

Chapter 11: How Local Government Can Save Australia's Federal System

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Introduction

The debate about federalism is gathering momentum. Australia's system of government is facing renewed scrutiny as we enter an era where blame-shifting, cost-shifting and duplication between the three spheres of government have become part of the public debate (e.g. House of Representatives 2003; LGI 2006; Dollery 2005; Wild River 2006). As a nation, we have already passed up two prime opportunities to reflect on the nature of our federation and how it should evolve to meet the nation's needs. The Centenary of Federation was a lost opportunity; something we did not take sufficient advantage of. So, too, was the constitutional debate on whether or not Australia should become a republic or retain the monarchy. On that occasion, we worked ourselves into lather about symbols – not substance.

More than 10 years ago, then Queensland Premier Wayne Goss posed the question: 'Will the States survive as viable political entities into the 21st century?' (Goss 1995). Goss called for a national debate on the future of our federation, including a reallocation of responsibilities between different spheres of government and argued '[u]nless this debate is vigorously taken up, what we will witness within a generation is the de facto, if not de jure, abolition of the States'.

Wayne Goss' warnings sound prophetic now. Federal Governments have been encroaching more and more on state territory. It is a trend seen through both the Hawke and Keating Governments and which is accelerating under John Howard. As mentioned earlier (see Brown, Peters this volume), the recent High Court decision upholding the Federal Government's powers to legislate in the area of industrial relations is a case in point (WorkChoices 2006). States' powers are being challenged in the policy areas of the environment, water, health and education. Local government is providing a broader range of services. The Labor State Premiers across Australia have recently formed the Council for the Australian Federation (CAF) based on the Canadian Council of the Federation model. This is a political response to the increasing centralism of federal governments.¹

But where are we heading – under what terms, and what conditions? More importantly, what will the outcome be? It is timely for a really good look at how we govern ourselves. We – the people – need to be masters of our own destiny.

If we were drawing up government in Australia from scratch, we would not pick the 'dog's breakfast' we have today. Yes, Australia is doing well. But we're doing well in spite of our governance arrangements, not because of them.

This chapter demonstrates the importance of the local government sector to regional governance in Australia's federal system of government. It puts the case that, although there has been substantial reform within the federal governance system in the last 20 years, there has been a failure to establish enabling institutional arrangements for strengthening local government's capacity to work together to deliver regional outcomes. In the context of current shifting roles and responsibilities for local government, this paper argues the case for constitutional reform to recognise local government within the Australian federal governance system.

Local government and federalism: a need for change

From a local government perspective, we now have three spheres of government in Australia that should operate in a cooperative and cohesive way. All three spheres should be treated as equal and valued partners, working together to achieve the best possible governance outcomes for the people they collectively serve; the Australian public.

Galligan (1996: 55) refers to local government's greatest strength, 'in the democratic character of the Australian polity', as being to 'represent and serve people in local communities'. Galligan also points out that 'the Australian States have been, and in various degrees remain, dominant and dictatorial in their treatment of local government and will concede to its representatives no part of their constitutional rights which they so vehemently claim for themselves'. Herein lies the rub. There is no mention of local government at all in the Australian Constitution, the document that sets out the way the nation is governed. This is because in 1901 local government was regarded as 'residue', for which the States were responsible. Constitutional responsibility for local government lies with the State and Territory governments with formal roles, functions and responsibilities established in state-level laws that differ across the different jurisdictions in Australia. Local government was 'established by state parliaments to exercise delegated powers and, as such, it is part of the States' administrative apparatus (whose) powers can be readily changed and the manner in which it exercises them is subject to overall control by the State' (Advisory Council for Inter-government Relations 1984: 23).

Importantly, local government is dependent on the States and the Federal government for resourcing. Though it has its own ability to raise revenue through rates, these are capped in NSW, and it does not have access to a growth tax such as the States and Territories have with the GST. Local government has also become a convenient dumping ground for costly and onerous state government

services. This led to the historic signing of the Intergovernmental Agreement on cost shifting between the States, the Federal Government and local government in April 2006 (IGA 2006).

Councils have been amalgamated or sacked by state governments without apparent cause or what many would consider a reasonable process and without the councils having the ability to appeal against unfair treatment. The campaign catch-cry for local government in 2007 is 'Fair Funding, Fair Treatment and Formal Recognition', which I will explain further below. But this catch-cry is a response to the fact that in Australia today, we have a federation with four distinct features:

- an increasingly dominant and centralist Federal Government;
- state governments that are still strong, but whose power has peaked;
- a complete absence of regional government, but a growing mish-mash of inter-government regional arrangements that are largely ad hoc and lack any real cohesion; and
- local government that continues to deliver services for communities despite being seriously under-resourced and increasingly over-regulated.

Notwithstanding, on the positive side, we are witnessing a greater degree of cooperation when it comes to our key forum for the resolution of intergovernmental challenges – the Council of Australian Governments (COAG). Local government is represented on COAG by the Australian Local Government Association (ALGA), the peak national body for local government in Australia. As a peak government body, COAG brings together the Prime Minister, State Premiers, Territory Chief Ministers and the ALGA President to develop responses to issues of concern to all three spheres of government. COAG at the very least is a willing spirit to address issues of mutual national importance that affect all three spheres of government. However, we have perhaps the personalities of the day to thank – not the system of governance that surrounds them.

Strengthening regional governance: empowering local government

In seeking to reconfigure our federation, first and foremost we need to strengthen local government. In doing so, we will empower councils to work together more effectively at the regional level. We must also overcome the problems confronting the diverse range of intergovernmental regional arrangements by making sure local government is at the centre – not the side – of these activities. We must empower local government to play a larger and fuller role in our governance arrangements by:

- embracing the principle of subsidiarity;
- eliminating cost shifting;

- fully addressing the problem of vertical fiscal imbalance; and
- providing local government with greater autonomy through full constitutional recognition.

The need to find better regional governance arrangements is clear. Communities and councils in coastal regions are facing dramatic demographic change. Their problems are compounded by the fact that their populations are not only growing at a rapid rate, but are also ageing at a rapid rate (see Berwick this volume). In rural and remote areas, communities are crying out for a greater emphasis on regional development to generate robust economic growth and counter the drift of young people to the major metropolitan centres (as shown by Mal Peters in this volume). Meanwhile, councils on the fringe of major cities face particular difficulties as the rapid expansion of suburbia into the rural fringe has increased demand for public infrastructure (see also Gleeson this volume). These are just three issues of critical concern to councils that have a regional dimension.

So, how do we get a greater focus on the problems that confront our regions? Some advocate a two-pronged approach: first, abolish the States, and second, amalgamate local government into regional governments; and 'hey presto – fewer spheres of government, better regional arrangements'. Unfortunately, this approach is fundamentally flawed. Despite our best wishes, the States are not going to roll over and die – at least, not in the short to medium term. More importantly, by merging local government into regional government you will destroy the one sphere of government that is genuinely part and parcel of our communities.

This does not mean that local government should not be prepared to reform, in order to better represent and serve those communities. Experience has shown that reform, accepted by councils and supported by communities, such as voluntary amalgamations, boundary changes, regional arrangements, shared services and doing things more collectively, achieves the best outcomes. However, it is clear from compulsory reform programs such as the State-imposed new boundaries in Victoria and South Australia, that reform based simply on 'top-down' ideas of amalgamation will risk the current benefits of local governments' connectedness with the community, and may make them less, not more financially sustainable. In Victoria, 12 to 14 of the councils created through the Kennett government's amalgamation program are now financially unsustainable. In South Australia, where the number of local governments was cut in half – to 69 – the indications are that about 29 of those are financially unsustainable. The decision by the Queensland Government in April 2007 to abandon its collaborative approach to reform with local government, and unilaterally attempt to impose new boundaries, is a backward step unlikely to achieve the benefits promised through a more considered partnership.

Local government reform is both a part – and a creature – of moving forward, therefore, all options for reform need to look beyond artificial financial indicators, and look at the ways in which communities change, and the ways in which they link and work together. There are eight or nine significant indicators for what makes 'community', not simply financial indicators and finances. Under any option, the existing strength of local government must be maintained and built, and local government's great strength lies in the fact that is part of and close to the people. It is the most transparent, responsive and accountable form of democracy that we have. It can respond to local need in a way no other sphere of government can, be it regional, state or federal. Local government embodies the spirit of subsidiarity, a principle which holds that the functions of government should be exercised as closely as practicable to the affected citizens. Local government delivers services and facilities on a human scale. It is responsive to local need, provides local leadership and advocacy, fosters civic pride and reflects local priorities in a way state and federal governments never can.

So, how can we in local government address our lack of solid, regional governance arrangements? Local government already works closely together at the regional level in a number of important ways. Firstly, for example, for some years local government has worked together through Regional Organisations of Councils, that is ROCs (see <http://www.alga.asn.au/links/regionalOrgs.php>). ROCs provide an opportunity for councils to exchange ideas, develop a sense of regional identity, promote common objectives and share resources.

Secondly, councils also work together on specific projects. For example, in NSW, councils in the Hunter and Central Coast have developed a comprehensive regional environmental management strategy (<http://www.hccrems.com.au/about.html>). This very successful regional initiative is being implemented through the collaborative efforts of fourteen councils to facilitate a regional approach to ecologically sustainable development. This has been achieved through a package of natural resource management initiatives. It encourages greater co-operation between member councils, state and federal authorities, industry and community groups, and it's led by local government. Now regarded as a model for integrating local government planning and environmental management at the regional level, it provides a framework for co-ordinated action, addresses those environmental and natural resource issues that are best managed at a regional level, and facilitates regional partnerships and resource sharing to address key environmental management issues in a co-ordinated, pro-active and efficient manner.

A third example comes from Queensland, the South East Queensland Regional Plan and its accompanying Infrastructure Plan (OUM 2005; 2006), which together are considered an outstanding achievement for regional planning in Queensland and Australia. In short, these plans establish collaborative, top down and bottom

up processes that will deliver tangible and lasting benefits for the region's communities.

Finally, local government also participates in the development of better regional governance through direct partnership with Federal agencies. As recognised in the submission by the Department of Transport and Regional Services to the House of Representatives inquiry on local government and cost shifting, local government is central to regional development and the delivery of the regional policy objectives of the Australian Government on a national scale (SCEFFPA 2003, p.91). As DOTARS recognised, local government offers a wide and well-established national network of public administration which may be capable of taking on extra responsibilities and functions, especially in rural and regional Australia. In some cases local government is the only institutional presence in small rural and remote areas. Its strong links to the community, accountability to the communities it represents and its legislative basis make it both durable and financially stable – unlike some community or interest groups. The integrated structure of councils can allow a high level of co-ordination between different activities; and the links between local government and local business and industry puts councils in a good position to foster a 'bottom up' approach to regional development. As DOTARS said, local government plays an increasingly important role in providing information to support Commonwealth regional policy development, and as a key stakeholder in the implementation of Commonwealth regional policy initiatives.

A national reform agenda for local government

When it comes to regional cooperation, councils are getting on with the job. But if councils are to work more effectively at the regional level, they need to be better resourced individually. Strengthening councils individually enhances their capacity to work together regionally. But how can we do this? The peak national representative body for local government in Australia, the Australian Local Government Association (ALGA), is pressing for three objectives – fair funding, fair treatment and formal recognition.

Fair funding

The need for fair funding is the top priority. The Australian Government collects the lion's share of Australian taxation revenue. It is the Australian Government's duty to share these funds with its state and local government counterparts to ensure they meet their service and infrastructure obligations to communities. By doing so, the Australian Government can counter the destructive impact of vertical fiscal imbalance.

A Coalition Government in the late 1970s linked payments to local government to a share of taxation revenue – in that case, personal income tax. This gave local government, for the first time, access to a fair share of revenue – that is access

to growth funding. This sensible and fair arrangement unfortunately was axed in the 1980s by the Hawke Government as a cost cutting exercise. Since then, local government has been steadily losing ground. Federal financial assistance grants have failed to match the increasing demands made on councils in the 21st century. The value of these grants, as a proportion of total Commonwealth revenue, has fallen from 1.2% in the early 1990s to less than 1% in 1996-97 (ALGA 2006). In two years time, it will have fallen to less than 0.8% (ALGA 2006). Local government's share of the Australian tax base has fallen from around 6% in the 1970s to about 3% today (PwC 2006). In fact, local government in Australia now has the fourth lowest share of taxation among the 30 industrialised nations of the OECD, and as shown at the outset (Brown this volume), a far lower share than in most other federations. And yet, councils have undergone a period of profound change over the past 40 years. Traditionally, local government has provided property-based services – the old 'roads, rates and rubbish'. To these traditional 'three R's' we can now add regulation, recreation, relief (as in welfare, childcare, aged care and health care services), regionalism and regional development, and retail services such as water, sewerage and transport services.

Local government continues to perform its traditional roles. But there is now much greater demand for councils to provide a growing range of human services. In recent years, councils have acquired new responsibilities including arts and culture, management of health, alcohol and drug problems, community safety and accessible transport. Local government is also playing a growing regulatory role in areas such as development and planning, public health, and environmental management, to name a few. Like a hungry caterpillar, these new services are now gobbling up the expenditure once reserved almost exclusively for traditional services and infrastructure maintenance. In the 1960s, around 50% of local government expenditure was allocated to the maintenance of roads. By the 1990s, this had fallen to just over 25% and local governments now have a significant issue in maintaining infrastructure (see PwC 2006). In the early 1960s, just 4% of expenditure was allocated to education, health, welfare and public safety activities. By the late 1990s, this had risen to 12% – a threefold increase.

These changes have been partly driven by community demand and partly by a range of other factors beyond the control of local government. Significantly, these factors have not only added to the range of services required of local government – they've also come largely without new or adequate sources of revenue.

ALGA argues that financial assistance grants should be replaced with a share of Commonwealth taxation revenue. This is supported by the recent Pricewaterhouse Coopers report into local government funding which recommends revising the escalation methodology for Financial Assistance Grants from a mix of population growth and Consumer Price Index to a new escalation

formula tailored to local government cost movements (PwC 2006). The funding provided to local government through Financial Assistance Grants should also be fixed at a rate of at least 1% of taxation revenue, providing councils with funding that grows as the economy grows.

Fair treatment

Apart from the need for fair funding, we also need to ensure fair treatment – and that means putting an end to cost shifting. Local government has been on the wrong side of cost shifting for decades, with state governments and – to a lesser extent – the Australian Government, passing functions to local government with inadequate or no off-setting revenue source. The Australian Government, for example, transferred responsibility for a large number of regional airports to local government in the early 1990s. The PricewaterhouseCoopers report (PwC 2006) shows that while some initial funding was made available, councils have been substantially out of pocket in their efforts to maintain and upgrade these important economic assets. The total infrastructure backlog for local government across Australia is estimated at between \$11 billion and \$16 billion. PricewaterhouseCoopers' conservative estimate is that between 10% and 30% of councils have financial sustainability issues. It recommends a new infrastructure fund for local government – a Local Community Infrastructure Renewals Fund – to provide a source of revenue to upgrade existing community assets, many of which were built in the 1950s and 1960s and are deteriorating, such as swimming pools, ovals, community centres, libraries and health centres.

In many rural communities, local government is the last man standing. Once the federal or state governments withdraw services, if local government doesn't step in, no one will. That's why we are seeing more and more councils buying doctors' surgeries and accommodation, and entire hospitals in some cases, in a bid to keep medical services available to people in rural communities.

In essence, cost shifting amounts to theft, diverting scarce council dollars to fund a function imposed on it by another sphere of government. The impact of cost shifting on local government has been estimated to be somewhere between \$500m and \$1.1 billion each and every year (House of Representatives 2003). Importantly, all three spheres of government – the Australian Government, the State and Territory governments and local government – have recently come together and signed an intergovernmental agreement in an attempt to set up some guidelines and principles to put an end to cost shifting (IAG 2006). Essentially, this agreement seeks to ensure that when agreements are made by a state or federal government which wishes to transfer a function or service to local government, then the cost of that function or service will be taken into account. It is possible that this historic agreement will pave the way to greater cooperation between all three spheres of government, ensuring proper consultation and negotiation takes place over the movement or shifting of

responsibilities and functions between spheres of government. Time will tell – but it's a promising start.

A further welcome initiative has been the Tripartite Partnership Agreement on Population Ageing that has recently been reached between the Australian Government, Tasmanian State Government and Tasmanian Local Government (Tripartite Partnership Agreement 2006). This Agreement is the first of its kind, and seeks to achieve a coordinated and cooperative approach to ageing in Tasmania. This would include joint work on planning, services and facilities to meet demands of an ageing population.

Formal recognition

The third element of ALGA's campaign is formal recognition: that is, constitutional recognition. Councils should not be merely creatures of state and territory governments. They should be seen as expressions of Australia's commitment to community democracy. This is why recognition of local government in the Australian Constitution is so important. A milestone towards local government's long-term goal of constitutional recognition was reached with the Commonwealth parliamentary resolution on recognition of local government, which passed the Senate on 7 September 2006 and the House of Representatives on 17 October 2006. The resolution stated:

That the House/Senate:

Recognises that local government is part of the governance of Australia, serving communities through locally elected councils

Values the rich diversity of councils around Australia, reflecting the varied communities they serve.

Acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation.

Acknowledges the importance of cooperating with and consulting with local government on the priorities of their local communities.

Acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services.

Commends local government elected officials who give their time to serve their communities.

ALGA has representation on 14 ministerial councils; so local government is at the table but not formally recognised. Local government should not only be recognised and valued, but should also be recognised and protected as a sphere of government.

Conclusion: reconfiguring the federation

In summary, the need to reform our federal system of government is very clear. So what is the way forward? The debate has already begun. In a major speech on 14 July 2005, before he became Labor leader, Kevin Rudd outlined his commitment to 'co-operative federalism':

The challenge for a future Labor government will be to rebuild the federation. And it is my argument that the federation can be rebuilt based on the principles of co-operative (rather than coercive) federalism. If Federal Labor succeeds in this enterprise, it will create a sustainable political and constitutional mechanism to deliver lasting reform to the nation; to implement a progressive policy agenda that is likely to endure beyond subsequent changes in the political cycle at either a Commonwealth or state level (Rudd 2006).

Mr Rudd also emphasised the importance of local service delivery: 'Arguments in favour of a federal structure include the classical idea of 'subsidiarity' – that is, devolving decision-making to the lowest level of government as possible so that decisions are as sensitive as possible to local circumstances and those responsible for these decisions are readily accountable to local communities.'

Fixing federalism has also been listed by the Federal Treasurer, Peter Costello, as one of the key criteria for future greatness. Addressing a dinner to mark the announcement of *The Bulletin* magazine's top 100 most influential Australians, Mr Costello said individuals who made their way onto the list in future would include 'the person who can solve the problem bedeviling Australian political life in every area, the problem of federalism'. He said federation was a great success in 1901 as 'the coming together of colonies in a customs and economic union within an empire':

But the empire has faded and the nation now has consciousness of itself. We are no longer dealing with self-governing sovereign colonies. I believed that by giving the States a revenue base – a financial free kick – we would restore that sense of sovereignty. It was a failed hope. States are moving towards the role of service delivery more on the model of divisional offices than sovereign independent governments. Legally, constitutionally and practically we must fix the problem of federalism (Costello 2006).

The Shadow Minister for Federal-State Relations, Bob McMullan MP, outlining his vision in a recent speech suggested some form of 'Performance Partnerships' between the States and the Federal Government and that 'there must be enhanced recognition of local governments as delivery agencies for programs'. His approach is 'fund nationally, act locally' (McMullan 2007).

We need to reform our federal system of government and we need to do it quickly. We have one sphere of government that is being slowly bled dry by the others. And we have a lack of sensible regional governance arrangements to really ensure that the decisions that we are making regionally are community-based and are linked to proper governance arrangements. But this is a vacuum that a properly-funded and properly-resourced local government sector can fill, and do so in a manner that will ensure the principles and benefits of local democracy are preserved and enhanced. The ALGA has been pressing for a review of federalism to better recognise the increasingly important role local government plays within the Australian federation. However, we need bipartisan support for constitutional change in order to achieve our long-cherished goal of constitutional recognition. After two unsuccessful referenda, the most recent in 1988, we cannot afford to fail again. To this end, local government is working towards holding a constitutional summit to highlight this issue and to ensure it maintains its prominence in the national agenda.

Finally, in considering the necessity for bipartisan support for reform, the most important thing of all is that leaders of all political persuasions understand the relationship between local government and community. It was very interesting that when the Prime Minister last spoke on federalism at the Menzies Institute (Howard 2005), on one occasion he mentioned local government, on three occasions he mentioned state governments, but on four or five occasions he mentioned community. If there is a lack of understanding, or a failure by other spheres of governments to remember that community and local government are one and the same, then we have lost the debate. But it also shows why the debate is needed. We now have a unique opportunity to take things forward, start a new thinking, and start an opportunity for our communities to have the discussion about reform.

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ENDNOTES

¹ See http://www.premcab.sa.gov.au/dpc/government_caf.html. For the Canadian model, see <http://www.councilofthefederation.ca/>