

8 November 2010

Senator Russell Trood  
Chair, Senate Select Committee  
on Reform of the Australian Federation  
Box 6100  
Parliament House  
Canberra ACT 2600

Dear Senator Trood

### **Submission**

Thank you for the opportunity to make this brief submission to the Committee's inquiry. I would be happy to expand on the points made in oral evidence, or to provide whatever further research or analysis might assist the Committee.

The inquiry is a timely and rare opportunity for the Commonwealth Parliament to devise processes and institutions that might lead to more productive outcomes from longstanding debates over the evolution of Australia's federal system.

The views below reflect a decade of research into the future of the federal system, including recent research by the Griffith University Federalism Project into (1) the broad question of how Australian citizens see the future of their system of governance, through the first and second Australian Constitutional Values Surveys, and (2) the more specific problem of how to address the deficit in regional-level governance institutions in Australia.

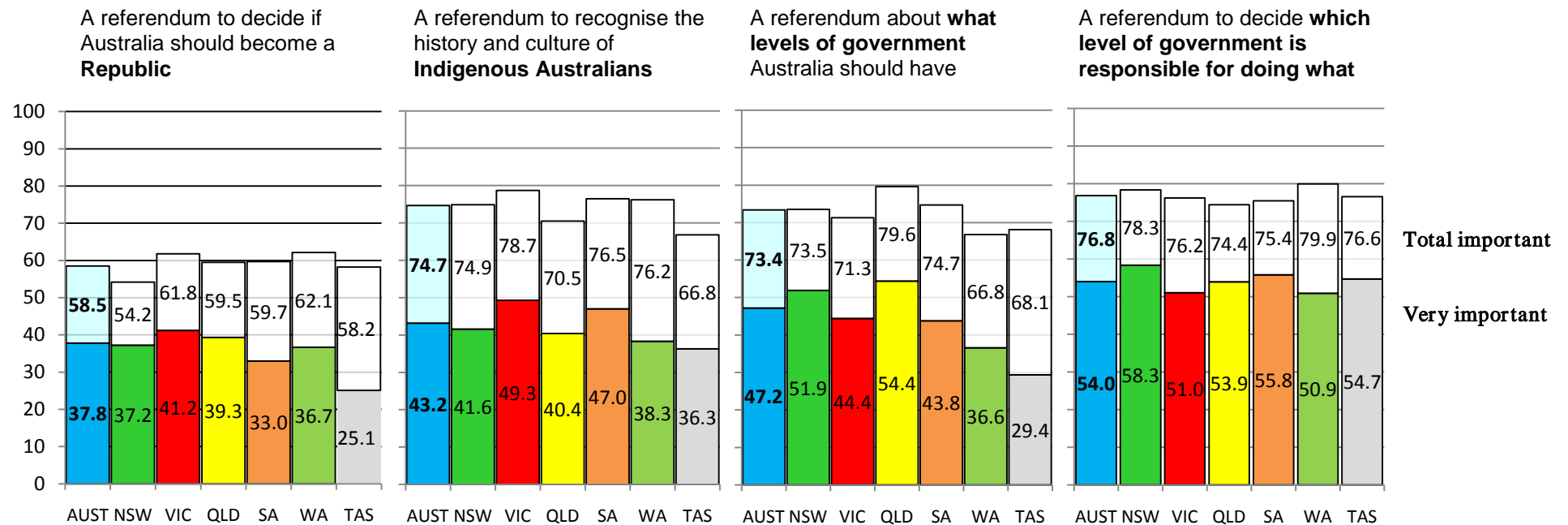
In respect of (1), there is no question that most Australians would welcome a positive process for structural evolution in the federal system, as indicated by the results from the first Values Survey set out in **Attachment 1** (Brown A J (2009), 'Thinking Big: Public Opinion and Options for Reform of Australia's Federal System', *Public Policy* 4(1): 30-50). That article sets out many of my basic views in respect of many of your terms of reference, although I also make more specific observations on several issues below.

**Attachments 2, 3 and 4** further set out key results from the first Constitutional Values survey in 2008, and the second Survey in March 2010, which suggests that public interest is only increasing in respect of the potential for improvement in the structures and processes of the federal system.

Figure 1 (from Attachment 4) summarises how adult Australians nationally indicated the degree of importance they attach to holding referenda on issues to do with the future of the federation 'in the next few years', alongside other familiar constitutional issues.

Figure 1. Importance of holding referendum in next few years, overall importance, national and by state (March 2010)

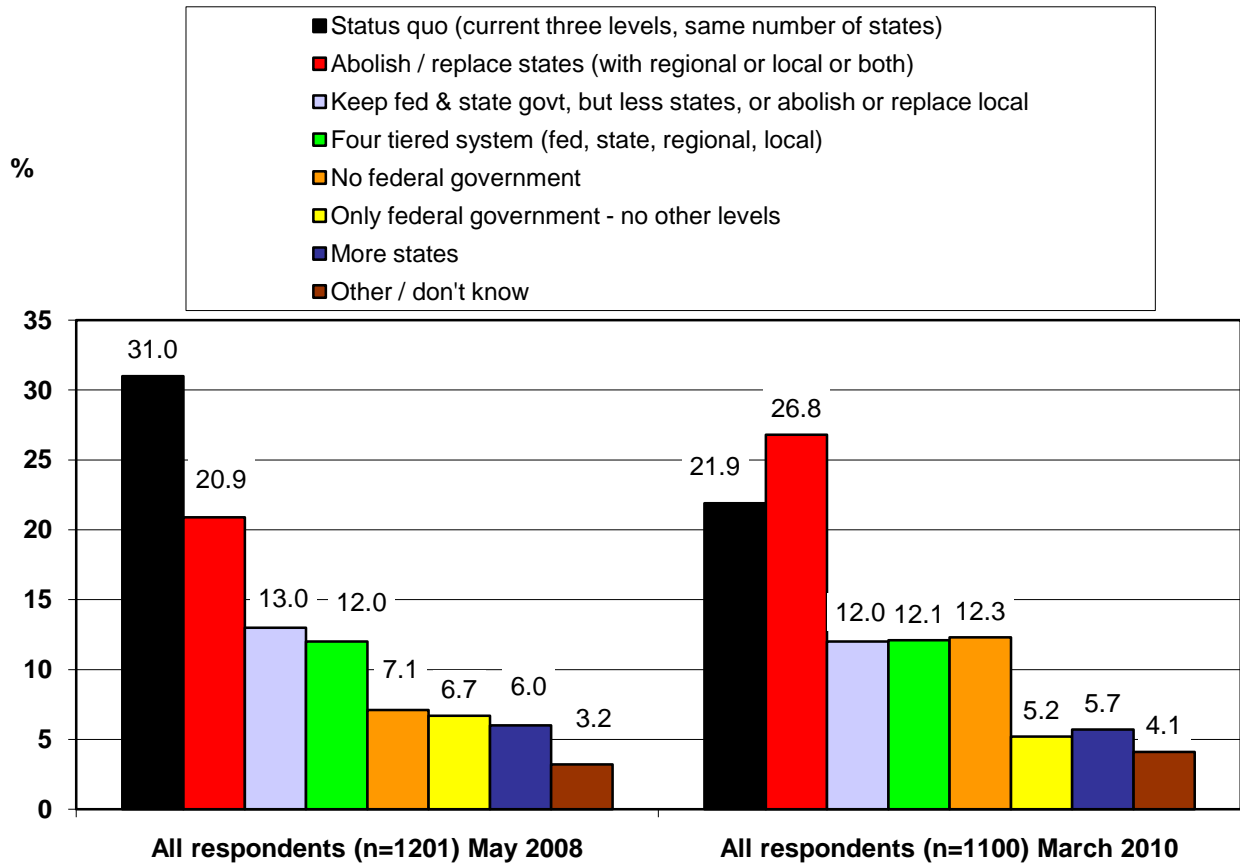
Do you think it is **important, or not important for Australia to have a referendum** about the following things in the next few years.  
[If important, is that **very important** or **somewhat important**?



Source: Griffith University – Australian Constitutional Values Survey ([www.griffith.edu.au/federalism](http://www.griffith.edu.au/federalism))  
Survey conducted nationally by Newspoll in March 2010, n=1100 respondents.

Figure 2 (from Attachment 3) below summarises how adult Australians nationally have indicated that they see their preferred system of government in 20 years, in terms of its basic structure.

**Figure 2. Major combinations of preferences for our system of government, 20 years from now (2008 and 2010)**



The appendices provide more detail.

While there is substantial public support for structural reform and redistribution of power within the system, the challenge remains the charting of a course which can see this support turned into effective change in any particular direction – even in the short term.

The need to chart such a course is reinforced by current developments in Australian federalism. In 2007-2010 we saw a brief, intensive but overoptimistic (and perhaps unrealistic) period of reliance on the Council of Australian Governments (COAG) for achieving enhancements in public policy and the performance of governments. However, it appears this period may now recede without major lessons being learned about how to convert such efforts into sustainable improvements in governance.

Since the August 2010 election, the Gillard Government has also committed to referenda for constitutional change in the next three years to recognise Indigenous Australians and local government. However, as discussed below, there is reason to fear that this latter proposal may fail (again) unless it is embedded in a sophisticated and well-resourced process for achieving positive improvements in the federal system as a whole. This needs to include new efforts to engage and educate the community in that process, and to secure a reform consensus among political leaders across party divides, prior to reform proposals being put to the people.

These issues are highlighted by the Gillard Government's announcement of 8 November 2010 that it will soon establish a referendum panel to lead debate towards constitutional change on the first of these issues (recognition of Indigenous Australians).

My further comments below are directed to the five areas in which, in my opinion, the Committee could most usefully make recommendations:

1. Need for investment in reform processes and institutions
2. Clear parameters for short-term constitutional reforms
3. Lifting sights on medium-term subconstitutional reforms
4. Movement towards sustainable regional institutions
5. Encouraging debate on longer term constitutional development.

As indicated I am happy to elaborate further before the Committee.

Thank you for your patience.

Yours sincerely

**Dr A J Brown**  
**Professor of Public Law**  
**Director, Federalism Project**  
Griffith Law School

## A J Brown (Griffith University) - primary areas for recommendation

### 1. Need for investment in reform processes and institutions

The Committee should make clear recommendations regarding the need for substantial investment in the processes and institutions needed to help chart and deliver real improvements to the functioning of Australia's federal system. These include:

- Improved processes for considering specific referenda proposals for constitutional change, as recommended by the House of Representatives Legal and Constitutional Affairs Committee in its report, *A Time for Change: Yes/No?* (2010); and
- A constitutional convention on federation, as recommended by numerous stakeholders including the Council for Australian Federation, as well as other researchers (e.g. the UNSW Gilbert & Tobin Centre, Submission 7).

However, it should be recognised that the process of charting and achieving reform to the federal system also needs much more than these mechanisms. In particular, it needs more than one-off events or processes, focused on constitutional change. It needs ongoing processes with sufficient stature and resources to engage governments, experts and the community in devising solutions to issues which have no simple fix.

The Committee's work follows in the footsteps of reviews of the functioning of the Federation such as undertaken by the Peden Royal Commission on the Constitution (1927-1929) and the Parliamentary Joint Committee on Constitutional Review (1956-1959). It may be useful for the Committee to locate its work in this broad historical context, along with the work of the Australian Constitutional Convention (1973-1985) (see e.g. Saunders, C. (2000). *Parliament as Partner: A Century of Constitutional Review*, Commonwealth Department of the Parliamentary Library).

This history provides a reminder that by their nature, any lasting solutions to the structure and functioning of the Federation are part-financial, part-legal, part-administrative, and part-constitutional – and all political. They also have short-term, medium-term and long-term elements. What is needed are both (i) ideas about desirable reforms to the federal system, but even more importantly (ii) more effective, enduring processes for turning those ideas to good effect and sustaining change.

In bringing together the various suggestions in other submissions, the Committee should endorse and expand upon the type of overarching reform investment recommended by the Governance and Economy streams of the Australia 2020 Summit of April 2008 (see **Attachment 1**) and the Institute of Public Administration Australia's Tenterfield Federalism Policy Roundtable, of October 2008 (see A Podger & A J Brown (2008), 'Australian Federalism: Rescue and Reform' *Public Administration Today* 16: 36-41, **Attachment 5**).

The Commonwealth Government's response to the 2020 Summit recommendations was to put further reform processes on hold, pending the results of the recent reinvigorated Council of Australian Governments (COAG) reform effort, including the valuable performance reporting work of the COAG Reform Council. However, while this effort has been worthwhile and has yielded substantial results, it is also now clear that it is not sustainable even in respect of its own short and medium term goals, let alone capable (in and of itself) of delivering lasting structural improvements to the Federation.

The last investments of any significance by governments in considering structural improvements to the Federation (as against repeat efforts to try to make existing structures work better) occurred in the 1970s-1980s through the Advisory Council on Intergovernmental

Relations (now defunct), and in the 1990s through the Constitutional Centenary Foundation (now defunct). The latter also ultimately became a valuable civic education mechanism, rather than a reform mechanism.

In addition to the formal institutions described in Attachments 1 and 5, the Committee should recommend special research initiative funding for an adequately-resourced national policy and research centre on federalism and intergovernmental relations, including federal, state, regional and local relations. The last standing investment in research to support the evolution of the Australian federation terminated in the late 1990s, after the Keating Government withdrew its funding from the ANU Federalism Research Centre (previously the ANU Centre for Federal Financial Relations). That Centre has never been replaced.

More recently, the Rudd Government allocated a one-off \$8 million to fund a Centre of Excellence in Local Government (2009), and the Gillard Government has allocated a one-off \$8 million to fund a think-tank in regional policy and service delivery (2010). However, apart from being small and temporary investments, these grants highlight the lack of investment in research and development for the federal system as a whole, including intergovernmental relations at Federal and State levels – a system which expends \$461 billion per annum, employs over 1.75 million citizens, accounts for 23 per cent of national GDP, and is responsible for the public policy settings affecting the social, economic and environmental wellbeing of all citizens and communities.

The foci, program structure and personnel of a multidisciplinary, nationally networked centre have already been scoped, but remain unfunded through Australian Research Council processes (see April 2010 proposal at **Attachment 6**). Irrespective who it involves or by whom it is led, such a research investment is clearly sorely needed.

## 2. Clear parameters for short-term constitutional reforms

In September 2010, the Commonwealth Government has committed in its agreements with the Greens and three Independents to hold referenda on constitutional change within the next three years, for formal recognition of Indigenous Australians and of local government.

Both proposals, but especially the latter, have vital importance for the future of the Australian federation. In the absence of any other formal process for considering how constitutional recognition of local government should be pursued, the Committee is uniquely placed to ensure that this issue is pursued with some sanity. This is by placing the issue within the context of the larger questions of importance to Australian electors, which is how any constitutional change is going to deliver clear and undeniable improvements in the functioning of their federal system.

Constitutional change in the short-term does not have to try to deliver *every* solution to the demonstrated challenges facing the federation. However unless it clearly moves towards that goal, there is the risk that attempted reform will be perceived as *ad hoc*, of no real meaning, and/or as carrying insufficient guaranteed benefits to outweigh any possible side-effects – as has happened repeatedly before (including twice on the issue of local government).

Detailed analysis of the state of public attitudes relevant to constitutional recognition of local government, as at May 2008, can be found in **Attachment 7** (Brown, A. J. (2008) 'In Pursuit of the "Genuine Partnership": Local Government and Federal Constitutional Reform in Australia' *UNSW Law Journal* 31(2): 435-466). This picture remains much the same after the second Constitutional Values Survey in March 2010 – see the results release and associated commentary in the *Weekend Australian* (2 October 2010) at **Attachments 4, 8 and 9**. Most of my views are set out in Attachments 7 and 8.

While I support the submission by the Australian Local Government Association (ALGA) (Submission 24), the Committee owes it to the Australian people to become the first multiparty group, independent of local government, to canvas what kind of recognition of local government might be most usefully pursued, and on what timetable.

A broader debate needs to be advanced than has occurred to date. This has in effect been limited to local government stating that it wants and needs financial recognition in the Constitution, and political parties stating their in-principle support (at least at the federal level) but reserving their final position pending a specific proposal. Meanwhile the case for financial recognition is starting to hinge on claims regarding the possible effects of the High Court's 2009 *Pape* decision – legal technicalities which in themselves are unlikely to interest electors, nor answer their fundamental questions about why guaranteeing the direct federal funding of local government will help improve the Federation and the daily lives of citizens.

There is a high risk that unless the proposal to recognise local government in the Constitution is embedded in a package of reforms which is supported across the political spectrum as guaranteed to enhance the federal system, it will again fail.

This is particularly pertinent because there are also other immediate constitutional reforms which can and should be made, to deal with known problems for intergovernmental collaboration under the present system, as detailed by colleagues in the Gilbert & Tobin Centre (submission 7) and Associate Professor Anne Twomey (submission 32). The average Australian is entitled to ask, if we are changing the Constitution to address known, immediate technical barriers to existing structures working well, why these other changes should not have equal or higher priority to recognition of local government.

The Committee should also consider the analysis of options presented to the ALGA as summarised in N McGarrity & G Williams (2010), 'Recognition of local government in the Australian Constitution', *Public Law Review* Vol 21: 164 (**Attachment 10**). Their analysis confirms the legitimacy of simple financial recognition, but also acknowledges arguments in favour of going beyond a 'minimalist' approach to this objective (as tried and failed in 1974), and instead including financial recognition within more substantive institutional recognition of local government – including possibly with its own Chapter of the Constitution (following that for the States) – so that constitutional recognition also reflects other principles of importance to citizens (e.g. that local government must be directly chosen by the people, and that there should be cooperation between all three levels of government).

My own view is to be meaningful to a sufficient majority of Australians, proposals for constitutional recognition of local government should probably:

- take the form of basic substantive institutional recognition (including financial recognition) in the form of a short new Chapter of the Constitution
- be accompanied by the other collaborative federalism reforms recommended by the Gilbert & Tobin Centre and Dr Twomey
- be presented as first steps in a larger program for reviewing the structures and processes of the federal system under the Constitution
- only proceed once support has been established across the leadership of all parties in the Commonwealth Parliament and all Premiers
- be pursued according to a timeframe the Government's promised 3-year timetable, but rather an extended timetable, unless it can be positively demonstrated that the necessary consensus and support exists to guarantee success.

In any event, I encourage the Committee to assist in generating greater public debate by stating its own view on these questions, as opposed to simply making another general statement of ‘in principle’ potential support for an undefined proposal.

### **3. Lifting sights on medium-term subconstitutional reforms**

The Committee is in a good position to pool together the many suggestions for important sub-constitutional reforms to Australia’s present systems of federal intergovernmental relations, including the present Council of Australian Governments (COAG) framework.

Consistently with point 1 above, there is much by way of public investment that can be done to improve current Australian intergovernmental relations on a day-to-day, year-to-year basis at the same time as medium and longer-term structural issues are addressed.

Key suggestions are provided by the Council for Australian Federation (CAF), including its Federalist Paper series; by the Australian Chamber of Commerce of Industry; by the Business Council of Australia through its previous ‘Reshaping Australia’s Federation’ project; by Institute of Public Administration Australia; and the 2020 Summit (Attachment 1).

I support all of these suggestions. It is even possible that serious investment in the existing machinery of federation will obviate the need for longer-term structural reform. My own assessment is that this is unlikely – rather, that improving current intergovernmental systems will help further (a) clarify which challenges can be solved subconstitutionally and which will require further constitutional reform, and (b) focus the options for further constitutional reform (see point 5 below). However this does not change the substantial consensus around the need for immediate subconstitutional investment.

Frequently, suggestions for immediate intergovernmental reform have also set their sights too low in respect of what kind of institutional and legislative support is needed for intergovernmental relations to function effectively. This helps explain why Australia has been through occasional periods of intensive intergovernmental collaboration (1920s, 1940s, 1990s, 2007-2010) but has then lapsed back into conflict and disorganisation.

An example is debate over the Rudd government’s attempt to make COAG a workhorse for policy change, design and delivery of a human capital-oriented national reform agenda, and simplification of public regulation to support a seamless national economy. However:

- the only significant institutional development to accompany this effort has been expansions in the role of the COAG Reform Council – which is a performance reporting rather than capacity building mechanism, and which like COAG itself has no statutory basis let alone guaranteed permanence; and
- the only significant legislative development has been the *Federal Financial Relations Act 2009* (Cth) – which attempted to streamline grants to the States but probably with limited success, given that it did not place clear legislative boundaries around the process or nature of financial partnerships and agreements that may be entered into between entities of the Federation, nor provide a financial framework that takes into account all major entities (including local government and regional organisations).

Recently, some commentators have noticed that the reform effort has proved unwieldy, cumbersome and unsustainable (e.g. ‘Reform logjam overloads COAG’, *The Australian*, 1 November 2010, p.1). The response of some stakeholders is to declare COAG’s processes to be ‘expensive and bloated’ as if the solution may be to go backwards. In fact, the solution is to recognise that these processes lack sufficient legislative and institutional support.



As recommended by many submitters, COAG should be permanently institutionalised with a statutory basis and independent secretariat; as should the COAG Reform Council. However, both these developments should take place within a larger framework:

- Given that a large part of the function of COAG is to identify and sustain regulatory cooperation and harmonisation, the establishment of a permanent COAG secretariat should be accompanied by a major investment in ongoing machinery of regulatory reform.

Recent COAG working group processes have effectively begun to finally replace the largely unproductive framework of Ministerial Councils that has long populated this space – including the Standing Committees of Attorneys-General (SCAG) which has long been the nearest thing to a standing mechanism for collaborative law reform.

The Committee should explore and recommend the co-establishment, with the COAG Secretariat, of two other effectively resourced offices: (i) one for supporting governments and ministers with the capacity needed to follow-through on agreed areas of regulatory reform (in the manner of the United States' Uniform Laws Commission (see <http://www.nccusl.org>)); and (ii) one to increase the transparency and accountability of intergovernmental processes, and build skills and capacity in intergovernmental collaboration generally, in the manner of the National Cooperation Commission also recommended by the Governance stream of the 2020 Summit.

Together with (iii) the normal functions of a secretariat servicing both Chief Ministers and other ministerial fora, (iv) the high level research and policy monitoring functions of the COAG Reform Council, and (v) the research and engagement needed to chart medium and longer-term reform solutions (at point 1 above), this gives at least five discrete functions to justify the establishment of a permanent Federation Commission.

The Committee would do Australia a service by articulating a new institutional model for how the evolution of the Federation could be supported in this way.

- In addition, the *Federal Financial Relations Act 2009* (Cth) should be expanded and updated as an accompanying comprehensive framework for federal financial relations. It should subsume the Commonwealth Grants Commission Act; with a reformed Commonwealth Grants Commission becoming the institutional custodian of this expanded framework. In addition to providing a broad structure for Commonwealth grants of financial assistance to the States, and for the indexation of those grants, the framework should explicitly:
  - Define and limit *all* the forms of financial partnership into which the Commonwealth may enter with other governments and governance bodies;
  - Include grants of financial assistance to local government;
  - Recognise that the Commonwealth is now engaged permanently in programs which allocate public finance to governance bodies at other levels (e.g. regional) and provide a clearer basis for tracking these transfers;
  - Provide for clear identification and evaluation of the regulatory, service and accountability responsibilities that accompany financial transfers;
  - Set out statutory principles (e.g. subsidiarity) to guide governments on what regulatory and service responsibilities should be allocated to what levels of governance under any intergovernmental financial agreements; and
  - Articulate a philosophy (e.g. in the form of targets) as to what share of key functions and own-purpose public expenditure should be allocated to each level of governance,

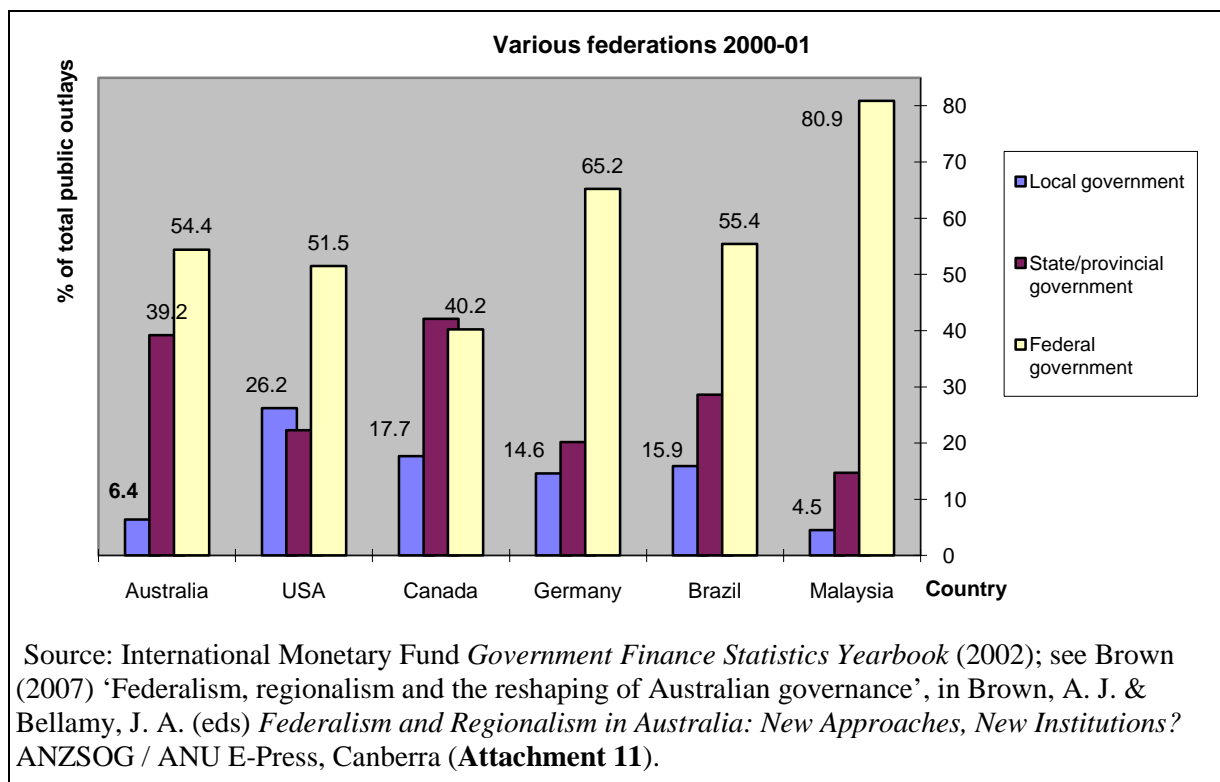
together with means of more transparent tracking of what is actually occurring, to better inform the evolution of Australia's financial system as a single system.

The submission by the Australian Local Government Association (submission 24) highlights the need for a new overarching framework for the federal financial system. I support the ALGA's submissions with respect to federal finance. However as the ALGA notes:

'ALGA has long called for an increase in the level of FAGs [Commonwealth Financial Assistance Grants] funding for local government to return it to the relative levels applying in 1996 when the grants represented around 1.01% of Commonwealth taxation revenue (excluding the GST). By 2008-09 the grants had fallen to the equivalent of just 0.68 per cent of Commonwealth taxation revenue.'

Coherent planning for the future of the Federation demands more than this limited *ad hoc* approach. Figure 3 below highlights the current distribution of own-purpose public expenditure in Australia by level of government, compared to some other federations.

**Figure 3. Federal, state and local government 'own purpose' outlays as a share of total public outlays (2000-01)**



If local government responsibilities have increased and are likely to continue to increase, then this, combined with the need for reform in the unusual degree of structural centralisation in Australian public finance, dictates that we need a better target for the overall share of responsibility and resources that we believe local government should be carrying. By better target, I mean than simply an arbitrary return to an arbitrary proportion of Commonwealth taxation at an arbitrary past date (1996).

I encourage the Committee to make a clear statement of its view that a better overall framework is both necessary and feasible in the short to medium term.

#### 4. Movement towards sustainable regional institutions

Given the challenges facing the Australian federation, it is welcome that the Committee's terms of reference include strategies for 'strengthening Australia's regions and the delivery of services through regional development committees and regional grant programs'.

There is a demonstrable general deficit in the institutions of governance at the regional level of Australian society across much of the nation – especially those States with the more acute combination of larger land area and population (NSW, Queensland and Western Australia). The three original States to be subdivided from the original colony of NSW (Tasmania, Victoria and South Australia) also experience this deficit, but to a much lesser extent because their subdivision occurred at a time (1825-1850) when there was at least some coherence to British colonial policy regarding the scale of subnational jurisdictions.

It is now well documented that this constitutional history is important for an accurate understanding of why regional institutions have become central to discussion about the future of the Federation (see **Attachment 11**: Brown (2007) 'Federalism, regionalism and the reshaping of Australian governance', in Brown, A. J. & Bellamy, J. A. (eds) *Federalism and Regionalism in Australia: New Approaches, New Institutions?* ANZSOG / ANU E-Press, Canberra; **Attachment 12**: Brown (2005). 'Regional Governance and Regionalism in Australia', in Eversole, R. and Martin, J. (eds), *Participation and Governance in Regional Development: Global Trends in an Australian Context*, Ashgate, Aldershot UK).

From the 1840s until the mid-20<sup>th</sup> century, the quest for stronger regional-level governance institutions played out in the form of demands for further colonial subdivision or new states (as provided for in Chapter VI of the Constitution), or alternatively in the form of stronger 'district', 'county' or 'provincial' structures. Since the 1930s and 1940s, these historical debates have been overlaid with fresh arguments about the importance of 'regional' planning and regional-level community capacity, in modern thinking in the fields of public administration, economics and, more recently, sustainability policy.

It is telling that this item of the Committee's terms of reference has attracted numerous submissions from Regional Development Australia (RDA) committees and other important stakeholders in the tapestry of regional governance, including one of the most important elements of regional governance in Australia, the national network of Natural Resource Management (NRM) regional bodies (submission 29).

In recent years, there has been growing recognition of the importance of the regional level as a place for intergovernmental coordination and interface with communities, for all levels of government – reinforcing the need for institutional development, as outlined by the Institute of Public Administration Australia (Attachment 5) and the Council for Australian Federation (submission 38).

While there has been historic competition between State governments and the idea of stronger regional institutions, I am optimistic that Australians and their governments are moving beyond this stage of their constitutional development. Regional institutions are here to stay, and likely to be of increasing importance to the governance of the nation, irrespective of the future of the other existing levels of government.

Many of these submissions reinforce the importance of developing a clearer, more efficient, agreed framework of better resourced regional governance institutions – irrespective of whether the desired outcome is perceived to be an evolution towards regional government (with or without the States, see Figure 2 and Attachment 1-3) or simply basic administrative and financial reforms to make the existing system more effective and sustainable.

Some of my views on the importance of this issue, including elements of a possible framework for developing a more coherent national model of regional governance, were set out prior to the 2007 federal election in *Public Administration Today* (**Attachment 13**). One principle behind these suggestions was the need for all levels of government to begin streamlining and co-establishing common, agreed regional bodies rather than establishing or sponsoring a continuing proliferation of different competing and conflicting institutions.

Since that time, the Commonwealth Government has re-established the national Area Consultative Committee network as Regional Development Australia (RDA) committees. This was a historic development, in that for the first time, there is a single, joint federal and State-appointed regional body for each of these regions. This built on the establishment of agreed joint NRM regional bodies originally under the Howard Government's National Heritage Trust funding frameworks.

The Committee should recognise and endorse these advances, and explore options for institutionalising them in a manner which consolidates the appointment of regional bodies as joint institutions recognised by all other levels of government. This is important to prevent future federal governments from reverting to establishing their own competing regional committees when, in the future, party-political interests cease to align.

However even with this important advance, many issues need to be addressed in and around the RDA framework for existing regional governance to be rendered sustainable.

As part of existing research under an Australian Research Council-funded project 'Towards Sustainable Regional Institutions', I am privileged to lead a research team comparing the structures and challenges of regional governance in three regions: Central Western Queensland (Qld), Riverina & Murray (NSW & Vic) and Greater Western Sydney (NSW).

An analysis of issues confronting regional governance in Central Western Queensland is shortly to be published as Brown A J & Bellamy J A (2010), 'In the Shadow of Federalism: Dilemmas of Institutional Design in Australian Rural and Remote Regional Governance', *Australasian Journal of Regional Studies* 16(2) (**Attachment 14**). The types of issues thrown up in the other two case study areas – despite their great demographic and economic differences – are surprisingly comparable.

Issues that should be considered by the Committee in respect of the future development of the RDA framework include:

- *Breadth and clarity of purpose.* As indicated by several RDA submissions, there continue to be mixed messages between the policy statements made by the Rudd government when establishing the RDAs, to the effect that they would be the primary regional coordinating bodies for both federal and State governments for their region; and subsequent advice to RDAs that their role is more to 'add value' and 'fill gaps' in existing regional development efforts.
- *Inconsistency and confusion at State level.* While the potential for institutional diversity at local, regional and State levels is a valuable attribute of federal systems, the likely effectiveness of RDAs (whatever their role) continues to be dependent on the State institutional landscape in which they are put. For example, in Western Australia they appear to align closely with WA's reasonably well resourced Regional Development Commissions; but in NSW, they have replaced the State's regional economic development boards; while in Queensland, they exist alongside, and in potential competition with a range of continuing economic development bodies.

A next logical phase in the development of the RDAs would be for the Commonwealth to pursue some greater consistency of the institutional landscape in which RDAs sit to help guarantee they can play the necessary leadership role in development of regional governing capacity across the country.

- *Program responsibilities.* Despite their improved institutional position as joint committees, RDAs have less of a direct role in any federal programs than the previous ACCs. This reduction in responsibility was triggered largely by controversy over the Howard government's Regional Partnerships Program. However as some submissions indicate, the key to giving RDAs a meaningful role in the social and economic development of their regions is to give them greater, genuine responsibilities in Commonwealth and other programs, not less.

There are many programs whose regional adaptation and delivery could benefit from RDA involvement. Indeed the more programs that well-constituted and well-resourced RDAs have a role in, the more likely it is that they will contribute to stronger regional governance and stronger, more autonomous regional communities.

- *Resources.* As indicated by several submitters, the current level of resourcing by the Commonwealth for the RDAs remains minimal. As long as this remains the case, it will remain understandable if RDA participants, communities and other stakeholders take a view that the committees are little more than a token exercise.

Resources in this instance means both (i) their own staff and financial resources and (ii) the position of the committees to influence other bodies, agencies and programs in the allocation of public resources more generally. The Commonwealth Government recently announced that it would commence a new initiative in regional budgeting. For such an initiative to represent a significant advance on the present system, regional budgeting should mean not simply transparency and reporting as to how government spends money in a given region, but an opportunity for the region itself to set budget priorities and manage the allocation of resources within the region.

It was telling that on 7 September 2010, when the Prime Minister signed the agreement with the Independent Members Windsor and Oakeshott which enabled her to form government, she referred to the RDAs as the 'Regional Development Authorities'. Of course, they are no such thing – but perhaps they should be.

- *Representativeness, profile, transparency and legitimacy.* Currently RDAs and many like groups are populated by federal and State appointees. For RDAs or other lead regional coordinating bodies to function with authority and integrity, they must have a public profile and be perceived as accountable by the community they serve, not simply accountable to the distant governments that appoint their members.

As the framework of regional governance is strengthened, consideration should be given to the direct election of key officeholders by the people of the region (e.g. at the same time as local government elections), as well as indirect election of local government representatives, and the appointment *ex officio* of representatives from other regional groups. In addition to continuing appointments by other governments, ensuring a diverse, representative and regionally accountable membership is important for the development of regional governance capacity.

The Committee should consider what options it thinks will contribute to a stronger federal system by ensuring the continued evolution of more durable, sustainable, integrated and empowered regional institutions. In most parts of Australia, these need not develop at the

expense of local government, nor necessarily at the expense of State governments, but rather as an investment to benefit the operation of our system of governance as a whole.

As Australia moves slowly towards a more robust framework for regional governance, it is with noting the history of a range of different institutional options within our existing traditions. For example, the Torres Strait Regional Authority provides one example of a Commonwealth-sponsored general-purpose statutory governance authority with broad capacity and powers, formally constituted through a mixture of electoral and appointment methods, recognised by all levels of government, in effect operating as a small, semi-autonomous Territory within the State of Queensland within the Australian federal system.

As part of addressing the above issues, consideration should be given to (i) giving RDAs a statutory base, (ii) providing statutory requirements for coordination between the different bodies making up the regional governance landscape, (iii) providing statutory and financial triggers for the rationalisation and alignment of local, State and federal regional planning processes across all relevant bodies, and (iv) incorporating genuine regional budgeting processes into reformed federal financial legislation.

## **5. Encourage debate on longer term constitutional development**

Consistently with the foregoing, the Committee should articulate its vision – or the range of visions held by its members – of the different options for where Australia’s federal system could and should end up given current governance trends.

As the Australian Constitutional Values Survey indicates, there are a wide range of views across the Australian community, but a general interest among a large majority of citizens that the system can and should evolve – both structurally and in governance processes.

While some short-term changes could usefully be made to the Australian Constitution, the proven difficulty of changing it on a piecemeal basis probably means that most of this evolution will continue to happen sub-constitutionally, through legislative, administrative and financial reform. Eventually, the gap between the federal system in actuality and the system as described by the Constitution will become so pronounced that there will emerge a largescale consensus that a new Constitution needs to be written to properly describe the fundamentals of the system as it is operating.

At that time, it is likely that the replacement Constitution will preserve many features of the existing Constitution, but it is useful to contemplate those elements that we can probably predict now, would be described differently.

For example, it is likely that the replacement Constitution would reflect change in the spatial distribution in the numbers and levels of government functioning in the Federation – possibly through constitutional recognition of regional government (with or without the continuation of the States) much as constitutional recognition of local government is mooted now.

What is even more likely is that no future political community or constitutional founders would again enact a Constitution which enumerated only the legislative powers of the federal parliament. It is far more likely that any replacement Constitution would take a path more similar to the Canadian Constitution, and other more recent constitutions, and enumerate the primary responsibilities, as well as shared responsibilities, of all recognised levels of general purpose government.

A more sophisticated but simply-stated distribution of primary responsibilities is a recognised, important issue in the short term. This reapportionment of responsibilities and resources can

and should be pursued with a view to arriving at a more effective constitutional statement of this distribution, in the long term.

It is also likely that the Constitution would provide different dispute resolution processes for constitutional questions than currently provided for. For example, it is likely that any future constitution would establish a constitutional court with either different membership or different requirements than the nation's ultimate court of appeal, with broader representation of interests from across the Federation, and greater facility for the court to receive advice from independent sources (such as a standing Constitutional Review Commission) about the impacts of competing interpretations of the Constitution, prior to arriving at decisions in constitutional cases.

Consequently there are longer term issues of constitutional design which the Committee can and should identify as worthy of ongoing discussion by the Australian community, even if they may appear to reflect past expired debates, or utopian notions, or are unlikely to become politically feasible until an indefinite point in the future.

Encouraging an imaginative debate is a prerequisite to having a more informed constitutional debate, since it is a prerequisite to having any debate at all. At times there is a tendency in constitutional debate for options to be closed off on the basis that they are either inconsistent with existing traditions or politically unachievable, even when there is a compelling case for reform. Rather than seeking to identify and dismiss medium and long-term options, the Committee should frame its recommendations regarding desirable immediate reforms and new reform processes in terms that encourage debate about the very different world and different institutions that Australians may need in the long run.

---

## Attachments

1. Brown A J (2009), 'Thinking Big: Public Opinion and Options for Reform of Australia's Federal System', *Public Policy* 4(1): 30-50.
2. Griffith University Federalism Project (2008), *Australian Constitutional Values Survey, Results Release*, July 2008.
3. Griffith University Federalism Project (2010a), *Australian Constitutional Values Survey, Results Release 1*, April 2010.
4. Griffith University Federalism Project (2010b), *Australian Constitutional Values Survey, Results Release 2*, October 2010.
5. A Podger & A J Brown (2008), 'Australian Federalism: Rescue and Reform' *Public Administration Today* 16: 36-41.
6. Griffith University, Australian Research Council Centre of Excellence (CoE) proposal, *ARC Centre of Excellence in Federalism and Public Policy Innovation*, April 2010.
7. Brown, A. J. (2008) 'In Pursuit of the "Genuine Partnership": Local Government and Federal Constitutional Reform in Australia' *UNSW Law Journal* 31(2): 435-466.
8. Brown, A. J. & Levy, R. (2010) 'Trust the People on Constitutional Change: a planned referendum on recognising local government is a chance for robust debate', *Weekend Australian*, 2 October 2010, p.14.
9. Steketee, M. (2010) 'Into the too-hard basket: A simple yes or no campaign won't suffice for constitutional changes' *Weekend Australian* (Inquirer), 2 October 2010, p.9.
10. N McGarrity & G Williams (2010), 'Recognition of local government in the Australian Constitution', *Public Law Review* Vol 21: 164.
11. Brown, A. J. (2007) 'Federalism, regionalism and the reshaping of Australian governance', in Brown, A. J. & Bellamy, J. A. (eds) *Federalism and Regionalism in Australia: New Approaches, New Institutions?* ANZSOG / ANU E-Press, Canberra.  
See also Brown, A. J. (2004) 'One Continent, Two Federalisms: Rediscovering the Original Meanings of Australian Federal Political Ideas', *Australian Journal of Political Science* 39(4): 485-504; Brown, A. J. (2006) 'The Constitution We Were Meant to Have: Re-examining the strength and origins of Australia's unitary political traditions', in K. Walsh (ed) *Democratic Experiments: Lectures in the Senate Occasional Lecture Series*, Department of the Senate, Canberra.
12. Brown, A. J. (2005). 'Regional Governance and Regionalism in Australia', in Eversole, R. and Martin, J. (eds), *Participation and Governance in Regional Development: Global Trends in an Australian Context*, Ashgate, Aldershot UK)
13. Brown, A. J. (2007). 'Reshaping Australia's Federation: the choices for regional Australia' *Public Administration Today* 13: 5-17 (also published as Brown, A. J. (2007). 'Reshaping Australia's Federation: the choices for regional Australia' *Australasian Journal of Regional Studies* 13(3): 235-253)
14. Brown A. J. & Bellamy J. A. (2010), 'In the Shadow of Federalism: Dilemmas of Institutional Design in Australian Rural and Remote Regional Governance', *Australasian Journal of Regional Studies* 16(2), forthcoming.