Compromise is not a dirty word

The federation

There remains value in divided powers and bargained solutions to national problems.

The problems of federalism have again been in the news. Last month, federal Health Minister Nicola Roxon revealed that a final agreement was imminent between the Commonwealth and the states and territories on the future funding and management of public hospitals. It will be the end of a long process that began with Labor’s 1987 election commitment to take full responsibility for public hospitals.

In 2010, then prime minister Kevin Rudd tried hard to get the states and territories to cede responsibility for hospitals, along with a significant share of GST revenue. However, he was forced to accept a compromise, whereby public hospitals remained under state and territory control but the Commonwealth was to pay 60 per cent of their funding growth in return for a smaller share of the GST.

Even that deal was too much for Western Australia, which took a principled stance against surrendering any of its GST. After last year’s election, Roxon embarked on a new round of negotiations that concentrated on agreed outcomes and performance targets that the states and territories would need to meet in order to secure Commonwealth funding. The potential clawback of GST funds was quietly dropped.

The Council of Australian Governments meeting in February this year approved a joint heads of agreement, setting out the principles that would govern the new arrangement. Differences still remained on a number of key issues, such as Victoria’s objections over the method of calculating emergency waiting times. Some details were therefore left to be settled by future negotiation. Roxon has now announced that the outstanding issues are almost all resolved and a final agreement can be expected soon.

This tortuous process can be assessed in two ways. On the one hand, it can be seen as a series of humiliating back-downs by the Federal Government. This is certainly the approach taken by the Federal Opposition, and also the media. Indeed, the Government itself encouraged such a verdict when Rudd rashly staked out his unequivocal goal on the hustings. He promised to end the “blame game” over hospitals and that the “buck” would stop with him. By the standards it originally set for itself, the Government has clearly failed, having been forced by the states and territories into a series of major concessions.

On the other hand, the final policy can be looked on as a sound and workable compromise to which all the major stakeholders have contributed. As such, it will represent a marked improvement both on the status quo and on the Commonwealth’s initial proposal for a total takeover. For true believers in federalism, it will reflect the characteristic virtues of the constitutional division of powers between the Commonwealth and states. When no side can dominate and each must cede ground to the others, the result is a negotiated consensus that strikes a good balance between all the various interests involved.

The virtues of federalism have received a new airing in a report from the Senate Select Committee on the Reform of the Australian Federation (Australia’s Federation: an agenda for reform, June 2011). The committee received submissions from various experts on federal systems as well as a carefully argued case from the Council of Australian Federations. The council is the peak body of the state and territory governments, formed in 2006 to advance the general interests of these governments in their dealings with the Commonwealth.

In the opening chapter of its report, the committee sets out the familiar arguments in favour of a federal division of powers: Australia is too large and varied to be governed wholly from the centre; independent state governments provide diversity and experimentation in policy; cooperation between governments leads to greater scrutiny and debate; the principle of subsidiarity (championed in the European Union) supports locating policy and delivery with the lowest practicable level of government; federalism, as an instance of the constitutional separation of powers, helps to restrain the power of government and protect individual liberty.

The report then goes on to discuss the main issues facing Australia’s federation, including intergovernmental relations, vertical fiscal imbalance and horizontal fiscal equalisation, as well as the role of local government and the possible expansion of regional government. The report provides a clear summary of the issues, with a general leaning towards strengthening rather than weakening federal structures.

Concrete suggestions, however, are sparse. Most recommendations focus on the establishment of a new joint standing committee of the Federal Parliament that would examine federal issues, including reporting on the activities of COAG. This new committee would then be required to examine and report further on contentious questions of Commonwealth-state relations, such as vertical fiscal imbalance.

Referring all of the tough issues to yet another committee may look like a cop-out. But it is actually a sensible response in the current, fevered...
political climate. The times are not conducive to thoughtful reform of anything, let alone something as vexed and complex as Commonwealth-state relations. Rather than trying to launch a substantial reform program into such a raging headwind, the committee has wisely decided to lay a basis for future change when calmer conditions may prevail. A powerful joint standing committee, with regular meetings, hearings and reports, could help to keep the issues of federalism alive until some political party and its leader have the courage to pick them up and run with them.

Australia’s federation could certainly be made to work better, though the desired direction of reform is contested. Those with tidy minds, including many economists and businessmen, would like to see an end to all overlapping functions. Each function, they argue, should be clearly allocated to only one level of government, which would then be fully accountable to its own electorate for raising the necessary revenue and delivering the relevant services.

But some degree of overlap and fiscal imbalance appears inevitable in complex modern federations. Recent experience over health reform has confirmed that the states and territories are determined to retain some direct responsibility in key policy areas such as health, education and infrastructure. At the same time, states and territories need the support of the Commonwealth, not only over matters of funding but also to represent an overall national perspective.

Such power sharing between different levels of government need not be a source of policy weakness. Indeed, negotiated compromises between governments acting in partnership and representing divergent but equally legitimate interests can lead to superior outcomes. In that case, reform should not look to remove overlap so much as try to make it work better as a genuine partnership.

Over recent years, federal governments have certainly tried to give the states and territories more financial independence and security. The Howard government began the unconditional transfer of GST revenue through the Commonwealth Grants Commission. The Rudd government sponsored the Intergovernmental Agreement on Federal Financial Relations, which consolidated over 90 specific purpose payments into five broad national agreements, with a focus on agreed objectives and outcomes rather than detailed prescriptions. The ultimate failure of the Rudd government’s assault on the GST for health reform has effectively cemented the states’ right to this revenue, even though they contest the basis of its distribution.

Nonetheless, the states and territories are far from complete masters over all the funds they receive. An increasing number of “national partnership” payments are conditional on the states and territories meeting specified targets. They threaten to reintroduce the levels of stipulation associated with the old specific purpose payments. The states are complaining, with some justice, that the Commonwealth is using the language of partnership as a cloak for reasserting its own control.

For committed federalists, the balance of power is still skewed too far towards the Commonwealth. Unfortunately for the reformers’ cause, however, public opinion is less than fully committed to the virtues of federalism. Australians might not want all power centralised in Canberra. But they do not embrace the political consequences of this preference. As the recent health-reform experience confirms, the voters warm to politicians who promise to impose a central solution. When the states and territories force a negotiated compromise, oppositions and the media persist in seeing “failure” instead of a successful outcome. Unless more opinion leaders and political parties openly champion the value of divided powers and bargained solutions, federal politicians will continue to set themselves up for disappointment.

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