

Independent review of the APS – Working better with other jurisdictions

Key points

- Commonwealth-state relations is becoming an increasingly strategic game of winners and losers – the Commonwealth against the states and territories (states); or the Commonwealth playing one state off against the other. This is at odds with a collaborative approach to Commonwealth-state relations which prioritises achieving the best outcomes for the nation.
- A greater recognition across the APS of the unique role of the states in Australia’s federation could foster more flexible, and pragmatic policy design better targeted to achieving desired outcomes.
- The APS could usefully reflect on its ability to foster policy innovation by ensuring states have more flexibility in how they achieve agreed outcomes. This requires the APS to reflect and build on its capacity to embrace risk. It requires the Commonwealth to shift its approach away from directive approaches to secure state control to one that more fully recognises states’ autonomy and sovereignty.
- The APS must demonstrate genuine respect and acknowledge the partnership role of states. For some policy problems, more enduring, robust and successful policy outcomes may be achieved by allowing states to take a leading role, rather than simply falling in with APS policy prescription.
- The Commonwealth should leverage states’ experience to develop robust evidence and experience-based policy. An APS culture that leans heavily upon the experience of states will capture some of the benefits of federalism – greater inter-jurisdictional diversity, complementarity of policy approaches and reduced duplication.
- Models for shared responsibility can lead to improved outcomes that enhance national wellbeing. The APS must partner with states to achieve shared outcomes across complex, cross-jurisdictional areas of responsibility, including health and education. Success will depend on clear accountability mechanisms, including robust performance reporting frameworks and well-designed KPIs for each level of government.

Introduction

NSW Treasury welcomes the opportunity to comment and provide our thoughts on an insightful analysis of some of the challenges confronting the APS in improving the relationships between all jurisdiction to drive better policy outcomes in areas of shared responsibility and enhance national wellbeing.

The challenges set out in paper are not unique to the APS. Similar challenges apply at a state level – how to deepen our focus on customers, and indeed citizens, across government agencies. Within NSW Treasury we are thinking deeply about how our staff can develop greater capability, understanding and empathy when they are not directly exposed to delivering front line services. Driving change in the sphere of social policy can be difficult when agencies are siloed, and incentives are narrowly framed and linked to agency-specific objectives.

The conclusions set out in the review and prescriptions set out for future action to strengthen governance and the ‘tradedcraft’ of cross-jurisdictional working are well-considered and merited. At the state level, as well as the Commonwealth, the challenge is to achieve a better balance between the right frameworks, capability building and stewardship mindset for government to function properly, especially when working across state and Commonwealth spheres of overlapping responsibility and complex interdependencies.

States and territories play a unique role in Australia’s federation

The paper acknowledges that the inclusion of local government and First Nation peoples’ perspectives is critical to providing a realistic picture of the complexity and interdependencies of service delivery in Australia.

The unique role and position of states should be much more explicitly recognised. States have the primary role in delivering many public services – early childhood and school education, public hospitals, transport, roads and infrastructure, and justice.

For most people, the most immediate and frequent contact they have with government is with public services delivered by state governments. However, many overlook the significance of state government investment in these services because spending is distributed across nine state governments. For example, state governments remain the majority funder of education services across Australia.

Similarly, community-wide expectations and longstanding practice regarding the role of state governments in the delivery of these services means states have an extremely limited fiscal discretion and are constrained in the ways such revenues can be allocated or shifted.

The principle of subsidiarity underpins and informs the practice of federation. It is an animating principle in favour of decentralisation. It works to allocate decision-making to the lowest level of government reasonably practicable. Democratic accountability is enhanced because decisions are made, policies designed and implemented by those with the greatest proximity to affected individuals and communities.

A greater recognition across the APS of the unique role of the states in Australia’s federation could foster more flexible, and pragmatic policy design better targeted to achieving its desired outcomes while minimising the risk of unintended consequences.

Cooperative and competitive federalism

The paper discusses cooperative federalism at some length. However, the risks and downsides of coercive federalism are downplayed.

The National Schools Reform Agreement (Gonski 2.0) is widely seen as an unprecedented example of the Commonwealth using its financial position to dictate state resource allocation, budget decisions and policy in an area of state responsibility and policy expertise. However, evidence showing how this intervention will lead to improved educational attainment is lacking.

At the same time, competitive federalism has significant capacity to generate public value. This is not explored in the paper.

Competitive federalism allows jurisdictions to experiment and take risks. From a national perspective, it offers flexibility and scope for innovation.

The APS should reflect on its ability to foster innovation by providing states more flexibility in how they achieve agreed outcomes. Equally this requires the APS to embrace greater risk. A shift by the Commonwealth away from exerting control and policy prescription over states' decision-making would be productive - toward approaches that more fully recognise the autonomy and sovereignty of states within the Australian federation

A partnership of equals

Competitive and cooperative federalism exist on a spectrum – and policy design, development and implementation can shift between these points at different times.

The APS needs to adopt a nuanced approach to harness the benefits that can arise from both forms of positive federalism. This can only be done by working with states as equal partners in policy areas of shared responsibility – that is, in developing policies that lie in the middle of the thick and thin plane.

Currently, the paper notes how the APS can consult, and at times, collaborate with states. However, the paper clearly conceives of all decision-making power residing in the centre. This is inconsistent with a commitment to working with states as genuine partners.

There is currently no external impetus to change how the APS works with the states and in the absence of any real change to the power balance between the Commonwealth and states, it is difficult to see how enduring change will be made.

The paper could for example show how the APS could equip itself to deliver good policy outcomes that involve the states without recourse to the constitutional and fiscal advantages that accrues to the centre in Australia's federal model. The paper may benefit from a discussion on an idea of 'restraint' by the APS in its approach to policy development – what needs to be done to ensure the APS delivers policy based on what outcomes are good for the nation, and not simply the outcomes it can deliver because it has the constitutional and financial leverage to do so.

Policy-making based on first principles

Best practice models for strategic policy-making emphasise the importance of correctly defining the problem to be solved. This is necessary to ensure proposed interventions are well-targeted, benefits outweigh costs and for implementation to be undertaken in ways that help secure success.

In a federal model, this can mean national approaches are not always the best solution. The paper correctly notes that in some instances, states are best placed to lead such cross-jurisdictional work. Such work may not always involve the Commonwealth.

The above point is highlighted by the experience of the National Occupational Licensing Authority (NOLA). States established NOLA in response to the Commonwealth's Seamless National Economy agenda in 2008. The Commonwealth was a strong advocate and driver behind the establishment of NOLA which subsequently failed and was dismantled. The states now manage cross-border licensing

through bilateral arrangements, which work to facilitate cross-border trade for a number of occupations.

The APS needs to appreciate that, for some policy problems, more enduring, robust and successful policy outcomes may be achieved by the states taking a leading role, rather than simply falling in with APS policy prescription.

Experience-based policy making

Deep experience in policy-making and service delivery is critical to achieving successful public policy outcomes.

The paper highlights the benefits of evidence-based policy and states that the APS needs to develop deep subject matter expertise in areas where they are not the primary service provider. We do not consider this appropriate or merited. A better approach (in keeping with a resource constrained environment) would value the deep experience that already exists within the states.

The paper could consider how the APS may seek to leverage states' experience. An APS culture that leans heavily upon the experience of states will capture some of the benefits of federalism – greater inter-jurisdictional diversity, complementarity of policy approaches and reduced duplication. This is preferable to the APS developing duplicative subject matter expertise 'in-house'. Such ways of working would also be consistent with a shared aim that the Commonwealth and states work in genuine partnership with each other.

Zero sum games and 'Ministerial capture'

Commonwealth-state relations are increasingly characterised by a strategic 'zero sum game' dynamic created through the political interactions between federal and state Ministers. However, the paper might benefit from exploring the idea of 'Ministerial capture'.

Ideally, an independent APS should be forthright in providing advice to Commonwealth Ministers on what are sound approaches to dealing with Commonwealth-state issues. This is difficult when the APS is exposed to a culture of 'quick wins' and point scoring between federal and state political actors. How the APS can preserve its independence and provide objective policy advice on Commonwealth-state relations to pursue strategic policy reform in this environment is a significant challenge. Arguably a parallel challenge may be said to exist across the states.

Recent COAG meetings may be viewed as a platform for 'announceables' addressing nationally coordinated responses on issues like counter-terrorism and responding to the Royal Commission Into Institutional Responses to Child Sexual Abuse.

At other times, COAG has tended to focus on transactional discussions on specific agreements and granular issues. Arguably, this means long-term strategic issues and reform opportunities have been crowded out. It is unclear whether COAG, and other COAG Councils have a real vision for key areas of engagement and long-term policy reform.

Health is a good example where the Commonwealth and states have a critical shared problem in addressing the long-term sustainability of health expenditure. However, this issue remains

unaddressed. It raises the question of what role the APS could play to support ongoing efforts for strategic reform with the states through COAG Councils and other interactions with the states.

A potential way to address the above challenges and provide an impetus for strategic reform lies with department heads across federal and state governments. The COAG Senior Officials Meeting (and equivalent bodies that support other COAG Councils) provides a potentially useful mechanism through which department heads from the Commonwealth and states can partner together to help shape strategic reform agendas. These bodies could serve as a clearinghouse for national policy reform, especially in the spheres of cross-jurisdictional policy like education and health. However, it also raises questions about why this does not already occur that the paper could also explore.

Moving away from transactional dealings

The paper could explore how a commitment to working in a genuine and equal partnership with the states needs to extend beyond the 'tradedcraft' of cross-jurisdictional working.

Currently, Commonwealth-state relations is largely focused on state performance, and how states will fulfil the obligations imposed on them by the Commonwealth in exchange for federal funding.

Transactional dealings between the Commonwealth and states and a focus on quick wins means one-sided approaches to the development of national agreements and national partnership approaches often ensue. This means that the Commonwealth can hold states responsible for addressing different problems, while leaving its own role unaddressed.

For example, the National Housing and Homelessness Agreement 2019 requires states to address housing affordability. States can exercise significant influence over the supply-side issues of housing affordability, but the Commonwealth was not subject to any obligation to address demand-side issues associated with housing affordability due to the operation of the federal tax system

Similarly, the current health agreement acknowledges the role of states as the system manager for public health systems. At the same time, the Commonwealth role with respect to primary health and aged care is more narrowly confined to that of funder and regulator. Arguably, this results in sub-optimal outcomes for citizens as incentives for investment in preventative care are weak.

A more collaborative, system-wide approach where responsibility and accountability on key issues such as unnecessary hospital admissions are shared could help both levels of government save money, enhance productivity and, vitally, lead to improved health outcomes for patients. Disappointingly, such outcomes have not been delivered when proposed in the context of the current National Health Reform Agreement.

The paper does not address how Commonwealth-state relations increasingly risks becoming a strategic game with clear winners and losers – the Commonwealth against the states, or the Commonwealth playing one state off against the other. This can lead to sub-optimal outcomes. Unintended and perverse consequences can occur, incentives can be misaligned, opportunity costs compounded, and potential benefits foregone. This is at odds with a collaborative approach to Commonwealth-state relations which prioritises achieving the best outcomes for the nation.

Shared accountability

The paper obliquely touches upon the challenge facing the APS to overcome the strategic environment set by Commonwealth Ministers and develop pragmatic solutions to building better ways of working between the Commonwealth and states.

The paper could highlight how placing greater value on personal relationships and opportunities for face to face interactions could help drive collaboration and build trust. Such actions represent an important first step in driving cultural change.

When advising Ministers on policy reform, the APS could consider how approaches that share responsibility across the Commonwealth and states can lead to improved outcomes which will enhance national wellbeing.

State public services also have a role – drawing on their first-hand knowledge of public service delivery, they need to equip the APS with clear evidence of how such models can work.

Building upon this, the paper could explore how the APS could partner with states to achieve shared policy and reform outcomes. Successful collaboration will depend on clearer accountability mechanisms, including robust performance reporting frameworks and well-designed KPIs for each level of government. This will mean each has the capacity to hold the other to account.

Outcome Budgeting

The NSW Government has adopted an Outcome Budgeting framework that places citizens at the centre of government decision-making. The paper could consider how the APS may use innovative budgeting frameworks to advise Ministers. This is desirable as such tools could show how achieving successful policy outcomes at a national level depends on working in partnership with state governments to ensure incentives and accountability frameworks are aligned. This would mean potential reform opportunities are not squandered, benefits are fully realised and wellbeing is enhanced.