

SUBMISSION TO
SENATE INQUIRY INTO THE REFORM OF THE
FEDERATION

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Introduction

This submission has been written from a West Australian perspective, although it is informed by national trends. It argues that in the long term the Australian Federation should be re-enacted into regional structures. It discusses how there has already been substantial evolution in this direction of governance. It concludes that in the short term, this Senate Inquiry may assist this slow change by endorsing the next logical step to reform, that of putting constitutional recognition and direct funding of local government to a constitutional referendum.

1) No way to run a country

Whilst there is a consensus across the country and across political parties that the Australian Federation is dysfunctional and some go as far as to say our system is actually “broken” there is however no consensus about how to fix it. Kevin Rudd when Prime Minister advocated various manoeuvres to improve “cooperation” as the way to reform federalism. Others such as the previous Prime Minister John Howard promotes an Irish I-wouldn’t-start-from here-solution, “If we started this country again, you wouldn’t have States, you’d have regions.” The oft quoted academic authority on federalism, AJ Brown cites detailed research, “That suggests a minor technical change would fail to attract enough support in a referendum but that (support) would increase if voters were given the opportunity to make a more substantial change that could feed into reform of the federal system overall.” (*The Weekend Australian*, 2/10/10 Inquirer p. 9)

The main reasons why the federation is dysfunctional will have been thoroughly canvassed by many submissions. I summarise them as follows;

- The process of 110 years of judicial activism by the High Court has reinterpreted the Constitution, leading to a massive misfit between how the Constitution says the country should be run, how it actually runs and who

controls the revenue to do so. In particular the decision during the 2WW to temporarily cede income tax powers to the Commonwealth, made permanent by the High Court in 1959 (NSW & Vic v the Commonwealth), and then the 1997 decision (Ha and Lim v NSW) which prevented the States from levying taxes on any ‘excise’, interpreted so wide so as to mean “on the sale of goods”, has left States progressively more impoverished. The Constitution says that the Commonwealth has limited and largely external responsibilities and the States have the responsibility for running the country. But the fact that States raise only half the necessary money has broken the nexus between government decisions about services and funds to provide them. This allows Governments to shift blame and confuses accountability. As a result today “Australia has had a much larger mismatch between expenditure responsibilities and revenue at each level of government than any other Federation” (Review of Commonwealth-State Funding by R Garnaut and V Fitzgerald for the Treasurers Of NSW, Victoria and WA, 2002) Every area of expenditure is negotiated on an ad hoc basis, be it health or education etc., so it is very hard to know who is responsible for what. There are no systematic rules and, in spite of the Constitution, there are very few areas of public policy in which the Commonwealth is not involved.

- **Top Heavy Revenue**

Linked is the formidable sounding problem of vertical fiscal inequity. It simply means our taxation system is centralised, leaving State and Local Governments permanently begging. And the problem is formidable. The States currently raise 26% of Australia’s total government revenue (down from 34% in 1985) but their spending is 41% of the total, and would be more if their programmes weren’t so pinched.(WA Dept of Treasury & Finance, *Discussion Paper on Commonwealth-State Relations*, March 2006, p.16) The approx.73% of total govt. funds raised by the Commonwealth compares with other federations such as Canada or Germany where the central government raises less than 20%. Hence, “Australia now has one of the most centralised federal systems of government in the world.” (George Williams, Anthony Mason Professor and Director of the Gilbert and Tobin Centre of Public Law, *The Australian*, 8/12/2006. He’s probably the best known Constitutional expert in the country.) That is why Bob Brown’s recent stand on mining royalties is important, otherwise we shall see a worsening of vertical fiscal inequity by removing a growth area in State self-funding.

- **Economic Cost** The additional cost to taxpayers for this messy system of duplication, whereby both the States and Commonwealth co-manage services is estimated as either \$ 9 billion each year, equivalent to \$1,100 per Aussie household. (Access Economics for the Business Council of Australia, *Reshaping Australia’s Federation*, 2006), or \$ 20 billion each year (House of Reps Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: A Fair Share for Responsible Local Government*, Oct 2003, p vii & Mark Drummond, Costing Constitutional Change: Estimating the Costs of Five Variations on Australia’s Federal System, *Australian Journal of Public Administration*, 61(4), pp 43-56, Dec 2002)

- **Confused accountability** The result is eight different streams of government programmes. We have self funded local government

programmes, State funded local government programmes, Federally funded local government programmes metered by the States, direct Commonwealth funded local programmes (now officially unconstitutional), self-funded State programmes, discretionary but federally funded State programmes, Commonwealth directed State programmes and direct Commonwealth programmes. That is why government accountability is very murky, duplication is massive and blame shifting is rife.

People are often not aware of how all this affects them. The Constitution is a distant document and their frustration at the blame shifting across governments rarely translates to an every day understanding that this is no way to run a country. They don't join the dots. But this leads to problems at every street corner actually. For instance in Balingup where I live the main street has a series of expensive and architecturally diverse shelters, one is a virtually unused gas BBQ in an elaborate pagoda at the war memorial paid for under disability services of Veterans Affairs, whilst the paving stones along the roadside are in disrepair. Or further along the uneven pavement is the grand shelter paid for under Commonwealth Centenary of Federation funding, showcasing Balingup, right next to a humble State-funded covered notice board in completely different colour and materials which tells you about the Bibbulman Track passing through town, and all these structures are 100 meters from the actual visitors' picnic site and toilets where they are needed.

More seriously consider how the inefficiencies lead to State public servants in agriculture or environmental fields spending one month a year applying to the Commonwealth for the funding to employ themselves (under a suitable Federal programme, often in competition with community land care applications) instead of doing their actual work for the whole twelve months of the year. Or have you by chance visited a coastal beauty spot like around Albany where interesting interpretation signs explain the natural attractions, but the steps are caving in making it dangerous to reach them because the Commonwealth programme only funds new things, not site maintenance?

Q. Why did the new school buildings under the national stimulus package cost nearly double standard building estimates (i.e. \$3900 instead of \$2100 per m2 in NSW from Editorial, *The Weekend Australian*, 7/8/10)?

A. Because it's very difficult to run things on the ground from Canberra.

2) Western Australian situation

Into this picture sits the well-publicised complaint in Western Australia of horizontal fiscal inequity, i.e. that WA doesn't get its fair share in the redistribution of federal funds across the country. So the argument runs that the Commonwealth Grants Commission overestimates the benefits of mining royalties to WA by underestimating the *costs* the same generates by its infrastructure needs. Thus we are getting less than our fair share and subsidising the eastern States. Last year WA was receiving only 68 cents of each GST dollar, this year it has jumped to nearly 72 cents and an unexpected bonus to WA of \$300 million. (*West Australian, New GST recipe, same sausage*, 4/4/11 p.21.) The State Premier wants a floor of 75 cents established. Now the Gillard Government has announced a review of horizontal fiscal equalisation.

Our State receives roughly 50% of its total revenue from the Commonwealth. In places like the Northern Territory this ratio goes up to 80%. Of this 50% of total WA State income in Commonwealth grants, between 40 to 50% are in the form of Specific Purpose Payments. That is to say their purpose and conditions are controlled by Canberra. The proportion of SPP's to untied grants has risen steadily since the 1970's. (WA Dept of Treasury & Finance, *Discussion Paper on Commonwealth-State Relations*, March 2006, p.25)

A further complaint is that when the Federal Government announces support for new Programmes it expects the State to match its new funds with *new* State funds of its own. This was the case with the Howard Government's National Action Plan on Salinity, despite the massive State programmes to tackle salinity already running without federal assistance over several decades. So too did the Gallop Government complain about similar matching funds requirements when the new Auslink federal transport funding programme was announced in 2002, although the State supported the thrust of the policy to spread transport support more broadly to rail from road. So the picture is one of too little money and/or too much control.

Yet ironically the centralisation of the federation is replicated by the State too. The State government considers itself an important power broker against the power of Canberra, but *its* centralised control over WA's distant regions is just as bad. (The Weekend Australian Magazine, *Defender of the West*, Barnett tells why his State must never surrender to Canberra, Dec 4th, 2010) This has been described as the “duplicated centralism” (Mark Drummond, *Why We Need Strengthened National and Local Governments not States*, www.onlineopinion.com.au 2002). Only eight countries in the world, excluding Australia itself, are bigger in land mass than Western Australia yet State administration is characterised by the extreme dominance of the State capital where three quarters of the population live. The impoverishment of local government revenue discussed below exacerbates the problem.

The current State Government proposal to centralise the structure of WA's Regional Development Commissions, if it takes place, would be a further detrimental move. (See website Department of Local Government and Regional Development, WA)

Nowhere has the inadequacy of this centralisation been more obvious than in the development of the Pilbarra, where social services are woefully behind economic development, so that some doctors caring for the region work from Perth on fly-in fly-out shifts, as well as most of the workforce itself, where a basic house in Karratha costs close to a million dollars, and the best restaurant in town stays open by housing its foreign backpacker staff in its own house. (The Weekend Australian Inquirer, Oct 30th, 2010, p1) We desperately need to create environments which offer an attractive North-West lifestyle on a sustainable basis. This will also ease population pressure in Perth. The private sector has developed the economic infrastructure up north but only government can control the necessary steps of selecting the best location, making land available and establishing the necessary community facilities around which new cities can grow. (Brian O'Donnell, *Invest in New Cities of the North*, West Australian 17/12/10 p.21)

The disempowerment of the WA regions was further exacerbated in 2005 when the WA Government reformed the State electoral system on the basis of one-vote-one value. Western Australia was the last State to abolish significant vote weighting. Yet

the progress in democratic principle was a bitter pill to swallow for the WA regions. The Legislative Assembly changed from 23 regional electoral districts out of 57 to the 17 regional districts now out of 59 seats. Vote equality is a fundamental principle of democracy but it is neither fair nor efficient to manage everything centrally from another region. That is why the Greens WA under balance of power provisions (with myself as spokesperson) upheld vote weighting in the Legislative Council to provide some regional input. We called this our “State Senate model”. The problem is not the principle of vote equality but the anachronistic federal structure of ex-colonial State boundaries.

3. Popular Support for Reform of the Federation

I attended the 2020 Summit in 2008 wanting to talk about re-federating Australia along a regional structure. I expected that no-one else would much want to talk about federalism, such a dry, non-sexy topic, yet to my enormous surprise, reform of the Federation was *the* “big idea” that formed the sub-text of so much of the 2020 Summit and emerged as the key issue from the top thousand minds in the country (.....well the top nine hundred and ninety nine).

“The 2020 Summit has set the Prime Minister, Kevin Rudd, a monumental challenge: nothing less than the wholesale reform of the Australian Federation. That was the inescapable message from the host of recommendations offered by the 10 streams of discussion.” (*Editorial* of the Sydney Morning Herald, 21/4/08)

Reform of the Federation came up everywhere. In the business stream it was called, “a seamless national economy”, in the regional stream they nearly went so far as to recommend the abolition of State Governments! In the governance stream itself the term “re-federate” was coined by chair Maxine McKew to summarise the overall discussions. By contrast the republic, although supported in a show of hands, was scarcely mentioned. A good summary of the principles for fixing federalism was the comment by journalist Paul Kelly from *the Australian*, “Two principles of power, moving in opposite directions...power has to be concentrated and devolved. Think of involving people at local levels along with centralised governance.”(*pers. comm.*)

Furthermore in public submissions to the Summit reforming federalism was relevant in 343 of the 790 submissions to the governance stream. (Mark Drummond, Governance Stream 2020 Summit Submission of Relevance to Beyond Federation, markld@ozemail.com.au)

The Final Report, Governance Stream, 2020 Summit wrote up the summary thus:

Theme: create a modern federation

IDEAS

9.1 Reinvigorate the federation to enhance Australian democracy and make it work for all Australians by reviewing the roles, responsibilities, functions, structures and financial arrangements at all levels of governance (including courts and the non-profit sector) by 2020.

A three-stage process was proposed with:

- an expert commission to propose a new mix of responsibilities
- a convention of the people, informed by the commission and by a process of deliberative democracy
- implementation by intergovernmental cooperation or referendum.

9.2 Drive effective intergovernmental collaboration by establishing a national cooperation commission to register, monitor and resolve disputes concerning intergovernmental agreements.

9.3 Engage the Australian community in the development of an ambitious long-term national strategic plan that delivers results.

The outcome of this national discussion has been reinforced in the findings of a decade of work by the Australian Constitutional Values Survey conducted under the Federalism Project at Griffith University. During that time dissatisfaction with the federal system has risen, as has support for structural reform.

“Those in favour of future reform has risen from 66% to 75%. That encompasses a wide array of options, ranging from a two-tiered federal-regional structure (supported by 13%) to four levels with the addition of regional governments (12%) and all the way to one government in Canberra (5%) or only state governments (3%). But while half of all Australians want to keep at least three levels of government, 45% support a future structure with just one or two levels. And while 65% have not heard of the idea of regional governments, 42% like the idea as part of a future reform, a ten percentage point rise in two years.” (The Weekend Australian Inquirer, *Government should be on the Level*, 10/4/10 p5)

4. The Emergence of Regional Governance

Although we are already served by three levels of formal government, one of the most noticeable characteristics of Australian governance in modern times is the mushrooming of regional structures. All tiers of government, federal, state and local, are setting up and running a plethora of regional Councils and Commissions. The Federal Government has its *Regional Development Australia Committees* and regional natural resource management; the WA State Government has *Regional Development Commissions* and a regional administrative structure for many of its Departments. Local Governments have been forming regional groupings (ROC's) for certain service deliveries, such as waste management. Now the *Systematic Sustainability Study* of the WA Local Government Association has launched a major ten year plan to shift local government in WA to a regional model, following the finding that 58% of local councils in WA are too small to be sustainable.

Regional institutions are increasing, outside of, and in addition to, the three formal structures of Government, simply because they work best in practice for efficient service delivery of government programmes. This scale of governance is close enough to understand local needs but large enough to implement strategic planning and efficient use of resources. Moreover, being based on a shared identity governance can connect better to everyday experience. Feeling more connected to the operations of government enhances democracy.

Although the Commonwealth Government can set national policies, it is too remote to deliver implementation. State Government legislation sets the regulatory frameworks but is still too distant from much of WA, whilst local councils have poor skills, are too small to develop policies such as strategic transport planning and have challenges with financial viability.

Put simply the country works in regions. The characteristics that influence the identification of a region are the environment, the common climate, geology and biology of a place that determine the socio-economic factors of the economy and land use. Lastly there's the magic ingredient known as "community of interest", essentially this is the way the above factors give rise to a common sense of identity and a commitment to that "place management".

Socially recognised and politically convenient regions are more simplified than strict bio-regions of which there are 85 of the latter across the country, but only about 57 political regions. Interestingly there is a considerable working agreement about what comprises the regions of WA across all three levels of formal Government. Those are the Kimberley, the Pilbarra, the Gascoyne, the mid-West, the Goldfields-Esperance, the Wheatbelt, the Great Southern, the South-West and the Peel. That's nine regions in all, and then Perth, although the Federal Government puts the mid-West and Gascoyne into a single Regional Development Australia committee. The WA Local Government Association (WALGA) also recognises the same regions. There is consensus about this because regions are real things, not political inventions like federal electoral seats ~ which are often named after people not places.

If regions follow natural boundaries they can provide the counter balancing factor in Australian political representation that belongs alongside vote equality, and should play a role in setting the natural boundaries within which equal representation works. People can be counted and equalised, but country cannot.

If regions have a natural integrity, and the principle of vote equality underpins our electoral representation, States have neither philosophical nor environmental integrity. The current State structure of our Federation is a frozen historical construct based on the different colonies at the end of the nineteenth century, at the time when the movement to join together to form the single nation of Australia was realised. In fact support in the Swan River Colony at the time of joining the federation was partly motivated in some places by the desire to overcome the centralism of the capital city of Perth which was dominating the colony, preventing the development of additional strong regional centres. It was in response to such sentiment that the constitution *was* provided with clear, relatively simple provisions for the establishment of new States.

Aboriginal people have always connected regionally. Traditionally there were eighteen broad regional groupings across Australia, six of which were within what we now call WA. Current advisor on Indigenous affairs to the WA State Government, and former State Governor, Lieutenant-General John Sanderson has called on the State Government to set up a new system of regional administration for Aboriginal people. Commenting on the Howard Government's intervention in the Northern Territory, Lt-General Sanderson said in a speech in February 2008

“The fact that the Federal Government chose to blame the States and Territory for this (indigenous policy) failure, despite the COAG principles which they shared, suggests that what we are really looking at here is a problem of our federal system and hence our constitution. Our system of government is not working ~ at least not for indigenous people.” (Speech to Institute of Public Administration WA division, Sheraton Hotel, 7/2/08)

It is profound that the natural environment of a region determines the socio-economic pattern and in turn promotes a sense of community. Even though people don't always understand this determinism, everybody recognises the resulting community of interest. The natural features are the fundamental factors giving rise to regional identification because these environmental givens affect the land-use and all wealth creation, and together provide a “sense of place”. In contrast to local government amalgamations based on dominant towns, where there are some winners and many losing communities, structural reform of local government into identified regions means everyone owns the outcome, and shares the identity.

This really came home to me when our Balingup Progress Association launched a proposal for our local government structural reform in 2009, based on joining our town with the Shires of Bridgetown, Boyup-Brook and Nannup to create a Blackwood Valley Shire. The proposal was immediately popular, enjoying majority support at some public meetings, because it promoted environmental integrity, and already enjoyed a shared identity and economic relevance. (Balingup Progress Assoc., *Submission to the Minister for Local Government on the Proposed Restructuring of Local Government in the Blackwood Valley Region, Sept, 2009*)

Not unsurprisingly Natural Resource Management follows a regional structure. We can further develop this system across governance akin to a deep ecology of Australian politics, replacing the superimposed colonial framework of State boundaries that bear only marginal correspondence to country. Caring for our country means understanding its nature. Deep Ecologist philosopher Arne Naess has said,
“There is a core democracy in the biosphere.”

It is in this connection to place, then, that sustainability can be realised. We are of the era that has conceived of, but then struggled to define, let alone to practice, sustainability. For deep ecology however, sustainability comes from people knowing and caring for a place. It's that simple. We are, says environmental philosopher Aidan Davison,

“a generation wanting sustainability - willing, even, to pen voluminous pages on the subject - but wary of practicing actual fidelity to people and places.”
(Aidan Davison, *Technology and the Contested Meanings of Sustainability*, State Uni of New York Press, Albany NY, 2001)

5. Constitutional Recognition of Local Government

Given the regional reformist zeal above and my ‘deep ecology vision’ of merging environmental integrity with equality of representation, this submission to the Senate Inquiry must now take a lateral turn. No-one said reforming the Federation was easy! It is the hurdle of the requirement of section 128 of the Constitution (majority vote in a majority of States, and an overall national majority) that has made it so hard to actually change our system by constitutional referendum. For the time being no referendum is going to succeed that will replace States with regional government. This will require many years of national dialogue using the methods of “deliberative democracy”. In the short term therefore I submit that the Federation must be allowed and encouraged to further evolve in the direction of regionalism, as it has since the 2nd World War. Eventually this will need to be entrenched in the constitution to eventually create, I hope, a less centralised system.

On that basis I submit that the most influential thing that this Senate Inquiry can actually *achieve* for the reform of the Federation is strengthen the likelihood that constitutional recognition of local government, in conjunction with explicit Commonwealth power to direct fund it, will be taken to referendum at the next Federal election in 2013. Such a unanimous recommendation from the Senate Select Committee could make a real difference in whether such a referendum would succeed, or indeed, be put.

- Although this proposition merely reflects common practice, this constitutional change is of itself quite challenging, especially as Colin Barnett has already indicated strong opposition to recognition on the grounds of undermining State rights. Two previous referenda on this failed. In 1974 it was bundled with three other proposals for change; whilst in 1988 in a bundle with several other far-reaching proposals, it was rejected again in a highly politicised campaign. When referenda become a political football they invariably fail. (George Williams and David Hume, *People Power: the History & Future of the Referendum in Australia*, UNSW, 2010)
- Recognition of local government is the next logical step in recognising the evolution of governance in Australia. This form of Australian governance that is closest to the community has become responsible for ever wider community services. Its competence has increased in the eastern States where structural reform has led to strong regionalised local governments in many places. (House of Reps Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: A Fair Share for Responsible Local Government*, Oct 2003, p83.) The ability of local governments to deliver federal programmes locally has become increasingly important to the Commonwealth. (*op.cit*, p99)
- Yet local government is relatively weak in Australia ~ part of the problem of duplicated centralism in Australian governance. It raises 80% of its own revenue but by international standards its budget is tiny. Local Government accounts for only 6% of total government spending; by comparison the US Federation sees 25% of revenue spent by local government, Japan 40% and Canada 19%. Many small local councils are hardly viable. In WA it has been estimated that 58% are unsustainable. (WALGA, *Systematic Sustainability Study*, 2008) In Australia, where Councils are now stronger than in WA, 10-30% of Councils are still estimated to be unsustainable financially. (Price Waterhouse Coopers, *National Financial Sustainability Study of Local Government*, 2006)

- It is estimated that cost shifting by States onto local government is in the region of \$500 million to \$1.1 billion per annum. Cost shifting occurs through direct reduction in funding, increasing regulatory & compliance requirements, or failure to index fees for service (House of Reps. *op cit.*)
- There is an estimated backlog of \$14.5 billion in neglected local infrastructure. (ALGA, Submission to your Inquiry, 2010)
- Since the Whitlam era the Federal Government has provided general purpose assistance to local government. From 1986 this was on the basis of direct grants. More recently the Commonwealth has also funded targeted programmes administered locally by councils, such as Roads to Recovery and the 2008 Community Infrastructure Fund where more than \$1 billion was made available to work on the backlog of local government infrastructure, as part of the Rudd Government's National Stimulus Package response to the Global Financial Crisis.
- However since a High Court ruling of 2009 (*Pape v Commissioner of Taxation*) all this has been thrown in doubt as potentially unconstitutional. The High Court has ruled that the Commonwealth Government does not have any general power under the Constitution to fund local government. The only remedy to this problem is to amend the Constitution, probably by amendment to s. 96. (George Williams, *Advice re Pape v Commissioner of Taxation and Direct Federal Funding of Local Government*, 2009).

So although it's not yet widely recognised as the moving or inspirational goal that this could be to bring government closer to the community, getting up a referendum to recognise and fund local government, especially regionalised local government, is the single most important next step to the reform of our federal system, and therefore towards the evolution of a properly functioning, efficient and responsive Federation.

6. Conclusion

If the Australian Federalism is evolving towards a regional Federation despite the constitution, then there are three immediate tasks in the short to medium term to assist this evolution. They are;

- ❖ To ensure that the current practice to make regional administrative boundaries consistent across the tiers governments is further emphasised, reinforcing recognition of *consistent regional boundaries* across governments.
- ❖ To bring local government into its rightful constitutional place in our Federation
- ❖ To support further structural reform to regionalise and strengthen local government.

The Australian Federation is the most centralised in the world. Indeed it is so centralised that it fails to deliver well the benefits of inclusiveness that a federal system normally provides. Federalism is a system of government that is desirable for nations with diversified ethnic populations or large geography. (Rupak Chattopadhyay, *The Economist*, Feb 24, 2011) Moving the Federation towards greater regional decentralisation, whilst providing coherent central government power to set national standards, can only improve our governance because it will have greater ecological

integrity and hence community of interest. Due to the relative weakness of local government in WA without structural reform, and our massive land mass, Western Australia is the most centrally governed part of this centralised Federation. Not only does this disempower regional communities, and Aboriginal people in particular, but it makes for inefficient and very costly government.

Thus the most effective next step to remedy and reform the Federation is to recognise and fund local government, through a constitutional referendum, and to support the ongoing evolution of contemporary government practice towards work regionally.