand; National Transport Commission); regulation (Australian Competition and Consumer Commission; Office of the Gene Technology Regulator; Great Barrier Reef Park Authority; Australian Energy Regulator, Australian Health Practitioner Regulation Agency); or a combination of these (Australian Curriculum, Assessment and Reporting Authority). For most of these bodies, membership and operational rules were established through intergovernmental agreement (and associated Commonwealth legislation). In many cases, membership of boards was jointly (or separately) decided by the Commonwealth and the states and territories, or the states and territories may have the ability to veto Commonwealth-proposed members. Depending on whether the agency was established by Commonwealth legislation, or mirror legislation, or by intergovernmental agreement alone, they report either to a Commonwealth minister or to a Ministerial Council (Phillimore and Fenna, 2017, pp.611–13).

Independent agencies are formally accountable to their Ministerial Council. In most cases, the board members and sometimes even the chief executive has been appointed by the Commonwealth in consultation with the states. Yet these agencies also tend to develop their own independence, expertise and authority. Thus, while the extent of direct Commonwealth dominance and control may be reduced, it is not necessarily replaced by increased state influence; instead, it leeches away to bodies that are effectively 'quasi-governmental'. Critics argue that democratic accountability is thereby diluted, with both Commonwealth and state ministers effectively abdicating responsibility for how these agencies operate in normal conditions, despite having established them in the first place.

Federalism, transparency and democratic accountability

Blame shifting and avoiding responsibility are always temptations for politicians dealing with difficult and often complex policy realities. Where such tactics appear to succeed, leaders have stronger incentives to adopt them. Yet blame shifting and opportunistic populism are also unambiguously bad for democracy, because they make it more difficult for voters to allocate responsibility or hold decision-makers to account when things go wrong. Over the long term, these evasive reductions in transparency also reduce public trust in government. In response, proposals or initiatives for reform and a recalibration of roles and responsibilities are periodically put forward, but almost always come to nought (for example, **PM&C, 2015**; NCA, 2014; **Senate, 2021**).

For most federalism scholars, democracy is almost an essential prerequisite of federalism (for example, Burgess and Gagnon, 2010). However, while one may not be able to have real federalism without liberal democracy, one can certainly have democracy without federalism. There have always been voices on the left raising an alarm that the restrictions imposed by federalism can compromise the democratic nature of Australia's system of government. This is primarily because of the way the division of powers can – or, at least, historically could – obstruct a party elected to office at the national level from fulfilling some of its policy goals. In a background paper for the original Democratic Audit of Australia, Graham Maddox (2002) argued precisely this – that federalism is undemocratic because at times it has presented an obstacle to the policy ambitions of the Labor Party at the national level. Similarly, the authors of *Australia: The State of Democracy* claimed that 'the federal division of powers, set out in rigid constitutions overseen by constitutional courts, may present … obstacles to democracy' (Sawer, Abjorensen and Larkin, 2009, p.295).

Others pointed out, though, that such claims confuse the possibility of presenting obstacles to the ambitions of some political parties with the idea of presenting obstacles to democracy itself. Andrew Parkin (2003) argued that while federalism might be at odds with one particular type of democracy, namely, 'winner-take all majoritarianism within a unitary state', it also enhances democracy in several ways. In particular:

- federalism necessitates a more consensual approach to national decision-making
- it allows regional and local communities their own democratic self-government

- it provides citizens with more, and more accessible, avenues for political access and influence. Underpinning this is the normative principle of *subsidiarity*, which holds that decisions should be taken at the lowest level of government, as close to the people as is practicable.

A more widespread concern is not that federalism in general compromises democracy, but that *one particular aspect* of modern federalism has an undemocratic character. This is the way that an increasing amount of governing is done in closed processes of executive negotiation and decision-making between the PM or ministers and the premiers and chief ministers. Geoffrey Sawer (1970, pp.7–8) warned a half century ago, this 'tends to erode responsible government'. Specifically, he meant that it eroded the accountability of the executive to parliament, and thereby to the people. Executive federalism does this primarily because it leads to arrangements 'so divided between the respective governments that no one Government … can be held responsible for the whole of the activity in any one parliament'.

Federalism scholars in Canada identified the same problem, adding that executive federalism 'contributes to undue secrecy' and further reduces the level of 'citizen participation in public affairs', partly because of the increased complexity of multi-tier policy-making (Smiley, 1979, p.105). However, from the Canadian francophone and Québec perspective, executive federalism is seen as actually *more* democratic since it gives the francophone community a stronger voice in the federation than it would otherwise have (for example, Gagnon, 2010; Hueglin, 2013).

Lacking a Québec, the more likely view in Australia is that 'the question of how to make intergovernmental decision-making democratic, transparent and accountable remains one of the most intractable problems of Australian democracy' (Sawer, Abjorensen and Larkin, 2009). The grounds on which the authors of the original Democratic Audit of Australia came to this conclusion were:

> *(a)* the division of powers may be 'impeding the evolving will of the people expressed through electoral majorities'
>
> *(b)* the division of responsibilities obscures lines of accountability and allows blame shifting
>
> *(c)* the tendency towards opacity in intergovernmental relations (Sawer, Abjorensen and Larkin, 2009, pp.295–96).

Subsequently, Kildea (2012) argued along similar lines that Australian intergovernmental relations are deficient in transparency, accountability and participation – problems that he suggests could be ameliorated somewhat by a few 'achievable reforms'. We return to these towards the end of this chapter.

Transparency issues around National Cabinet

An interesting recent illustration of the problems associated with executive-controlled federal politics arose out of the claim that National Cabinet is a cabinet as normally understood in terms of responsible cabinet government. In 2020, under federal Freedom of Information (FOI) law, independent Senator Rex Patrick asked for minutes and other documents concerning the formation and functioning of National Cabinet. Disclosure was refused by the Department of the Prime Minister and Cabinet (PM&C) on the grounds that National Cabinet was a sub-committee of federal Cabinet and hence exempt from disclosure under FOI. Senator Patrick challenged

this refusal in the Administrative Appeals Tribunal (AAT) and in August 2021, Justice White found quite emphatically that National Cabinet did not fall within the meaning of a committee of the Commonwealth cabinet and ordered that the documents be provided to Senator Patrick.[2]

On the same day that the Commonwealth government indicated that they would not appeal that decision, the Morrison government introduced the COAG Legislation Amendment Bill into the federal parliament, which declared that National Cabinet was established as a committee of the Commonwealth Cabinet. Had this law been passed, National Cabinet proceedings, documentation and decisions (and those of its committees) would have remained confidential and exempt from disclosure under FOI and the operation of other legislation. The Bill's Explanatory Memorandum argued that confidentiality was 'critical to the effective operations of the National Cabinet, enabling issues to be dealt with quickly, based on advice from experts'. The Morrison government's legislation was roundly criticised by academics, expert bodies such as the Law Council and the Australian Human Rights Commission, as well as non-government senators. Senator Patrick (**2021a**, p.53) argued that it 'would be a severe blow against transparency and accountability'. The only submission in support of the legislation to the Senate Committee investigating it was the one made by the Department of the Prime Minister and Cabinet (PM&C) itself. Many other submissions were forceful, even excoriating, in their criticisms (for example, **Twomey, 2021**).

At the heart of the AAT decision was the observation that National Cabinet cannot be regarded as a committee of the federal Cabinet. Apart from the PM, none of its members are members of the federal Cabinet; they are not appointed by the PM; and they are not members of, or responsible to, the federal Parliament. Indeed, the terms of reference of National Cabinet (disclosed to Senator Patrick after his AAT victory) note that the Commonwealth, states and territories retain their 'sovereign authority and powers' and their individual responsibility for implementing decisions of National Cabinet. There is no formal obligation of collective ministerial responsibility: if a state premier chooses to criticise or even act in defiance of a decision of National Cabinet, they are not bound to resign, as might be expected (or required) in a system of responsible cabinet government. Instead, they are each responsible to their own parliament. As Anne Twomey (**2021**) pointed out, such meetings of first ministers are designed 'to be a body of equals that makes collective decisions, with each being responsible to their own legislature and people for any action taken in implementing those decisions'. If National Cabinet was 'treated as nothing more than a committee of the Commonwealth Cabinet … this would traduce their [that is, the premiers and chief ministers] power and role in the federation … and subjugate [them] to the Commonwealth's will and power'.

Concerning confidentiality and other safeguards for executive action, critics argued that provisions already existed in FOI laws to grant exemption to disclosing documents that could cause damage to relations between the Commonwealth and a state, or which could divulge communications made in confidence on behalf of a state or the Commonwealth, if disclosure is deemed to be contrary to the public interest. However, under the proposed legislation, all material from its key committees (such as minutes of the Australian Health Protection Principal Committee) that had previously been accessible under FOI would no longer be.

The legislation stalled after the Senate committee reported (split along party lines) in October 2021. Subsequently, federal Coalition ministers still acted as if National Cabinet was indeed a committee of Cabinet, and the PM&C refused further access to documents under FOI on Cabinet exemption grounds, arguing that since the AAT decision in August 2021, other evidence needed to be taken into account (Patrick, 2021b). In particular, a joint statement was released

on 17 September 2021 by the PM, premiers and chief ministers regarding the importance of confidentiality to relationships between them (**PM and Premiers and Chief Ministers, 2021**). This included the statement that 'meetings and operations of National Cabinet have been conducted in line with the process outlined in the Commonwealth Government's Cabinet Handbook'. Nevertheless, as Twomey (**2021**) argued, the joint statement 'does *not* assert that the National Cabinet is a committee of the Commonwealth Cabinet' – unlike the legislation tabled in the Commonwealth Parliament. Given the Senate's opposition, the legislation was not brought to a vote and lapsed when the parliament was prorogued in advance of the 2022 election.

Under the new federal Labor government, National Cabinet has provided more clarification regarding its operations including, for the first time, publishing comprehensive terms of reference (**PM, 2022**; **NC, no date**). These include a section on 'National Cabinet confidentiality and handling of National Cabinet documents'. The continuing need for confidentiality regarding discussions and documents is maintained; however, it is conceded that 'National Cabinet documents will be subject to different information management laws in each jurisdiction'. Furthermore, the Commonwealth agrees to consult with the states and territories regarding any requests for National Cabinet documents made to it under Commonwealth FOI laws, and states and territories agree to consult with each other and the Commonwealth regarding any requests they receive. If another FOI test arises, it is very likely that only a court ruling will resolve matters.

Legislative federalism

Australia's intergovernmental relations are predominantly executive-led, consisting largely of meetings between ministers and/or officials from the different jurisdictions. Parliamentary involvement is normally limited except for those cases where government requires legislative approval for particular initiatives, programs or funding. A range of legislative techniques are used across the federation to give effect to intergovernmental agreements (Phillimore and Harwood, 2015, pp.51–52; **Twomey, 2007**). The technique that provides the least amount of ongoing autonomy and capacity to states and territories is a *referral of powers*. Section 51(xxxvii) of the Constitution permits the Commonwealth to legislate in regard to matters referred to it by any state or states. States may refer matters individually or collectively, and non-referring states may subsequently join the referral or adopt the Commonwealth law. The referral option 'represents a mechanism whereby, through cooperation, complete uniformity of legislation, administration and adjudication can be achieved in areas not otherwise within Commonwealth power' (Saunders, 2002, p.71). The referral route has been used sparingly since Federation but a little more actively in recent years (Lynch, 2012). Examples include mutual recognition of certain skilled occupations; the regulation of corporations and securities; and criminal code powers concerning terrorism.

Another legislative technique is so-called *uniform legislation*, which involves one jurisdiction enacting a law that is then adopted by other parliaments. While this restricts the autonomy and capacity of individual states and territories, it lessens the risk of the Commonwealth exceeding or extending its powers beyond the legislation. It also normally involved states and territories working together to achieve harmonisation, thus enabling them to be active policy players. The technique is often associated with the establishment of a policy-making or regulatory body on which states and territories are represented directly or have a say over key appointments.

A related legislative technique involves a *model law* being developed (often by a Ministerial Council), with each state parliament then enacting it in an agreed form. States can sometimes make variations to the model to meet local circumstances. This technique provides for a degree of harmonisation, while still allowing jurisdictions to implement their own versions and retain some ownership over implementation. Commonwealth legislation that has been mirrored in the states and territories include consumer protection; offshore minerals and petroleum; censorship; and financial transactions reporting. This legislative technique has also been used by states and territories to cover areas where the Commonwealth has no direct involvement (for example, child protection and interstate transfer of prisoners).

Close parliamentary oversight of these legislative options is relatively rare. As governments generally have a clear majority in their lower Houses, the limited scrutiny that does take place (for example, through committees) generally occurs where the governing party lacks a majority in the upper house of parliaments. Indeed, some state upper houses have been critical of uniform and mirror legislation placed before them by their governments. There is, though, little organised or regular scrutiny.

One exception is Western Australia, whose upper house has a Standing Committee on Uniform Legislation and Statutes Review. That committee has a standing order requiring it to consider and report on any proposed legislation that 'ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the government of the state is a party; or … introduces a uniform scheme or uniform laws throughout the Commonwealth' (Legislative Council, no date, pp.71–72). This can lead to delays in the passage of uniform legislation, which can provoke criticism by business groups for undermining the harmonisation of regulations and therefore increasing business costs.

Reform proposals

Various proposals have been put forward to address perceived deficiencies in the operation of Australian federalism, particularly in respect of the chronic overlap and duplication and the resulting problem that citizens cannot necessarily know which government to hold accountable in a number of policy fields. The most sustained effort in recent years to rethink the respective roles and responsibilities of the two levels of governments was the Reform of the Federation White Paper process launched by the Commonwealth in 2014. That enquiry engaged with stakeholders and the broader public, produced discussion papers and even a Green Paper, but (like the COAG Reform Council) was unceremoniously terminated following a change of prime minister (**PM&C, 2015**).

The entrenched level of VFI, the complexity of modern governance and the pragmatic nature of most Australians' attitudes toward federalism make it highly unlikely that reform of the basic structures of Australian federalism towards a 'clean lines' division of roles and responsibilities is possible. Indeed, an ANZSOG paper deems them to be 'false hopes' (**Rimmer, Saunders and Crommelin 2019**, p.13). The authors of that paper argue that proposals for reform need to be directed instead towards better interjurisdictional engagement – in other words, the nuts and bolts of intergovernmental relations.

Improving intergovernmental relations has both an efficiency and a democratic element – but the two may not always be compatible. As noted above, much of intergovernmental relations in

Australia is marked by a lack of trust and respect and an absence of formalisation of the basic institutions and rules of the game. On occasions, this informality and flexibility can be useful, as COAG's swift and complete replacement with National Cabinet might suggest. However, it can also be a danger – in particular, the Commonwealth does not need to abide by the 'rules' of intergovernmental relations, because there are none. In 2014, for example, PM Abbott simply refused to convene a COAG meeting, despite being asked to by seven (out of eight) premiers and chief ministers. Similarly, the Commonwealth abolished the COAG Reform Council that same year, without any reference to the states and territories. Some form of 'rules-based order' would assist with promoting more effective, equitable and efficient intergovernmental relations. In particular, it would help to protect the states against Commonwealth unilateralism and dominance, and force the Commonwealth to justify and defend its actions more than it does currently. However, there is no inherent reason why even a reformed system of intergovernmental relations would be more democratic, transparent or accountable (as experience with another executive-run area – international relations – suggests). Parliaments and accountability agencies seem destined to play a decidedly secondary role.

Improvements have been suggested by parliamentary inquiries (**SCRAF, 2011**) and others. Paul Kildea (2012, pp.85–90) suggested four key areas of institutional reform:

- *Improving information flow*s, through having a central register of intergovernmental agreements, and advance publication of COAG and Ministerial Council meeting agendas.
- *Formalising* the status and operations of intergovernmental bodies (then COAG), through complementary legislation in the Commonwealth and state parliaments.
- *Expanding the role of federal and state parliaments* by obliging premiers and ministers to report on the outcome of meetings and table their minutes; as well as increasing parliamentary scrutiny of legislation and intergovernmental agreements (not just those requiring legislative implementation), including scrutinising draft agreements on occasion.
- *Expanding opportunities for public participation* and consultation in intergovernmental relations.

Since then, there have been some improvements in transparency relating to information provision. There is now a central website repository of intergovernmental agreements, and the outcomes of National Cabinet and Ministerial Council meetings are routinely published via media statements from the ministers chairing those meetings. But these are after-the-event exercises in information provision. There is still no real involvement of parliaments or the public (for example, through interest group consultation and participation) in influencing the agenda or the deliberations of these meetings. As Kildea (2012, p.87) himself acknowledged, though, in intergovernmental relations there is almost unavoidably a trade-off between transparency and accountability, on the one hand, and flexibility, efficiency and workability on the other. So far, the demands of the executive at both Commonwealth and state levels have trumped those of the legislature – which may be for perfectly good reasons.

There has been less justification, however, for the historical lack of formalisation of the meetings of first ministers (first COAG, now National Cabinet), or Ministerial Councils. While National Cabinet functioned well during the pandemic, there was initially no particular reason to believe that collegiality would continue in normal times, and observers have long argued that it is desirable to 'lock in' some key operational features in order to provide more predictability and stability to intergovernmental relations. This would offer some protection to states and territories and add a level of accountability and democratic legitimacy (Kildea, 2012, p.86; **Wanna et al.,**

2009, p.16). On this front, some progress has been made. As noted above, at its meeting on 9 December 2022, National Cabinet agreed to (and published) Terms of Reference (**NC, no date**). At four pages in length, these cover core issues such as membership, minimum frequency of meetings (four per year), agendas (including a standing item for discussion of state and territory priorities), priorities, decisions and record of meetings, out-of-session processes, confidentiality, and caretaker provisions. While still short of either a formal Intergovernmental Agreement or legislation, this is still a notable improvement on more than 30 years of informality and *de facto* Commonwealth dominance.

Conclusion

The COVID-19 crisis was a shot in the arm for Australian federalism and reminded the wider public of some of federalism's democratic virtues. It demonstrated subsidiarity at work, with state governments and leaders being able to respond to local needs and preferences on a range of issues, be they lockdowns, school closures or border restrictions. The crisis also promoted a productive case of competitive, if not quite laboratory, federalism. Citizens, media and parliaments could look across borders and compare policy settings and outcomes in other states with those of their own jurisdiction and ask questions of their leaders accordingly.

At the same time governments were able to cooperate and act together nimbly and effectively in National Cabinet, supporting each other where needed – for example, with the Commonwealth financially supporting the states with their health response, while the states helped the Commonwealth meet its quarantine responsibilities. National Cabinet also enabled leaders to challenge each other's positions, rather than the traditional pattern of the Commonwealth invariably getting its way due to its fiscal dominance. This led to better policy-making and outcomes.

Yet the pandemic also confirmed that intergovernmental relations is by its nature a relatively closed process. Executives (first ministers, ministers and their bureaucrats) met to discuss and negotiate policies and programs, with little if any involvement at any stage from the main institutions of representative democracy, such as parliaments or oversight agencies. This seems to be a reasonable price to pay to achieve rapid, effective and agile intergovernmental decision-making between democratic governments. The original democratic audit's assertion that 'the question of how to make intergovernmental decision-making democratic, transparent and accountable remains one of the most intractable problems of Australian democracy' is quite misleading in this respect (Sawer, Abjorensen, and Larkin, 2009). Executives remain accountable to their respective parliaments, and it is not clear how transparent these exercises in Commonwealth–state diplomacy need to be.[3] Some institutions and practices function best when they are indirectly rather than directly democratic.

Notes

1 *Ha v New South Wales*, 189 CLR 465; *Vanderstock and Anor v State of Victoria*, HCA 30. For a scathing critique of the majority ruling in the latter, see the dissenting opinions.

2 *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information),* AATA 2719 (August 2021).

3 The phrase adverts to Richard Simeon's classic work *Federal–Provincial Diplomacy: The Making of Recent Policy in Canada*, Toronto: University of Toronto Press, 1972.

References

Australian Bureau of Statistics (2019) *Government Finance Statistics, Australia, 2018–19,* Annual webpage. **https://perma.cc/RNK3-S47P**

Banks, Gary and McDonald, Lawrence (2012) 'Benchmarking and Australia's report on government services', in Fenna, Alan and Knüpling, Felix (eds) *Benchmarking in Federal Systems*, Melbourne: Productivity Commission, pp.199–226. **https://perma.cc/QV8R-GG58**

Burgess, Michael and Gagnon, Alain-G (2010) 'Introduction: Federalism and democracy,' in Burges, Michael and Gagnon, Alain-G (eds) *Federal Democracies*, Abingdon: Routledge, pp.1–25. **https://www.routledge.com/Federal-Democracies/Burgess-Gagnon/p/book/9781138969643**

Conran, Peter (2020) *Review of COAG Councils and Ministerial Forums: Report to National Cabinet,* Commonwealth of Australia (Canberra). **https://perma.cc/Q6W3-CAJ8**

Downey, Davia Cox and William M. Myers (2020) 'Federalism, intergovernmental relationships, and emergency response: A comparison of Australia and the United States', *American Review of Public Administration,* vol. 50, no. 6–7, pp.526–35. **https://doi.org/10.1177/0275074020941696**

federation.gov.au (no date) 'National Cabinet Terms of Reference', webpage. **https://perma.cc/45VJ-7HC6**

federation.gov.au (1999) 'Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations', webpage, 25 July. **https://perma.cc/YM2F-YY2B**

Fenna, Alan (2008) 'Commonwealth fiscal power and Australian federalism', *University of New South Wales Law Journal,* vol. 31, no. 2, pp.509–29. **https://perma.cc/NDW2-K2PF**

Fenna, Alan (2014) 'Performance comparison in Australian federalism', in CEDA, *A Federation for the 21st Century*, Melbourne: The Committee for Economic Development of Australia, pp.94–100. **https://perma.cc/Y2BG-N38N**

Fenna, Alan (2017) 'The fiscal predicament of Australian federalism,' in Bruerton, Mark; Arklay, Tracey; Hollander, Robyn; and Levy, Ron (eds) *A People's Federation*, Leichhardt NSW: Federation Press, pp.134–46.

Fenna, Alan (2019) 'The centralization of Australian federalism 1901–2010: Measurement and interpretation', *Publius,* vol. 49, no. 1, pp.30–56. **https://doi.org/10.1093/publius/pjy042**

Fenna, Alan (2021) 'Australian federalism and the COVID-19 crisis,' in Chattopadhyay, Rupak; Knüpling, Felix; Chebenova, Diana; Whittington, Liam; and Gonzalez, Phillip (eds) *Federalism and the Response to COVID-19: A Comparative Analysis*, Abingdon: Routledge, pp.17–29. **https://www.taylorfrancis.com/books/mono/10.4324/9781003251217/federalism-response-covid-19?refId=1eb115ee-6378-467b-a70f-fb6bfd2ba1db&context=ubx**

Fenna, Alan (2023) 'Climate governance and federalism in Australia,' in Fenna, Alan; Jodoin, Sébastien; and Setzer, Joanan (eds) *Climate Governance and Federalism: A Forum of Federations Comparative Policy Analysis*, Cambridge: Cambridge University Press, pp.14–40. $ **https://doi.org/10.1017/9781009249676.002**

Fenna, Alan and Anderson, Geoff (2012) 'The Rudd reforms and the future of Australian federalism,' in Appleby, Gabrielle; Aroney, Nicholas and John, Thomas (eds) *The Future of Australian Federalism: Comparative and Interdisciplinary Perspectives*, Cambridge: Cambridge University Press, pp.393–413.

Fenna, Alan and Knüpling, Felix (eds) (2012) *Benchmarking in Federal Systems,* Melbourne: Productivity Commission. **https://perma.cc/QV8R-GG58**

FSG (First Secretaries Group) (2022) *A Culture of Cooperation: First Secretaries Group's Review of Ministerial Councils, Final Report to National Cabinet*, Canberra: Commonwealth of Australia. **https://perma.cc/P3SJ-VZD5**

Gagnon, Alain-G (2010) 'Executive federalism and the exercise of democracy in Canada', in Burgess, Michael and Gagnon, Alain-G (eds) *Federal Democracies*, Abingdon: Routledge, pp.232–50. **https://www.routledge.com/Federal-Democracies/Burgess-Gagnon/p/book/9781138969643**

Hueglin, Thomas (2013) 'Federalism and democracy: A critical reassessment', in Skogstad, Grace; Cameron, David; Papillon, Martin and Banting, Keith (eds) *The Global Promise of Federalism*, Toronto: University of Toronto Press, pp.17–42. **https://www.degruyter.com/document/doi/10.3138/9781442619197-003/html**

Karp, Paul (2020) '"Coag is no more": National Cabinet here to stay with focus on post-Covid job creation', Guardian Australia, 29 May. **https://perma.cc/BHG5-KAXM**

Kildea, Paul (2012) 'Making room for democracy in intergovernmental relations', in Kildea, Paul; Lynch, Andrew and Williams, George (eds) *Tomorrow's Federation: Reforming Australian Government*, Leichhardt NSW: Federation Press, pp.73–91.

Lecours, André, Béland, Daniel; Fenna, Alan; Fenwick Beck, Tracy; Paquet, Mireille; Rocco, Philip; and Waddan, Alex (2021) 'Explaining intergovernmental conflict in the COVID-19 crisis: The United States, Canada, and Australia,' *Publius* vol. 51, no. 4, pp.513–36. **https://doi.org/10.1093/publius/pjab010**

Legislative Council (no date) *Standing Orders*, West Perth, WA: Parliament of Western Australia.

Lynch, Andrew (2012) 'The reference power: The rise and rise of a placitum?' Kildea, Paul; Lynch, Andrew; and Williams, George (eds) in *Tomorrow's Federation: Reforming Australian Government*, Leichhardt NSW: Federation Press, pp.193–209.

Maddox, Graham (2002) *Federalism and Democracy,* Democratic Audit of Australia.

NCA (National Commission of Audit) (2014) *Towards Responsible Government,* Canberra: Australian Government.

NC (National Cabinet) (no date) 'National Cabinet Terms of Reference' **https://perma.cc/45VJ-7HC6** Accessed 10 January 2023.

O'Loughlin, Mary Ann (2012) 'Benchmarking and accountability: The role of the COAG Reform Council,' in Fenna, Alan and Knüpling, Felix (eds) *Benchmarking in Federal Systems*, Melbourne: Productivity Commission, pp.247–66. **https://perma.cc/QV8R-GG58**

Parkin, Andrew (2003) *Federalists Can Be Democrats – and Democrats Ought to Be Federalists: A Response to Maddox.* Democratic Audit of Australia.

Patrick, Senator Rex (2021a) *Dissenting Report: An Arrogant and Foolish Endeavour,* Finance and Public Administration Legislation Committee (Canberra). **https://perma.cc/ZD3B-XJT6**

Patrick, Senator Rex (2021b) 'PM in disgraceful defiance of Justice White's National Cabinet decisions: Further legal proceedings pending', webpage, 5 November.

Phillimore, John and Alan Fenna (2017) 'Intergovernmental councils and centralization in Australian federalism,' *Regional and Federal Studies,* vol. 27, no. 5, pp.597–621. $ **https://doi.org/10.1080/13597566.2017.1389723**

Phillimore, John and Harwood, Jeffrey (2015) 'Intergovernmental relations in Australia: Increasing engagement within a centralizing dynamic', in Chattopadhyay, R and Nerenberg, K (eds) *A Global Dialogue on Federalism Booklet Series, volume 8: Intergovernmental Relations in Federal Systems*, pp. 12-15. Canada: Forum of Federations and IACFS. **https://perma.cc/WZ7Z-4CFB**

Prime Minister, and Premiers and Chief Ministers (2021) 'The importance of confidentiality to relationships between the Commonwealth and the states and territories', **https://pmtranscripts.pmc.gov.au/sites/default/files/2022-06/national-cabinet-statement-the-importance-of-confidentiality-to-relationships.pdf**

PM (Prime Minister) (2020) 'Scott Morrison MP, Prime Minister, Press Conference,' Transcript, 26 March 2020. **https://perma.cc/KHF5-TW43**

PM (Prime Minister) (2022) Media Statement, 'Meeting of National Cabinet'. 9 December. **https://www.pm.gov.au/media/meeting-national-cabinet-4**

PM&C (Department of the Prime Minister and Cabinet) (2015) *Reform of the Federation: Green Paper,* Commonwealth of Australia (Canberra), 23 June. **https://perma.cc/EA2C-5J2K**

Poirier, Johanne and Saunders, Cheryl (2015) 'Conclusion: Comparative experiences of intergovernmental relations in federal systems', in Poirier, Johanne; Saunders, Cheryl; and Kincaid, John (eds) *Intergovernmental Relations in Federal Systems: Comparative Structures and Dynamics*, Don Mills ON: Oxford University Press, pp.440–98.

Rimmer, Ben; Saunders, Cheryl and Crommelin, Michael (2019) *Working Better with Other Jurisdictions,* Carlton, Victoria: Australia and New Zealand School of Government. **https://perma.cc/5YAB-PNJV**

Saunders, Cheryl (2002) 'Collaborative federalism', *Australian Journal of Public Administration,* vol. 61, no. 2, pp.69–77. $ **https://doi.org/10.1111/1467-8500.00274**

Sawer, Geoffrey (1970) *Cooperative Federalism and Responsible Government in Australia*, Alfred Deakin Lecture Trust.

Sawer, Marian; Norman Abjorensen, Norman; and Larkin, Phil (2009) *Australia: The State of Democracy*, Leichhardt NSW: Federation Press.

SCRAF (Select Committee on the Reform of the Australian Federation) (2011) *Australia's Federation: An Agenda for Reform,* The Senate (Canberra). **https://perma.cc/J9C6-ZEA5**

Senate (2021) 'Abbott Government's Commission of Audit', Senate committee report. **https://perma.cc/4ZMM-QL4T**

Smiley, Donald V (1979) 'An outsider's observations of federal–provincial relations among consenting adults', in Simeon, Richard (ed) *Confrontation and Collaboration: Intergovernmental Relations in Canada Today*, Toronto: Institute of Public Administration of Canada, pp.105–113.

Twomey, Anne (2007) 'Federalism and the use of cooperative mechanisms to improve infrastructure provision in Australia', *Public Policy,* vol. 2, no. 3, pp.211–26. Open access at **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1370701**

Twomey, Anne (2021) 'Submission' to the *COAG Legislation Amendment Bill 2021 [Provisions], Submission 8,* Canberra: The Senate. **https://perma.cc/QK3V-MT8B**

Victoria, Government of (2020) *Victorian Government Submission to the Senate Select Committee on COVID-19*, Melbourne: Government of Victoria. **https://perma.cc/NW8W-AGZA**

Wanna, John; Phillimore, John; Fenna, Alan; and Harwood, Jeffrey (2009) *Common Cause: Strengthening Australia's Cooperative Federalism*, Brisbane: Council for the Australian Federation. **https://perma.cc/N6LE-MKFH**