



Reforming the Australian Federation

Submission by the Western Australian Local Government Association

August 2010

West Australian Local Government Association

The West Australian Local Government Association (WALGA) is the voice of Local Government in Western Australia. As the peak industry body WALGA is an independent, membership-based organisation representing and supporting the work and the interests of all 141 Western Australian Local Governments, including the Christmas Island and Cocos (Keeling) Island Councils.

The Association provides an essential voice for almost 1,300 elected members and over 11,000 employees of local government in Western Australia and also provides professional advice and offers services that provide financial benefits to Local Governments and the communities they serve.

WALGA is a member of the Australian Local Government Association (ALGA) and contributes to the formation of national policy positions on behalf of the local government sector at the federal level.

This Inquiry

The Senate established a select committee, known as the Select Committee on the Reform of the Australian Federation, to:

- (a) inquire into and report by 17 November 2010 on key issues and priorities for the reform of relations between the three levels of government within the Australian federation; and,
- (b) explore a possible agenda for national reform and to consider ways it can best be implemented in relation to, but not exclusively, the following matters:
 - (i) the distribution of constitutional powers and responsibilities between the Commonwealth and the states (including territories),
 - (ii) financial relations between federal, state and local governments,
 - (iii) possible constitutional amendment, including the recognition of local government,
 - (iv) processes, including the Council of Australian Governments, and the referral of powers and procedures for enhancing cooperation between the various levels of Australian government, and
 - (v) strategies for strengthening Australia's regions and the delivery of services through regional development committees and regional grant programs.

Our Submission

There has been consultation with WA local governments in forming this submission, both directly through a call for contributions made on the 16th July 2010, and indirectly, based on the review of existing policy positions established over recent years as part of our general advocacy for constitutional recognition for the sector.

WALGA acknowledges and endorses the submission made by the Australian Local Government Association in response to the Inquiry's terms of reference.

Whilst the following discussion will intersect generally with the Committee's wide ranging brief, this submission is predominantly directed at term of reference (iii); *"possible constitutional amendment, including the recognition of local government."*

This submission is structured to provide;

- a brief understanding of our standing and qualification to represent the views of the WA local government sector;
- the historical context in which the current WA local government arrangements sit;
- an outline of the pursuit of better local government;
- discussion of the legal imperative for constitutional change;
- an indication of the political support for constitutional change.

WA Local Government in Historical Context

The establishment of Local Government in WA dates back to 1838 with the enactment of the *Towns Improvement Act* that authorised the establishment of Town and Country Trusts for the purpose of building roads.

In 1871, when the population had just reached 25,000, the *Municipalities Act* and the *Road Districts Act* were passed to lay the foundations of our current Local Government structure. The *Municipalities Act 1871* transformed the Town and Country Trusts into authorities responsible for services touching the daily lives of people in country towns. Added powers that were conferred on these new municipalities included the licensing and regulation of slaughter-houses, markets, carts and carriages, straying and grazing of livestock in towns, and dogs. Councils could also draft by-laws to carry out these functions; they could condemn food considered unfit for human consumption, plant and preserve trees and shrubs and regulate weights and measures. Councils were also given the power to establish and maintain public libraries, museums, botanical gardens and places of public recreation – although the Governor's approval was required in order to spend municipal funds on these establishments.

The *Road District Act 1871* made locally elected Road Boards responsible for communications in the country. Road Board powers, as distinct from those granted to municipalities, were restricted to the construction and repair of roads, bridges and drainage works.

By the end of 1871 there were eight municipalities and 21 road boards.

"Following the discovery of gold there was a big upsurge in the formation of new local authorities and by the early 1900's as many as 43 towns existed. With the decline of the gold rush many local authorities were disbanded but this was offset by the development of primary industry resulting in the establishment of road boards in other country areas.

In the early days road boards received no revenue from rating but relied on grants from the Government as their source of revenue. This encouraged the formation of new authorities in any area where settlement was taking place and the residents wished to develop a town site.

Isolation was probably the biggest influence on the formation of new authorities. The State was comprised of small isolated pockets of settlement each of which wished to become self-contained to some degree. This growth preceded that of the State itself.

As the State developed, lines of communications (mainly railways) began to extend into the country and it was along these railways that the bigger communities were formed and around which other authorities were formed.

This then was the pattern by which Local Government has developed to its present form – not by a systematic and economic division of the State but in accordance with the immediate requirement.”

(Local Government Assessment Committee Report, 1968)

During the 1970's there was a growing sense that quality of life issues associated with resources conservation, planning, health and welfare services for the disadvantaged needed to be addressed and this resulted in shifts in Council responsibilities. From 1975 onward there was a substantial investment in recreation and cultural facilities by Local Governments in WA, and a movement into a broad range of community services, including aged care, in response to community pressures. Local governments still played a major role in providing and maintaining streets, footpaths, drainage, rubbish removal, street lighting, sweeping and sign posting, and the numbering of houses and other buildings. Their responsibilities increased dramatically to include intricate town plans, health and building control services, recreation, cultural and children's services, and services for the aged. They also became responsible for the control of bush fires, dogs, parking, cemeteries and aerodromes.

The late 1980s saw an increasing recognition of the importance of Local Government's role in promoting economic and regional development as communities began to increasingly turn to their Local Governments for the direction and leadership impinging on all areas of economic and social welfare.

It was not until the 1990s that any substantial effort to share resources and collaborate was undertaken. The level of resource sharing increased dramatically over the 1990s, with the formation of many voluntary and statutory Regional councils and alliances. In the last decade a number of voluntary amalgamations have occurred and the pursuit of better local government remains a priority in the early 21st Century.

Better Local Government

In January 2006, the Western Australian Local Government Association (WALGA) commissioned a review of the Systemic Sustainability of Local Government – positioned as an industry-led assessment of the condition and prospects for Local Government in this state.

An independent Panel was established to provide direction for the review and to provide WALGA with advice, strategies and a plan for the future sustainability of the industry for its further consideration and development with Local Government in Western Australia.

The Systemic Sustainability Study was undertaken as a three-stage process:

1. Academic Research
2. Industry Dialogues
3. Synthesis, Report & Recommendations

The Panel's report and recommendations were then delivered to the Association and developed into a final set of recommendations – 39 in all – for the delivery of better local government in Western Australia.

Key among these was those recommendations dealing with financial issues.

Central to improving the sector's capacity to perform is the stability and adequacy of its funding sources – its financial sustainability.

There are a small number of fundamental funding considerations which impact on the capacity of the sector to enhance its sustainability. Primary amongst these is the national taxation debate.

Local Government needs to secure an ongoing entitlement to share in a percentage of the Commonwealth tax take (net of GST), so that financial assistance to Local Government grows automatically, and in line with the growth in the Commonwealth tax take. In this way, Commonwealth funding to Local Government will be maintained in relative terms, and over time this will gradually address historical cost shifting. For example, moving from the current Financial Assistance Grants funding base to a funding pool based on 1% of total Commonwealth taxation (net of GST) would increase Local Government funding from \$1.9 billion to \$2.4 billion (2008/9 figures).

In addition, funding programs like Roads To Recovery (R2R) and the Community Infrastructure Program need to be made a permanent part of the funding distribution to Local Government, and should be indexed annually based on the rate of growth of Commonwealth taxation so that they retain their funding relativity as a proportion of the tax revenue regime.

Whilst establishing the political will to do these things is essentially a matter of policy, establishing efficient mechanisms to implement them – and the legal framework to secure them – does require a change to the technical operation of the federation in the form of constitutional recognition of local government. This imperative has essentially been created by the outcome of “the Pape Case”.

Pape v Commissioner of Taxation – The Legal Imperative for Change

Undoubtedly, the most efficient and effective way of distributing Commonwealth funds to Local Government is for the Federal Government to make direct payments to the recipients. Indeed, Roads to Recovery and Community Infrastructure Program funding has been made available to local governments in this way since their establishment.

However, the constitutional appropriateness of this approach is now in question, as highlighted by ALGA in its advice to the State and Territory Local Government Associations and reflected in its submission to this Inquiry;

The capacity of the Commonwealth to directly fund local government without relying on the need to pass funds through the state and territory governments has been cast very clearly into doubt by the decision of the High Court in Pape v Commissioner of Taxation (2009) 257 ALR1. In that case the Court found that the scope of Section 81 of the Constitution which allows the Commonwealth to appropriate funds for the purposes of the Commonwealth was much narrower than thought by the Commonwealth. As a consequence (there) must be doubts about the validity of the Roads to Recovery program which relied on abroad interpretation of Section 81. The decision in Pape strongly supports the need for constitutional reform.

The doubt created by Pape is anathema to the concept of an effective 21st century Australian democracy.

Surely it must be considered unacceptable, in an era driven by red-tape reduction and sustainable systems, for the federal government to be forced to distribute its

expenditure efforts via a hierarchy of State and Territory governments and their subsidiary departments and agencies in order to reach the intended recipients by virtue of the constraints of a constitution drafted over one hundred years ago?

Supporting Constitutional Change – A Matter of Legitimacy

There is wide spread political support for local government to be recognised in the Australian constitution.

The current Australian Government has committed to constitutional recognition of local government, demonstrating its support by;

- placing the issue on the agenda of the Australian Council of Local Government,
- consulting ALGA closely on the process required, and;
- providing \$250,000 over two years to raise the profile of constitutional recognition of local government, particularly in local communities, and to assist the Australian Local Government Association to support local councils in engaging their communities on this issue.

Further, each of the key political parties – the Liberals, Nationals and Greens - has indicated support to ALGA for the conduct of a referendum to recognise local government.

In Western Australia, local governments have supported constitutional recognition for the sector, based around their understanding of the importance of an integrated national governance framework and how local government can best be utilised within that context.

The Council of Australian Governments (CoAG) is an important forum in the pragmatic governing of the nation.

It has considerable potential to coordinate the national strategic agenda between the spheres of government and their subsidiary departments and agencies.

Whilst local government is recognised within the processes of CoAG, the lack of a formalised constitutional relationship between local government and the Federal government tends to diminish the standing of local government within CoAG's processes, particularly in the eyes of the State and Territory players with their hierarchical perspective on intergovernmental relations.

For us, constitutional recognition of local government will serve to legitimise the sector within the scope of relevant national agendas.

Concluding comments

For local government, reforming the federation is not about wielding political power, or "State's rights" or political posturing between State and Federal governments.

It is about a cooperative and collaborative approach to governing the nation.

It's about being better resourced, better focussed and better able to deliver on the demands of our 21st century communities.

The constitutional recognition of local government will secure the Commonwealth's ability to invest efficiently into local communities through local government.

It will enable the national budgetary decisions necessary for securing the financial sustainability of local government.

It will provide for the grant funding and service delivery objectives that the Federal government holds for regional Australia to be facilitated and delivered through Local Governments.

It will deliver a new level of legitimacy to local government and create a more robust and valid relationship between the players around the CoAG table.

Constitutional recognition for local government is fundamentally about creating a better federation.

References

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