

State revival

The role of the states in Australia's COVID-19 response and beyond

Australia's states and territories have taken the lead in addressing the COVID-19 pandemic, supported by constitutional powers and popular mandates. With the states newly emboldened, further action on climate change, changes to federal–state financial arrangements and reform of National Cabinet could all be on the agenda.

Discussion paper

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Summary

The Australian Constitution gives the states and territories extensive powers, many of which the states and territories have exercised in the response to the COVID-19 pandemic. The major limitation of state ambition in the past – the federal government’s control of most revenue – is less salient in times of crisis. The states and territories may use their newfound moral authority to push for redress of the “fiscal imbalance” where taxes are raised federally but spent at the state level.

Part of the moral authority comes from popular support for state handling of the COVID-19 response. Australia Institute polling research finds that state and territory COVID-19 responses have been popular, with majority support for state border closures and the consistent finding that Australians think their state or territory government has handled the COVID-19 pandemic better than the federal government has.

Australia’s COVID-19 response has been highly rated, with few infections and deaths per capita. That said, the vaccine rollout has been criticised for being slow and likely to miss its targets, and state and federal governments have been criticised over their handling of aged care and hotel quarantine.

Overall, Australia’s federal structure seems to be responsible for some of the country’s success in handling COVID-19. Smaller countries have tended to do best, and in some ways Australia has acted as eight small countries instead of one medium-sized one. The “laboratories of democracy” model also means that each jurisdiction can experiment with policies, with successful policies adopted more broadly.

COVID-19 has already provoked one major change in federal–state relations, with the Council of Australian Governments (COAG) replaced by the National Cabinet. However, with concerns around transparency, accountability and representation, states may wish to pursue reform of the National Cabinet once the imminent threat of COVID-19 has passed.

COVID-19 is not the only example of the federal government trailing the states. On climate change, every state and territory jurisdiction has adopted a net-zero emissions by 2050 target – which the federal government is yet to do.

The evidence points to a revival of the fortunes of the states and territories in the Australian federation that will continue long after the COVID-19 crisis abates.

Introduction

The COVID-19 pandemic has the potential to re-write politics and society. It has already been responsible for profound changes in attitudes to government, public health and economics.

COVID-19 has also changed how governments relate to one another, both within the Commonwealth of Australia and between different countries. Prime Minister Scott Morrison introduced Australia's National Cabinet, an intergovernmental forum, in March 2020 and announced it would replace the existing Council of Australian Governments (COAG) two months later.¹

The COVID-19 response is necessarily the responsibility of both state/territory and federal governments, and some of the worst crises Australia has faced during the crisis have involved overlapping state–federal jurisdictions: aged care in Victoria, the Ruby Princess disembarkment in NSW and hotel quarantine numbers, management and outbreaks.

The different levels of government have not always agreed on how to handle the COVID-19 pandemic. Some of the starkest disagreements have occurred around border closures. The states have not been reticent in using their constitutional powers and democratic authority, even in the face of evident frustration from the federal government and (in some cases) other states.

The pandemic has highlighted that it is state and territory governments that are responsible for much of the infrastructure and services that Australians use day-to-day, and the evident popularity of state premiers and territory chief ministers may embolden them to take further action. The old saws around abolishing the states have not been heard during the pandemic.

A similar point was made by Greg Craven, writing in *The Australian*:

Federalism is about the feds and the states. For a century, each played their assigned roles. Canberra had power and money and beat the states ragged; the states wept piteously and tried to betray each other. COVID has changed this game, like Kerry Packer changed cricket.

¹ Hitch (2020) "COAG is no more": National Cabinet here to stay, PM says, <https://www.abc.net.au/news/2020-05-29/coag-scrapped-national-cabinet-here-to-say-coronavirus-update/12300636>

The states control the vast bulk of governmental apparatus that combats COVID. They run the hospitals. They command police. They have authority over public health. Their laws regulate quarantine hotels. They can lock people up.²

Craven goes on to speculate about the possibility of secession or the collapse of the federation, which seems unlikely. However, Craven's thesis that the states' increased authority will rebalance our federation is borne out.

In this paper, polling research and analysis by the Australia Institute looks at the strengthened role of the states and territories in Australian democracy.

² Craven (2021) *For first time since WWI the states are the boss*,
<https://www.theaustralian.com.au/commentary/for-first-time-since-wwi-the-states-are-the-boss/news-story/1c1fb05090ffb3fb719065312bd83622>

The powers of the states

Australian states have been able to coordinate their own responses and influence the federal response due in part to their strong constitutional powers.

The constitutional powers of the states in Australia are not guaranteed features of Westminster systems. Whereas the Australian Constitution gives specific powers to the federal parliament and the remainder to the states, Canada's Constitution gives specific powers to the provinces and the remainder to the federal parliament.³ The devolved parliaments of the United Kingdom (Scottish Parliament, Northern Ireland Assembly and the Welsh Senedd) are even more limited than Canada's provincial parliaments, both in terms of which policy areas are devolved to them and how constitutionally entrenched devolution is.⁴

In Canada, each province's Lieutenant Governor is appointed by and takes instruction from the federal government, and they have the nominal power to veto bills (a power most recently exercised in 1961). Lieutenant Governors have historically also refused to assent to bills and dismissed ministers.⁵

Australia's federation therefore has more in common with that of the United States, where state governments are co-equal with one another and have the residual of legislative powers not otherwise specified.⁶

As with many federations, one area of outsized federal influence in Australia is spending and revenue. State expenditures significantly exceed state revenues, with the states dependent on federal revenues to make up most of the difference. Some of the federal funding is subject to many restrictive conditions.⁷ The gap between expenditures and revenues is

³ There are also concurrent powers held by both state and federal parliaments. *The Constitution Acts, 1867 to 1982* (Canada), sec.91, <https://laws-lois.justice.gc.ca/eng/Const/>; *Constitution of the Commonwealth of Australia* (Cth), sec.109; Hamer (2004) *Can responsible government survive in Australia?*, pp. 46–47, https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~~/link.aspx?id=E546DECDB0B04E0C9EF20803027FCB32&_z=z

⁴ Gov.uk (2019) *Devolution of powers to Scotland, Wales and Northern Ireland*, <https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland>; Hamer (2004) *Can responsible government survive in Australia?*, pp. 25–28

⁵ Hamer (2004) *Can responsible government survive in Australia?*, p. 44

⁶ These differences are relative; Australia, Canada and the USA all score 5 out of 5 on Arend Lijphart's "Index of federalism". Rhodes, Binder, & Rockman (2006) *The Oxford Handbook of Political Institutions*, pp. 266–267, <https://minerva-access.unimelb.edu.au/handle/11343/30674>

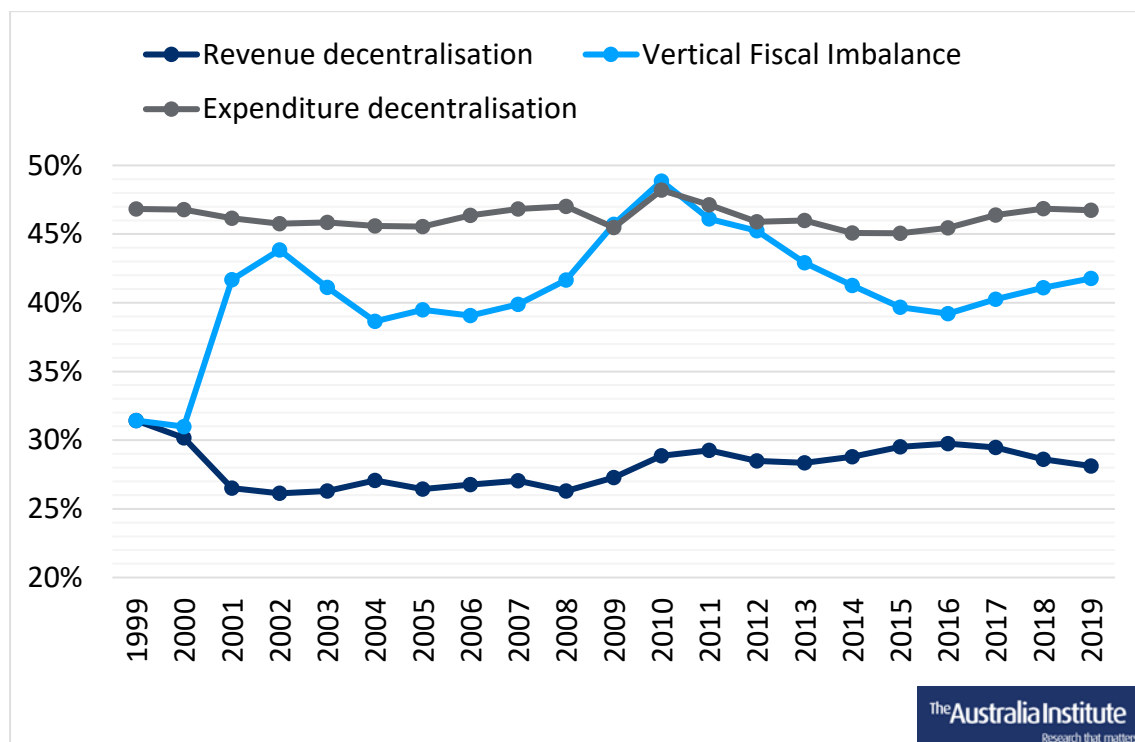
⁷ Thodey (2019) *Federal Financial Relations Review: Final Report*, p. 19, <https://www.treasury.nsw.gov.au/four-pillars/federal-financial-relations-review/federal-financial-relations-review-final-report>

referred to as the “vertical fiscal imbalance”: “The difference between the shares of revenue collection and of expenditure among various tiers of governments”.⁸

This highlights the distinction in a federation between the power to *decide* (e.g. which powers are reserved for the federal government) and the power to *act* (e.g. what portion state and local taxes are of overall tax revenue).⁹

The International Monetary Fund (IMF) compares national, state and local revenues, taxation and other economic measures for 75 countries, including 11 federations like Australia. Records of “subnational” (state and local) revenue and expenditure for Australia go back to 1999, before the Goods and Services Tax (GST) commenced on 1 July 2000. As shown in Figure 1, the states were responsible for 47% of expenditure but 31% of revenue in 1999. By 2019, the most recent year for which data is available, the states were responsible for the same share of expenditure but only 28% of revenue.

Figure 1: Australia's subnational government revenue and expenditure shares



Note: Revenue decentralisation is subnational governments’ revenue over general government revenue. Expenditure decentralisation is subnational governments’ own spending over general government spending. Vertical Fiscal Imbalance is 1 minus the ratio of own revenue to own spending.

⁸ Select Committee on the Reform of the Australian Federation (2011) *Australia’s Federation: an agenda for reform*, p. 55, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/reffed/reffed/report/index

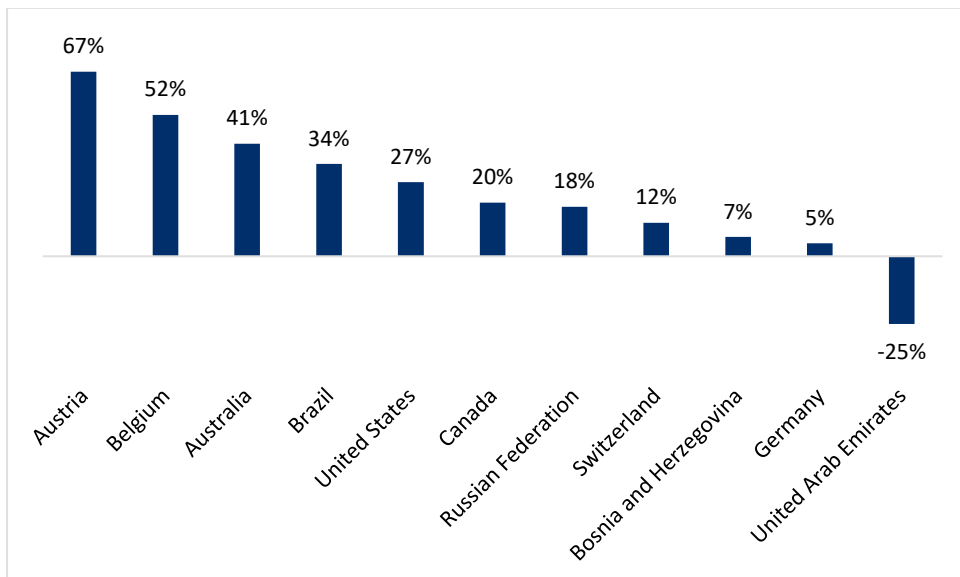
⁹ Vatter (2009) *Lijphart Expanded: Three Dimensions of Democracy in Advanced OECD Countries?*, p. 136

Source: IMF (2020) *Fiscal Decentralization*, <https://data.imf.org/?sk=1C28EBFB-62B3-4B0C-AED3-048EEEBB684F>

The difference between local and state government expenditure and local, state and territory government revenue is mostly made up by grants from the Commonwealth Government. These can be general grants, where the recipient has discretion in how to spend the money, or tied grants that come with conditions. For example, the National Cabinet has a National Health Reform Agreement that assigns responsibilities for healthcare between state/territory governments and the Commonwealth Government, and commits the Commonwealth Government to additional funding. In 2020–21, the government made about \$25 billion in payments to states and territories for the specific purpose of funding the agreed National Health Reform.¹⁰

Among the 11 federations recorded in the IMF data, Australia has the third greatest vertical fiscal imbalance at 41%, behind Austria (67%) and Belgium (52%) but ahead of other federations like the United States, Brazil and Germany. The United Arab Emirates is notable for having a negative fiscal imbalance, meaning that the seven emirates represent a greater share of the country's revenue than of its expenditure.

Figure 2: Vertical fiscal imbalance across federations (2018)



Source: IMF (2020) *Fiscal Decentralization*

In 2019, the NSW Government released the NSW Review of Federal Financial Relations, which considered the financial relationship between state and federal governments. The review identified seven issues including state dependence on the Commonwealth, the sustainability and efficiency of funding arrangements and federal relations.¹¹ The states and

¹⁰ Australian Government (2020) *Budget 2020-21: Budget Paper No. 3*, p. 14, <https://budget.gov.au/2020-21/content/bp3/index.htm>

¹¹ Thodey (2019) *Federal Financial Relations Review: Final Report*, p. 27

territories may use the opportunities that come with the easing of the COVID-19 crisis to take up state–federal financial arrangements with more vigour.

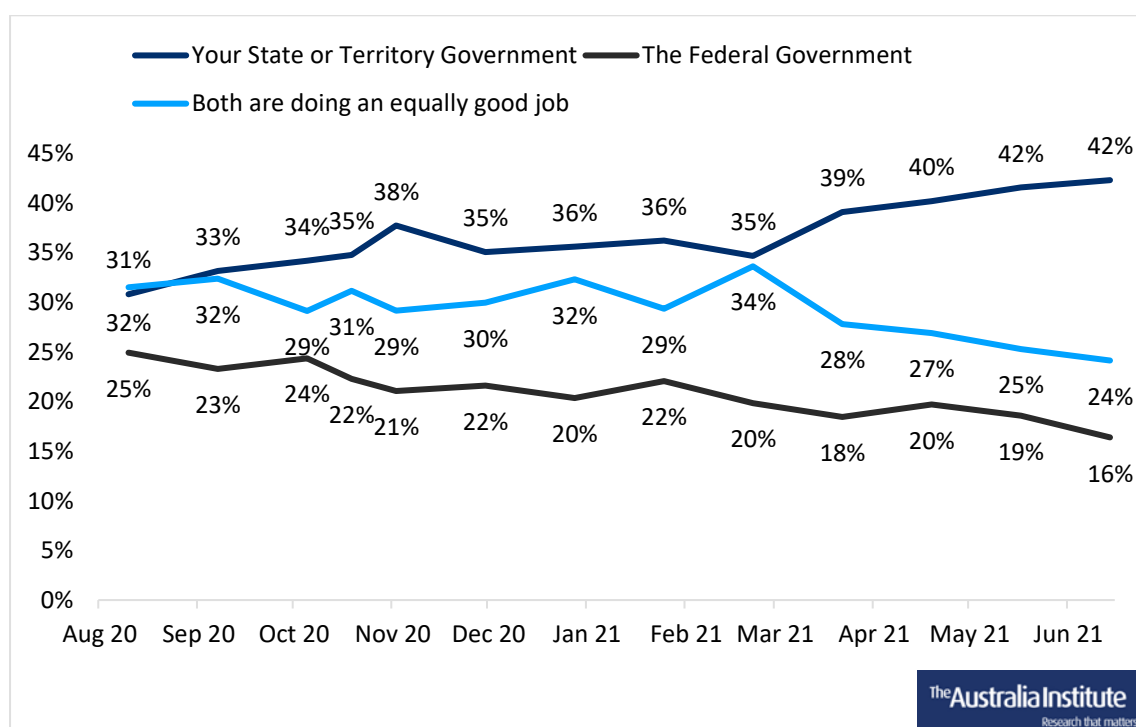
Handling of COVID-19 polling

STATE/FEDERAL HANDLING COMPARISON

Every month, the Australia Institute has surveyed a nationally representative sample of over 1,000 Australians about which level of government they think is doing a better job of handling the COVID-19 crisis.

Since polling began in August 2020, respondents have been more likely to select their state and territory government as doing a better job, followed by “both are doing an equally good job”. Over time, more Australians have chosen their state or territory (from 31% in August 2020 to 42% in July 2021) and fewer have chosen the federal government (from 25% in August 2020 to 16% to July 2021).

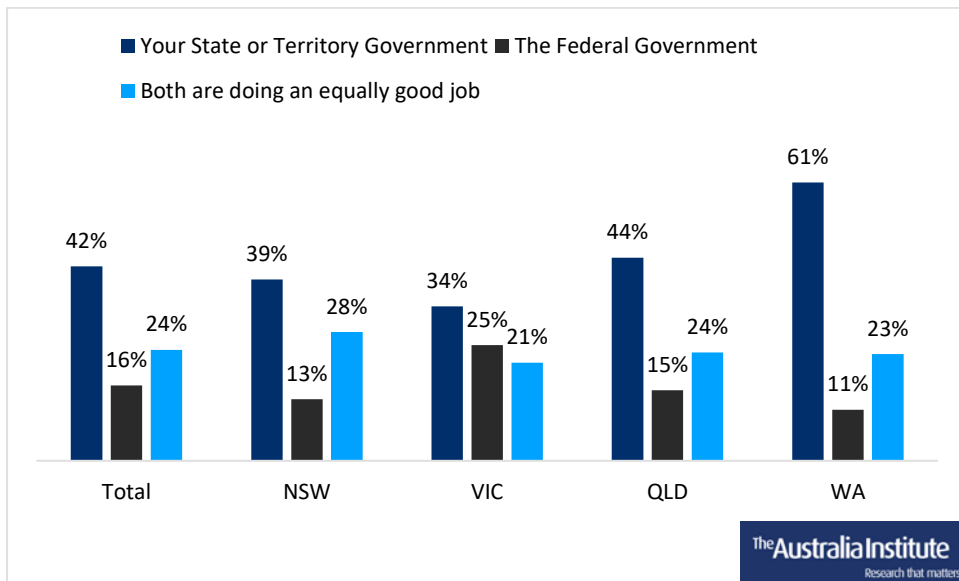
Figure 3: Which level of government is doing a better job of handling the crisis?



Source: Australia Institute polling

Looking at the results for July 2021 specifically, the pattern is similar across all four large states. Western Australia has the most pronounced difference, with three in five Western Australians (61%) saying that the state government is doing a better job compared to 11% for the federal government. The gap is narrowest in Victoria.

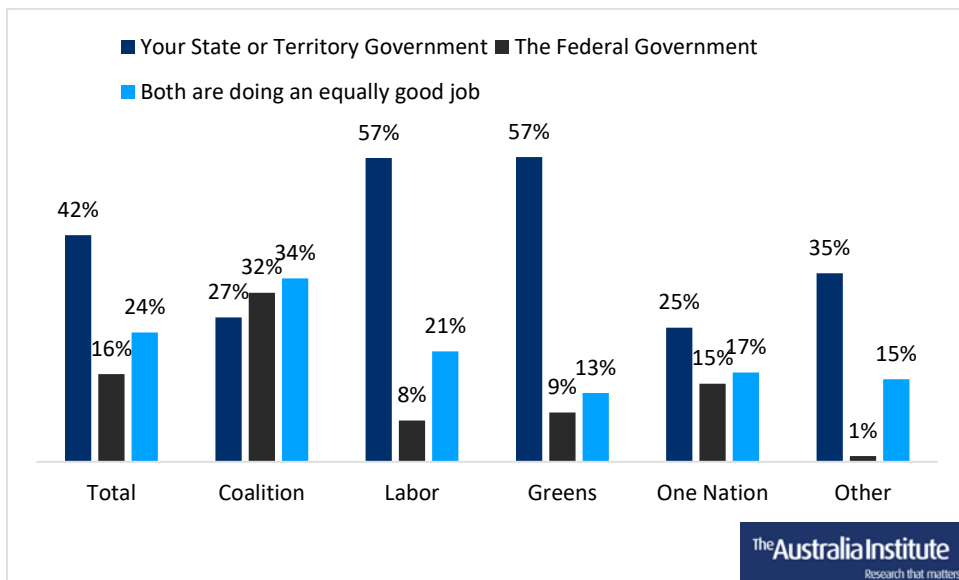
Figure 4: Which level of government is better handling the crisis? (July 2021)



Source: Australia Institute polling

By voting intention, Labor and Greens voters are notably more likely to say that their state/territory government is doing a better job than to say that the federal government is doing a better job or both are doing an equally good job. Coalition voters are about equally divided between those who select their state/territory government, the federal government or both.

Figure 5: Which level of government is better handling the crisis? (July 2021)



Source: Australia Institute polling

Higher and growing approval of state government handling of the COVID-19 pandemic over federal government handling is born out by polling conducted by the Essential Report and JWS Research.¹²

SUPPORT FOR BORDER CLOSURES

Border closures have been a particularly heated topic of COVID-19 policy, both between state/territory governments and between state/territory governments and the federal government.

Prime Minister Scott Morrison has described border closures as “not something ... to boast of” and “putting enormous stress and strain on Australians”.¹³ Agriculture Minister David Littleproud described arrangements as “insanity” and Peter Dutton said that “The reason the borders are closed to Queensland at the moment is because there’s a state election in October. Premier Palaszczuk is a panicker”.¹⁴

Most prominently, the Commonwealth Government initially joined Clive Palmer’s suit arguing that the WA “hard” border closure was unconstitutional, before withdrawing.¹⁵ Mr Palmer ultimately lost his case, with the High Court finding that the WA Government was not in breach of the Constitution.¹⁶

¹² JWS Research (2021) *True Issues 24*, <https://www.jwsresearch.com/>; The Essential Report (2021) *Federal government response to Covid-19 (13 April)*, <https://essentialvision.com.au/federal-government-response-to-covid-19-10>; (2021) *State government response to Covid-19 (13 April)*, <https://essentialvision.com.au/state-government-response-to-covid-19-25>; for what may be a contrary example, see Lunn (2020) *Trust in government jumps during Covid*, <https://www.theaustralian.com.au/nation/politics/federal-and-state-governments-win-publics-trust-during-covid-pandemic/news-story/8f14e22d6ad3041cc4bb818f7190d39d>

¹³ Cosenza (2020) *Morrison calls for state borders to open: “State borders are putting enormous stress and strain on Australians,”* <https://www.theaustralian.com.au/breaking-news/morrison-calls-for-state-borders-to-open-state-borders-are-putting-enormous-stress-and-strain-on-australians/news-story/37347de5ada59560b236266d8064df4b>; SBS News (2020) *“Not something to boast of”: Scott Morrison criticises Anastacia Palaszczuk over Queensland border closures*, <https://www.sbs.com.au/news/not-something-to-boast-of-scott-morrison-criticises-annastacia-palaszczuk-over-queensland-border-closures>

¹⁴ Littleproud (2020) *Parliament House Press Conference, 3 September 2020*, <https://www.michaelmccormack.com.au/media-releases/2020/9/4/transcript-parliament-house-press-conference-3-september-2020>; Stefanovic (2020) *Interview with Peter Stefanovic, Sky News*, <https://minister.homeaffairs.gov.au/peterdutton/Pages/interview-with-pete-stefanovic-sky-news-2020-08-28.aspx>

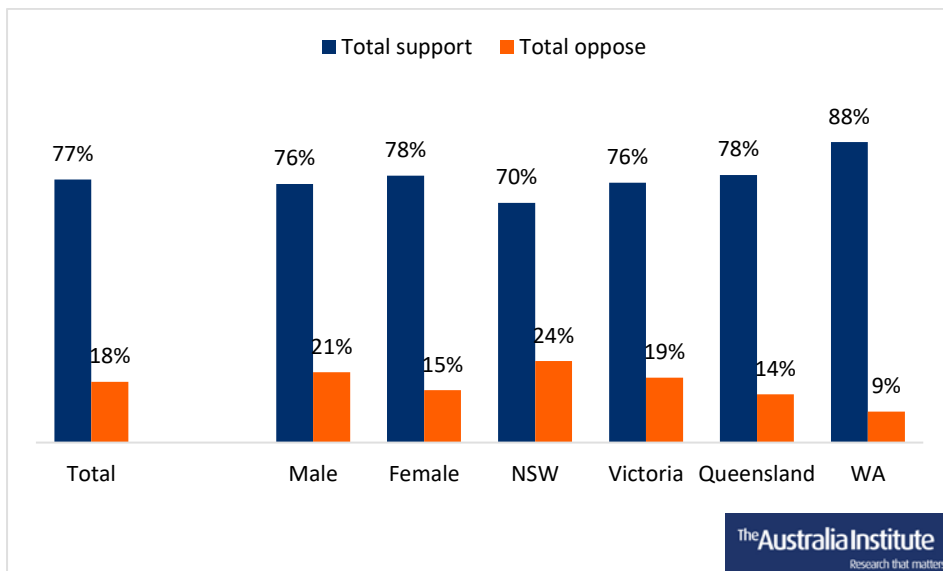
¹⁵ Carmody (2020) *Federal Government withdraws from WA border court case brought by Clive Palmer*, <https://www.abc.net.au/news/2020-08-02/government-removes-support-for-clive-palmers-push-to-open-border/12515948>

¹⁶ Byrne, Shine, & Al Jrood (2020) *Clive Palmer ordered to pay costs as High Court rules in favour of WA hard border closure*, <https://www.abc.net.au/news/2020-11-06/clive-palmer-loses-high-court-challenge-against-wa-border-close/12855286>

The federal government has been more circumspect in 2021.¹⁷ One explanation for the federal government’s changed tune on border closures may be their evident popularity.

Australia Institute polling in 2020 found strong support for state border closures. A national poll in May 2020 found three in four (77%) support state border closures, including 40% who strongly supported such closures. One in five (18%) opposed state border closures.¹⁸

Figure 6: Do you support or oppose state border closures?



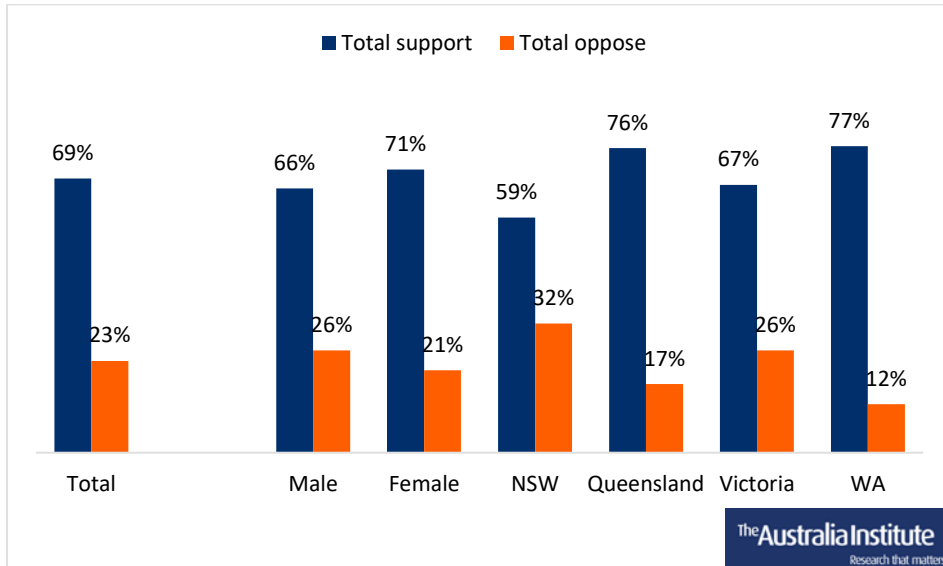
Source: The Australia Institute (2020) *Polling: State Border Closures*, <https://australiainstitute.org.au/post/polling-state-border-closures/>

¹⁷ Sainty (2021) *PM Scott Morrison would like ‘greater consistency’ on border closures*, <https://www.news.com.au/travel/travel-updates/health-safety/pm-scott-morrison-would-like-greater-consistency-on-border-closures/news-story/7a75dab394f406e8c1cbb853869e122d#.izhs0>

¹⁸ The Australia Institute (2020) *Polling: State Border Closures*, <https://australiainstitute.org.au/post/polling-state-border-closures/>

Respondents were also asked specifically about how they thought the Queensland government had handled their border closure. Seven in 10 Australians (69%) supported the Queensland government’s handling, including 30% strongly supporting.

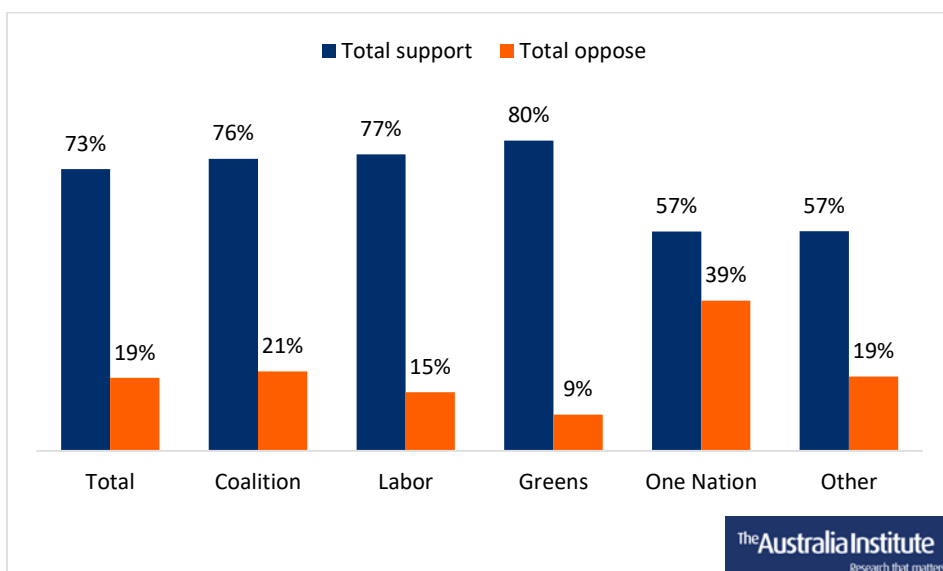
Figure 7: Do you support or oppose how Qld Govt has handled their border closure?



Source: The Australia Institute (2020) *Polling: State Border Closures*

In December 2020, the Australia Institute had the opportunity to ask NSW residents specifically about whether they support or oppose state border closures. Three in four NSW residents (73%) support border closures, including 32% strongly support.

Figure 8: Do you support or oppose state border closures?

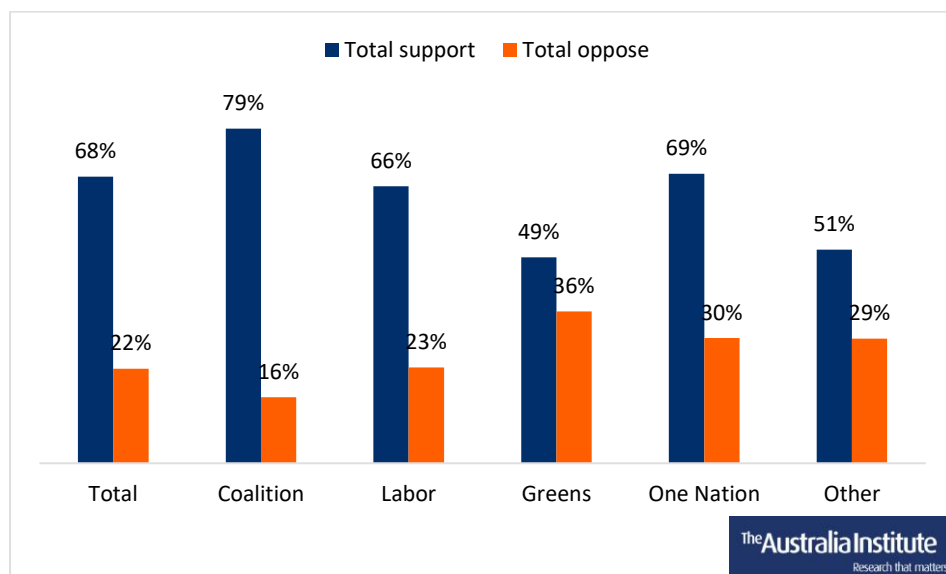


Source: Australia Institute polling

In May 2021, the Commonwealth Government announced a temporary ban on people in India, including Australian citizens, returning home to Australia. *Australian Financial Review* political editor Phillip Coorey describes this as the Commonwealth Government having “given in to the hardline approach of state premiers. Not because it is necessarily right, but because it is politically popular”.¹⁹

Polling from the Australia Institute confirms that most Australians support the ban on people returning from India, although at 68% support is lower than it was for state border closures. Most Australians (51%) also agreed with the general proposition – contradictory to the India ban – that Australian citizens should never be deprived entry to Australia.

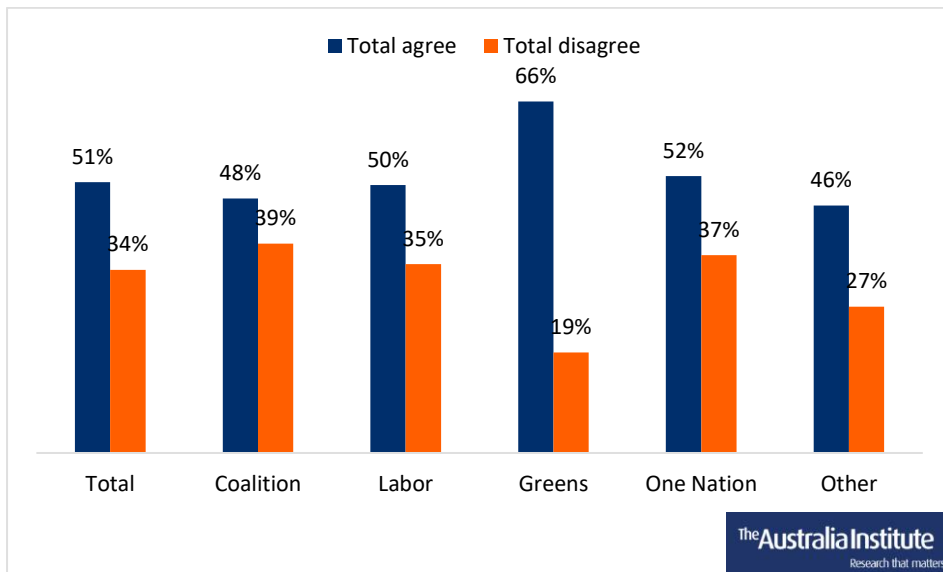
Figure 9: Support for the ban on people returning from India, by voting intention



Source: Australia Institute polling

¹⁹ Coorey (2021) *Can't beat the border populists, so PM Scott Morrison has joined them*, <https://www.afr.com/politics/federal/can-t-beat-the-border-populists-so-the-pm-has-joined-them-20210506-p57pbu>

Figure 10: Australian citizens should never be deprived entry to Australia



Source: Australia Institute polling

Federation as an edge

Australia's handling of COVID-19 has been excellent relative to other countries, with few cases and deaths as a proportion of population, and strong testing. These successes may in part be attributed to its federal structure.

More recently, Australia's vaccine rollout has been criticised, with recriminations between the state/territory governments and the Commonwealth Government over how the rollout has been handled.²⁰ However, it is too early to say how the vaccine rollout will go over 2021 and whether Australia will maintain its reputation for excellent handling of the pandemic.

LABORATORIES OF DEMOCRACY

The states can serve as “laboratories of democracy”, where policies adopted and “proven” in one jurisdiction can then be adopted by other jurisdictions. Previous Australia Institute research has identified areas where the ACT's policy leadership has served as a model for other states.²¹

The “laboratories” model has been used for COVID. After New Zealand and then the Australian Capital Territory adopted parliamentary oversight committees to scrutinise their respective governments' COVID-19 responses, the Australia Institute made the case for other state and federal parliaments to adopt similar mechanisms.²² The Australian Senate subsequently established a select committee on COVID-19.²³

The different shutdown, isolation, mask and border closure policies adopted by different state and territory governments have allowed for comparisons in pandemic response. The

²⁰ Gailberger & McHugh (2021) *'No issue': Hunt on vaccine rollout dispute*, <https://www.news.com.au/lifestyle/health/health-problems/covid19-vaccine-rollout-health-minister-greg-hunt-seeks-to-ease-tensions-with-states-and-territories/news-story/f24fd54fb85fd55d00fd6b787fda3126#.0jyme>

²¹ For more, see Browne (2019) *Canberra: Laboratory of democracy*, <https://australiainstitute.org.au/report/canberra-laboratory-of-democracy/>

²² Browne (2020) *Parliamentary scrutiny during the COVID-19 crisis*, <https://australiainstitute.org.au/report/parliamentary-scrutiny-during-the-covid-19-crisis/>; Minshull & Browne (2020) *Parliamentary Scrutiny During the COVID-19 Crisis in Tasmania*, <https://australiainstitute.org.au/report/parliamentary-scrutiny-during-the-covid-19-crisis-in-tasmania/>

²³ Australian Senate (2020) *Senate Select Committee on COVID-19*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19

federal government has singled out NSW for compliments, describing their test-and-trace strategy as “gold standard”.²⁴

Despite the opportunity for eight different jurisdictions to go in different directions, states have at times taken steps to harmonise their approaches.²⁵ In fact, head of the US National Institute of Allergy and Infectious Diseases Anthony Fauci identifies Australia’s uniformity as a strength:

At least looking at it from a distance, and then discussing with my Australian friends and colleagues, you had the capability and the uniformity of your citizens that when you shut down, you really shut down very effectively.

I'm sure not everybody in Australia was excited about having to shut things down.

But you did it in a way which was really quite uniform, but importantly, effective.

We had an inconsistent response, which allowed us, unfortunately, to really do worse than essentially any other country.²⁶

That combination of states and territories able to take charge of their own jurisdictions, but still cooperate most of the time, is a winning combination.

EIGHT SMALL COUNTRIES

The Lowy Institute analyses COVID-19 outcomes by country, using a combination of confirmed cases (absolute, per capita and per test), confirmed deaths (absolute and per capita) and tests per capita.

Australia’s long-term COVID-19 outcomes place it ninth of 102 countries considered, behind Bhutan, New Zealand, Taiwan, Thailand, Cyprus, Iceland, Rwanda and Latvia. Comparing countries by their short-term scores (final week considered only), Australia places third in the world, just after Bhutan and Singapore.²⁷

Australia belongs to the region that has the best overall COVID-19 outcomes, the Asia–Pacific. However, it otherwise belongs to categories that have not had good COVID-19

²⁴ Cockburn (2020) *NSW is the “gold standard” for COVID-19 management according to the PM — here’s why*, <https://www.abc.net.au/news/2020-09-08/why-pm-says-nsw-is-gold-standard-in-covid-19-control/12636890>

²⁵ Hayne (2020) *Here are the key takeaways from Scott Morrison’s latest coronavirus update*, <https://www.abc.net.au/news/2020-08-21/national-cabinet-border-town-decisions-agreement-coronavirus/12581938>

²⁶ Taylor (2021) *Anthony Fauci on what the US can learn from Australia’s COVID-19 response — and vice versa*, <https://www.abc.net.au/news/health/2021-04-14/covid-19-anthony-fauci-what-australia-can-learn-from-us/100068256>

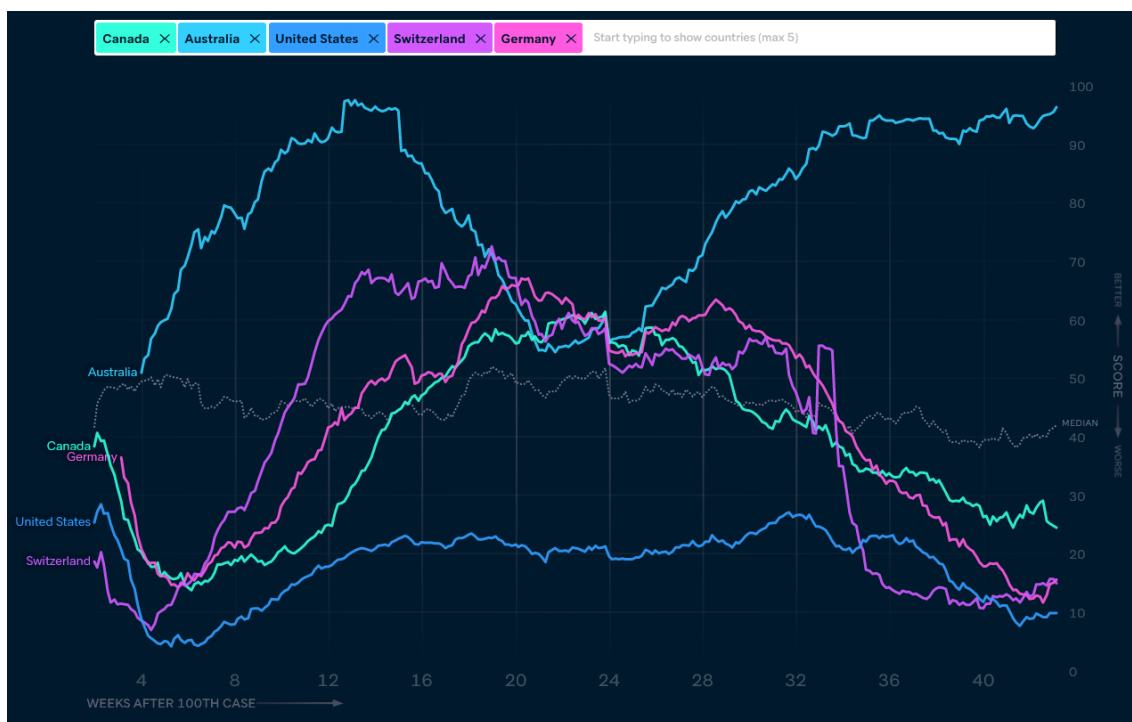
²⁷ Using 13 March 2021 figures. Leng & Lemahieu (2021) *Covid Performance*, <https://interactives.lowyinstitute.org/features/covid-performance/>

outcomes. Democratic countries have worse COVID-19 outcomes than hybrid or authoritarian countries and medium-sized countries have worse COVID-19 outcomes than small countries (though better than large ones). This makes Australia’s performance particularly remarkable.

One explanation is that Australia’s federation has allowed it to effectively act as eight small countries, and get the natural advantages in handling COVID-19 that small countries seem to display. The researchers behind the study note that: “Countries with populations fewer than 10 million people proved more agile, on average, than the majority of their larger counterparts in handling the health emergency”.²⁸

However, other economically developed federations – among them Canada, Germany, the United States and Switzerland – have not replicated Australia’s success (as shown in Figure 11). When economically developing federations are considered as well, there is no apparent trend in how federations have handled COVID-19 compared to other forms of polity.

Figure 11: COVID-19 performance of select federations



Source: Leng & Lemahieu (2021) *Covid Performance*,
<https://interactives.lowyinstitute.org/features/covid-performance/>

Note: Belgium and Mexico are also OECD members and federations, but were omitted as the tool only has space for five countries. Both countries under-performed the median.

²⁸ Dziedzic (2021) *NZ, Vietnam top list of countries with best responses to the pandemic*,
<https://www.abc.net.au/news/2021-01-28/new-zealand-tops-list-as-country-with-best-covid-response/13095758>; Leng & Lemahieu (2021) *Covid Performance*

Further study is needed to identify whether Australia’s success during the COVID-19 pandemic is related to its federal nature and – if so – why other federations do not seem to have done as well. As discussed under the “Laboratories of democracy” section, Australian states and territories have also been effective at *harmonising* their COVID-19 strategies, and it may be this combination – the ability to “go it alone” but the willingness to cooperate – that has proven the winning combination.

National Cabinet

An early consequence of the COVID-19 pandemic was the adoption of the National Cabinet, a meeting of the Prime Minister, state premiers and territory chief ministers which quickly replaced the existing Council of Australian Governments (COAG).

Whereas COAG itself typically met twice a year, so far the National Cabinet meeting schedule has been anywhere between two meetings a week and roughly one meeting a month.²⁹ With Australia failing to meet its original vaccine timeline, the Prime Minister's response was to dramatically increase the number of National Cabinet meetings.³⁰

Whereas COAG operated under formal arrangements, complete with bureaucratic support and records of proceedings, the National Cabinet is ostensibly covered by cabinet-like restrictions like confidentiality and limitations on Freedom of Information requests.

The loss of a public record of decision-making is not the only change. The Australian Local Government Association was represented in COAG, but not in National Cabinet.³¹ Instead, treasurers and the President of the Local Government Association are members of the ancillary National Federation Reform Council.³² Federal, state and territory ministers are represented on six National Cabinet Reform Committees.³³ The National Cabinet is ostensibly a committee of the Commonwealth Cabinet, created by the Prime Minister's authority, rather than a product of state–federal relations.³⁴

Governments have used National Cabinet to play a significant coordination role. Paul Bongiorno reports that the state and territory leaders agreed to establish and pay for hotel

²⁹ 9News (2021) *National cabinet meetings ramped up to address troubled vaccine rollout*, <https://www.9news.com.au/national/prime-minister-scott-morrison-national-cabinet-returns-vaccine-rollout/e0294b9d-753a-4916-a359-59bff94960c0>

³⁰ Murphy & Karp (2021) *Morrison asks national cabinet to meet twice a week after Covid vaccine program flounders*, <http://www.theguardian.com/australia-news/2021/apr/14/morrison-asks-national-cabinet-to-meet-twice-a-week-after-covid-vaccine-program-flounders>

³¹ Crabb (2020) *Morrison has sailed into treacherous waters that sunk the dreams of those before him*, <https://www.abc.net.au/news/2020-06-07/federal-reform-treacherous-waters-scott-morrison-capital/12320028>

³² federation.gov.au (n.d.) *National Federation Reform Council*, <http://federation.gov.au/nfrc>

³³ federation.gov.au (n.d.) *National Cabinet Reform Committees*, <http://federation.gov.au/national-cabinet/national-cabinet-reform-committees>

³⁴ Karp (2021) *Battle to unlock secret of Scott Morrison's national cabinet faces tribunal*, <http://www.theguardian.com/australia-news/2021/may/19/morrison-bus-analogy-shows-national-cabinet-meetings-are-not-confidential-tribunal-hears>

quarantine at the first National Cabinet meeting, “when the Prime Minister came to the meeting with no quarantine plan”.³⁵

National Cabinet has been spoken of warmly, with Australia’s coordinated but cautious approach to the pandemic a notable contrast to the “patchwork” approach of another federation, the United States.³⁶ It has been endorsed by former premier Jay Weatherill.³⁷

Unfortunately, there are issues around National Cabinet transparency. Prime Minister Scott Morrison has announced his intention that the National Cabinet is treated as a cabinet, with Freedom of Information limitations and cabinet confidentiality: without “lifting the veil” in the Prime Minister’s words.³⁸ With COAG already the subject of criticism for a lack of transparency, further limiting the openness of its successor is a mistake.

Senator Rex Patrick has argued that this approach increases the power of the Prime Minister relative to premiers and chief ministers, and subjects premiers and chief ministers to enforcement of secrecy provisions under the *Criminal Code Act 1995*.³⁹ The Cabinet Handbook has been updated to the same effect.⁴⁰ Senator Patrick has taken a case to the Administrative Appeals Tribunal challenging the Prime Minister’s claim that cabinet confidentiality applies to the National Cabinet.⁴¹

It is also worth considering the absence of opposition leaders from National Cabinet. While the National Cabinet has been compared to the War Cabinet of the 1940s, the War Cabinet was notably attended by opposition figures. Political editor Simon Benson has noted that one of the attractions of the National Cabinet model is that it marginalises opposition

³⁵ Bongiorno (2020) *PM shirks duty in gold-standard quarantine blame game*, <https://thenewdaily.com.au/news/2020/12/22/paul-bongiorno-scott-morrison-quarantine/>

³⁶ Burton (2020) *National cabinet creates a new federal model*, <https://www.afr.com/politics/federal/national-cabinet-creates-a-new-federal-model-20200318-p54bar>

³⁷ Richardson (2020) *Retain national cabinet post-pandemic: ex-Premier*, <https://indaily.com.au/news/2020/05/06/retain-national-cabinet-post-pandemic-ex-premier/>

³⁸ Burton (2020) *National cabinet creates a new federal model*; Hitch (2020) *Scott Morrison says National Cabinet here to stay, will replace COAG meetings in wake of coronavirus*, <https://www.abc.net.au/news/2020-05-29/coag-scrapped-national-cabinet-here-to-say-coronavirus-update/12300636>

³⁹ Patrick (2020) *All the Prime Minister’s Premiers*, https://www.rexpatrick.com.au/national_cabinet

⁴⁰ Department of the Prime Minister and Cabinet (2020) *Cabinet Handbook - 14th edition*, pp. 27, 30–32, <https://www.pmc.gov.au/resource-centre/government/cabinet-handbook>

⁴¹ Karp (2020) *National cabinet secrecy under fire in first-of-its-kind challenge to new arrangement*, <http://www.theguardian.com/australia-news/2020/aug/19/national-cabinet-secrecy-under-fire-in-first-of-its-kind-challenge-to-new-arrangement>; (2021) *Battle to unlock secret of Scott Morrison’s national cabinet faces tribunal*

parties.⁴² Calls early in the pandemic for Anthony Albanese and other opposition figures to be included in National Cabinet have not been heeded.⁴³

An early example of National Cabinet secrecy provisions limiting the public's right to know is around the meeting of the Energy National Cabinet Reform Committee (ENCRC), chaired by federal Energy Minister Angus Taylor. Ministers have been critical of the federal government's control of the meeting, with ACT minister Shane Rattenbury saying:

if the federal government doesn't want to talk about it, Angus [Taylor] just doesn't let it on the agenda⁴⁴

The Energy National Cabinet Reform Committee is one of two committees of energy ministers; the other is the Energy Ministers Meeting (EMM) – which is a successor of the COAG Energy Council. The EMM was required because the National Cabinet Reform Committee model did not suit forums that have “large ongoing workplans”;⁴⁵ the ENCRC also may not meet the criteria for the meeting of ministers required by the National Electricity Law.⁴⁶ Like the ENCRC, the EMM is chaired by Angus Taylor, but the EMM is not bound by cabinet rules.⁴⁷

The lack of transparency has provoked criticism from the energy industry and regulators, with Energy Security Board chair Kerry Schott saying that the lesson from COVID-19 that transparency and expert advice are key must be heeded. Instead, key energy stakeholders

⁴² Benson (2020) *All parties eager for new national forum*, <https://www.theaustralian.com.au/commentary/coronavirus-all-parties-eager-to-sign-up-for-a-new-national-forum/news-story/d8622ceb0207f1414db5c47206647460>

⁴³ Hamilton & Kells (2020) *Opinion: Time for a real war cabinet — and one based on capability, not ideology*, <https://www.themandarin.com.au/128235-opinion-time-for-a-real-war-cabinet-and-one-based-on-capability-not-ideology/>; Matthewson (2020) *Coronavirus politicis: Morrison must reach out to Albanese*, <https://thenewdaily.com.au/news/politics/australian-politics/2020/03/20/coronavirus-paula-matthewson-war-cabinet/>

⁴⁴ Mazengarb (2020) *“Angus doesn't let it on the agenda:” State energy ministers slam federal policy*, <https://reneweconomy.com.au/angus-doesnt-let-it-on-the-agenda-state-energy-ministers-slam-federal-policy-94278/>

⁴⁵ Conran (2020) *Review of COAG Councils and Ministerial Forums*, pp. 5, 16, <https://www.pmc.gov.au/domestic-policy/effective-commonwealth-state-relations>

⁴⁶ The author could not find this specified by governments, but it seems likely based on his discussions with experts. See the responsibilities and powers of the “MCE” in the *National Electricity (South Australia) Act 1996* (SA), [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20\(SOUTH%20AUSTRALIA\)%20ACT%201996.aspx](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ELECTRICITY%20(SOUTH%20AUSTRALIA)%20ACT%201996.aspx)

⁴⁷ For more details, including how work is expected to be divided between the two bodies, see Mazengarb (2020) *Transparency lost as Taylor seizes control of now “secret” energy minister forums*, <https://reneweconomy.com.au/transparency-lost-as-taylor-seizes-control-of-now-secret-energy-minister-forums-12982/>

are excluded from National Cabinet meetings and it is not known what ministers are discussing.⁴⁸

With the state and territory government response to COVID-19 being so successful and popular, it remains to be seen whether they will be content long-term with a National Cabinet model that is managed under federal cabinet rules, including laws that could expose state and territory leaders to criminal secrecy provisions.

⁴⁸ Mazengarb (2020) *Transparency lost as Taylor seizes control of now "secret" energy minister forums*

Climate change

A parallel to the rise of the states in their handling of COVID-19 is their preparedness to take the lead on action on climate change. Every Australian state and territory has a net-zero emissions by 2050 target, which the Commonwealth Government so far has not set. States and territories have pursued other ambitious plans, like the NSW renewable energy push and the ACT's 100% renewables target (already achieved).

Former Liberal opposition leader John Hewson made the comparison with the handling of the COVID-19 pandemic in a November 2020 opinion piece, writing:

Of course, it would be preferable to have a coordinated national response [to climate change], but the Morrison government has ignored the significance and urgency of the challenge and abrogated this responsibility. It has again created a leadership vacuum, which the states, rightly or wrongly, are attempting to fill.⁴⁹

One of the most obvious advantages of federation is that different communities can be represented differently. The report from the Select Committee on the Reform of the Australian Federation identifies “customisation of policies to meet local needs” as a key strength of federalism, for example.⁵⁰

What is interesting about the states' leadership on COVID-19 and on climate change is that the states have pursued a similar strategy to one another, sometimes in conflict with the federal government. Since the federal government's electorate is the aggregate of the electorates of all states and territories, this divide cannot be explained by the different wishes of the public. Instead, there is something about the federation itself that produces a state–federal divide.

As with COVID-19, the states and territories have taken the lead on climate change action. The Morrison Government is making noises about matching the states' net-zero by 2050 target, but this is unlikely to be the end of state leadership on policy issues that have traditionally been seen as the federal government's purview.

⁴⁹ Hewson (2020) *The Morrison government has abrogated responsibility for acting on the climate crisis to the states*, <http://www.theguardian.com/commentisfree/2020/nov/25/the-morrison-government-has-abrogated-responsibility-for-the-climate-crisis-to-the-states>

⁵⁰ Select Committee on the Reform of the Australian Federation (2011) *Australia's Federation: an agenda for reform*, pp. 14–15

Conclusion

Australia's states are sometimes disparaged as relics or mendicants, dependent on the federal government and unnecessarily fine-grained for a medium-sized country like Australia with little demographic variation by geography. However, the states and territories have shone during the COVID-19 crisis – at times dragging the federal government in their wake – with strong, strict responses that have won popularity with the public.

Their overall successful handling of COVID-19 shows that the states and territories remain valuable organs of Australian democracy, and demonstrates that the federal government is far from the only game in town. On the urgent and necessary response to climate change, too, the states and territories have set the standard that the federal government – to date – fails to meet.

It remains to be seen how the states and territories will use their newfound authority and popular support. Further action on climate change, changes to federal–state financial arrangements and reform of National Cabinet could all be on the agenda.

Appendix: Polling

Method

The Australia Institute surveyed over 1,000 people once a month between August 2020 and July 2021, online through Dynata's Rapid Results polling, with nationally representative samples by gender, age and region.

The margin of error (95% confidence level) for the national results is 3%.

Results are shown only for larger states.

Voting crosstabs show voting intentions for the House of Representatives. Those who were undecided were asked which way they were leaning; these leanings are included in voting intention crosstabs. "Coalition" includes separate responses for Liberal and National. "Other" refers to Independent/Other.