

17 July 2002

The Secretary
House of Representatives
Standing Committee on Economics, Finance and
Public Administration
Parliament House
Canberra ACT 2600

Dear Committee

Submission to Inquiry into Local Government and Cost-Shifting

Please find enclosed our submission into your present inquiry.

Many of the research results incorporated in the submission lend themselves to visual presentation. We also have additional comparative research on the level and quality of political and financial decentralisation in Australia, similarly available for presentation in Power Point form.

I believe it might be valuable to present these results in person at a Committee hearing when these are timetabled. It may also be effective to schedule this at a time when either Australian Local Government Association or Local Government Association of Queensland are giving evidence, as both were involved in this research.

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Yours sincerely

A. J. Brown
Fellow

**Submission to Inquiry into Local Government and Cost-Shifting:
House of Representatives Standing Committee on Economics, Finance and
Public Administration**

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GRIFFITH UNIVERSITY



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Summary

This submission addresses the financial position of local government in the Australian federal system from the perspectives of:

- Public attitudes, including local government community attitudes toward future directions in Australian constitutional development as a whole; and
- Historical and theoretical analysis of previously unresolved problems concerning the constitutional position of local government.

The evidence for the conclusions is drawn from a pilot study into public attitudes to constitutional change conducted in Queensland during Australia's centenary of federation (2001), and historical and theoretical research, supported by the Local Government Association of Queensland and *Courier-Mail*.

The submission interprets evidence of substantial disaffection among the Queensland local government community towards current constitutional and financial relations. Only 22% of our statewide local government sample indicated a belief that the present federal system should remain the same in another 100 years. 70% indicated a positive preference for structural change, with 71% of these (50% of total) indicating that they would like to see regional governments replace both local government and the current states. A general population sample produced equally startling results.

These results highlight:

- the importance of the Committee's inquiry not only for better understanding of the comparative weakness of Australian local government in functional and financial terms, but the reasons for this in unresolved constitutional theory;
- evidence of an increasing public open-mindedness about the prospect of change, but simultaneous narrowing of options for the development of future regional-level institutions of government in Australia; and
- evidence that the scope for achieving further rationalisations of roles and responsibilities between governments may be severely limited unless unresolved constitutional questions are squarely attacked -- such as how many levels of government are necessary or desirable, how these should be structured and configured, and how federal values might be better operationalised.

The submission's conclusions and recommendations are directed towards the need for further and better research into functional, financial and structural reform at state and local level. The necessary research includes a further nationwide study into public and official attitudes, and new methodologies for more accurate and dispassionate cost-benefit analysis of our constitutional options. This is vital to support the type of informed deliberation needed if questions about future structure are not to once again become bogged down in short-term party-political debates.

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1. Introduction

This submission addresses Terms of Reference 1-5 of the Inquiry into Local Government and Cost-Shifting by the House of Representatives Standing Committee on Economics, Finance and Public Administration. The inquiry comes at an opportune time in the history of Australian intergovernmental relations. Following the Centenary of Australian Federation (2001), there is increasing evidence that governments, researchers and the broader community are entering a new period of comparative open-mindedness about the optimum structural and financial relationships between major elements of the Australian constitutional system. This submission presents and interprets some of that evidence. Its conclusions and recommendations are directed not only to issues of public finance, but more generally to the broader questions of institutional and constitutional structure that those issues inevitably raise.

The major evidence here comes from a pilot survey on issues of future structure conducted by the Key Centre in 2001 with the support of Local Government Association of Queensland (LGAQ) and Brisbane *Courier-Mail*. While limited to Queensland, the pilot raised issues national in stature and is proposed to be replicated on a national scale. The survey (Appendix 1) drew opinion from three samples, as set out in Table 1:

- Queensland adult population generally (random sample size of 301).
- Local government community. This sample of 259 Queensland residents was drawn from delegates and participants in the 2001 LGAQ Annual Conference, Townsville, including 48 mayors, 45 chief executives and over 120 other councillors and staff from across Queensland.¹
- *Courier-Mail* readers and website users (a self-selecting sample of 704 persons responding to the same survey by post or email).

Much of this submission repeats an article ‘Subsidiarity or Subterfuge? Resolving the position of local government in the Australian federal system’, *Australian Journal of Public Administration* (forthcoming). Further issues from the survey are also presented in the article ‘After the Party: Australian regionalism, federalism and constitutional reform in the 21st century’, *Public Law Review* (Appendix 3).

The first part of the submission addresses the current position of local government (TORs 1, 2 and 4). The question of financial position relates directly to the long-discussed issue of the constitutional position of local government. Important issues continue to surround not only the comparative weakness of Australian local government in functional and financial terms, but the reasons for and implications of this in unresolved constitutional theory.

The second part of the submission addresses the question of future directions in regional-level cooperation and institution-building between local governments (TOR 3). The survey provides direct evidence of an increasing open-mindedness, and narrowing of options for Australia’s future regional-level institutions. Again, while driven by functional and financial imperatives, these narrowing options pose some important challenges for the development of Australian constitutional theory.

The third part of the submission argues that these problems are fundamental to the ‘next generation’ of questions about achieving further rationalisation of roles and responsibilities across all levels of government (TOR 5). The survey provides direct evidence that the scope for achieving further rationalisation may be severely limited unless we attack unresolved constitutional questions: how many levels of government are necessary or desirable for Australia, and how should those levels be structured and configured? While Australia’s constitutional structure is likely to remain federal in nature, there remain a variety of options for how Australian federalism could or should develop; and indeed, how federal values might be given a better operationalisation.

Conclusions and recommendations are directed to the type of research needed to support meaningful debate about the issues raised by the Inquiry into the future.

Table 1: Responses to 'Australian Regionalism: Federation to Future' survey

Collection method	Telephone interview	Written survey			
Samples	Telephone	Local government	Courier-Mail		Total
			Written	Internet	
Total responses	3 minute i/view by NFO CM Research 4&5 Sept 01.	Hand distributed & collected LGAQ Annual Conference 4 Sept 01.	CM p.11 reply-paid survey 4-30 Sept 01	CM website responses 4-13 Sept 01	1,264
Valid responses (e.g. Qld residence)	301	265	429	331	
	301	259	424	280	
	n=301	n=259	n=704		
Reliability	Stratified random sample; weighted results accurate to within $\pm 5.6\%$ at 95% level of confidence	Unknown - 48 mayors, 108 councillors, 45 CEOs, 12 other officers & 46 other Qld-residents	Self-selecting samples from 606,000 audited weekday readership		
Age range/mean	18->60 / 40	20->60+ / 53	<18->60 / 64	<18->60 / 45	
Mean gender (% male)	50%	77%	74%	80%	
Mean location (% metropolitan)	36%	19%	81%	86%	

2. Current position of local government

TOR 1: Local government's current roles and responsibilities

TOR 2: Current funding arrangements for local government

TOR 4: Local government expenditure and the impact on local government's financial capacity of changes in powers, functions and responsibilities between state and local governments

Background

It is well-established, and should no longer be denied, that the structural position of Australian local government is weak by Australia's usual international standards

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This has a historical explanation, albeit not often clearly stated. In the English and Anglo-American political systems, local institutions developed as effectively the first tier of government, with a major early call on community resources and political allegiances, on or over which intermediate and national institutions were then built. However, in Anglo-Australia, centralised colonial structures provided the key machinery of public control and services from the outset, with local institutions arriving second in time or directly in their shadow. While there are important variations between states **Error! Bookmark not defined.**, the functional position of state authorities generally allowed them to “exaggerate their pre-eminence in the colonial scheme of things”, “enfeebling” Australian local government by comparison with America or Britain **Error! Bookmark not defined..**

This history has always been fundamental to local government’s financial position. However, as local institutions have surged in political and administrative importance in recent decades, this has become increasingly problematic. Since the 1960s, it has become inseparable from underlying questions of constitutional theory, law and politics. In the 1970s and 1980s the debate focussed on the potential value of formal recognition of local government in the federal constitution. Although defeated in constitutional referenda in 1974 and 1988, proposals for recognition were calculated to deliver two things:

- A symbolic promotion of the political importance of local government, filling a presumed silence in Australia’s basic law. This was based on the view that the 1901 Constitution ignores the existence of local government; for example, that “at none of the three Constitutional Conventions held in the 1890s was local government discussed; it was not important for the creation of the federation” **Error! Bookmark not defined.**; “Australian federal theory says nothing about local government” **Error! Bookmark not defined..** Constitutional recognition would provide symbolic reflection of the permanence of local government in our political system.
- An enhanced role for the Commonwealth Government as a direct source of local government finance. Federal governments had funded a variety of local programs such as roads since at least 1923, but had always done so through the states, in keeping with section 96 of the Constitution.² While the Whitlam government legislated for local government representation on the Commonwealth Grants

Commission (1973), it remained undesirable if not impossible to fund local government direct without amending the Constitution.

The failure of the 1974 and 1988 referenda was based in large part on the fact that the second imperative could be, and was, overcome by other means. By 1988, in particular, it was clear that direct funding was relatively easily achieved through terms and conditions upon state grants, as well as the additional grant power revealed to exist in section 81 of the Constitution **Error! Bookmark not defined.** Subsequent Coalition and Labor governments have had little difficulty in preserving the Whitlam approach through the system which now requires each state to have local government grant commissions for the purpose of distributing Commonwealth assistance **Error! Bookmark not defined.** There was little practical purpose to be served by constitutional reform, much as some argued in relation to the 1999 republic referendum.

Further, an alternative solution was also available to the symbolic problem of the local government's absence from the national constitution. Since local government had always been a legislative creature of each state, the Advisory Council for Intergovernment Relations championed the view that it fell most properly to the states to "show their good faith in local government" and recognise it in their constitutions **Error! Bookmark not defined.** In the 1980s-90s this generally occurred, accompanied by a broadening of local government competence to provide for the 'peace, order and good government' of their area **Error! Bookmark not defined.** At the same time, local government was put through the general mill of 1990s microeconomic reform.

Clearly, these dual responses were intended to resolve local government's position as a political issue. Equally clearly, they have not done so: politically, functionally, or in terms of constitutional theory. The issue of ongoing disquiet among the local government community is addressed later in the submission. However, our project revealed direct evidence that unresolved functional and theoretical questions are playing a fundamental role in this disquiet, as well as continuing to support questions about the structure of government in the broader community.

Local government's functional position

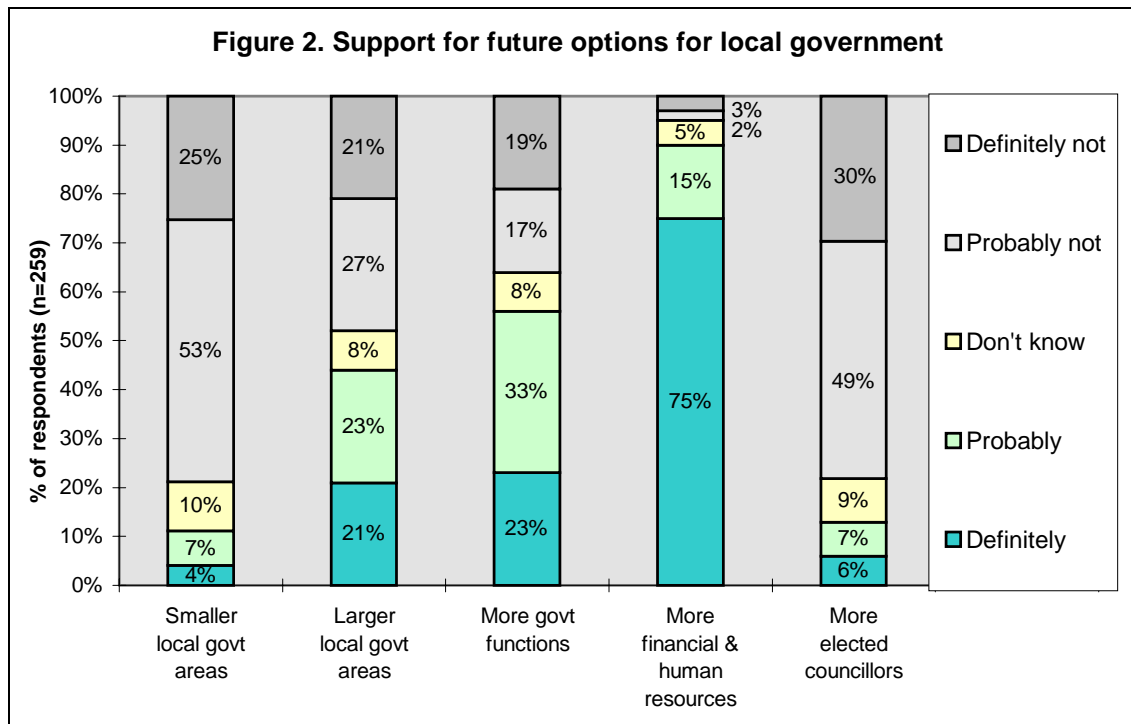
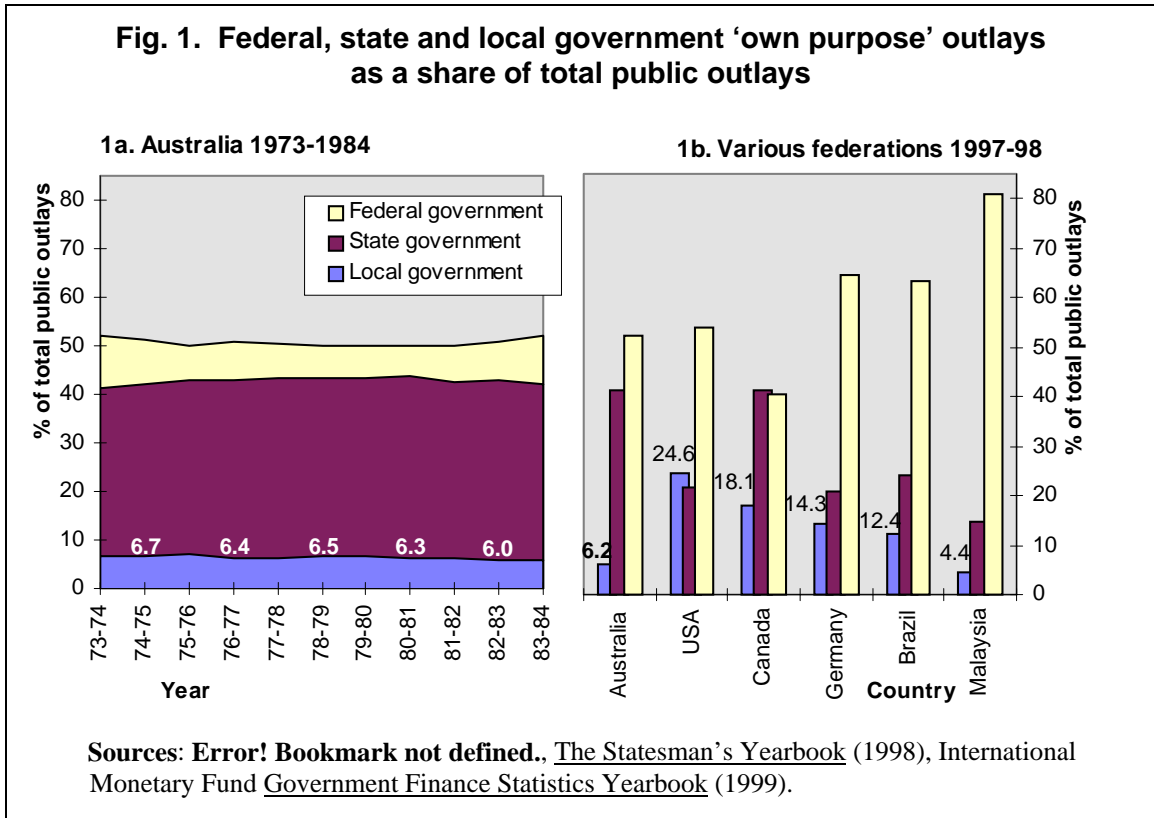
Basic disquiet about the adequacy of present arrangements correlates with evidence that, ultimately, the reforms of the 1970s-90s have never done more than tinker with local government's functional and financial position. Post-1972 Commonwealth general purpose assistance has always been justified by evidence of the narrowness of local government revenues; but as Worthington and Dollery **Error! Bookmark not defined.** point out, the debate about the consequences of this for Australian federalism remains fairly embryonic. None of the many inquiries of the 1970s, 80s or 90s, such as the 1984-85 National Inquiry into Local Government Finance (the Self Inquiry), attempted any reevaluation of local government's position from first principles. Nor did they draw significantly on the historical or comparative evidence of a structural anomaly.

In consequence, the new systems have done little to change, as opposed to simply stabilising, local government's pre-existing weak position. Indeed, not only has the overall position of local government not improved -- it has remained a battle to prevent it from deteriorating, given the Commonwealth's tendency to rebadge old money as new, and the states' tendency to let their own financial assistance decline **Error! Bookmark not defined.**

Figure 1(a-b) demonstrates the extent to which local government's overall position remains comparatively small and unchanged, by presenting its position in terms of 'own purpose outlays'. Figure 1a repeats the Self Inquiry's statistics on local government's share of public finance, including all state and federal general purpose grants, through the 70s reform period and beyond. This share has consistently remained at under 7% of the national total. Figure 1b highlights not only that this remains the same today, but that this remains dramatically small when compared against most of our preferred sister federations. This contrast is recognised in international literature **Error! Bookmark not defined.**, but rarely remarked on at home.

There is nothing new about a part of our governmental system crying poor in respect of its share of finance or power. For example, when our survey asked whether respondents would like to see the development of the Australian federation include

“councils with more financial and human resources”, it is no surprise that 95% of our local government sample answered “definitely” or “probably” (see Figure 2 below).



However, our survey also tended to indicate a link between this predictable demand for more resources, and genuine awareness of local government's position:

- The same question asked whether respondents would like to see “councils take on more government functions” in the development of the federation (Figure 2). A 56% majority of the local government sample answered “definitely” or “probably”, against only 36% who thought definitely or probably not.

The response tends to indicate a substantial view that apart from not receiving what it should, local government is not doing what it could. It also suggests a shift in attitudes from 20 years ago, when the leading scholarship noted local government's enduring reputation as “stodgy and basically unenterprising”, and found “less municipal enthusiasm” for expanding functions than for more resources to simply tackle existing tasks **Error! Bookmark not defined.** Given our question provided no guarantee of resources to match the new functions, and the growth in unfunded functions over the past decade, the response suggests something of a departure from old stereotypes.

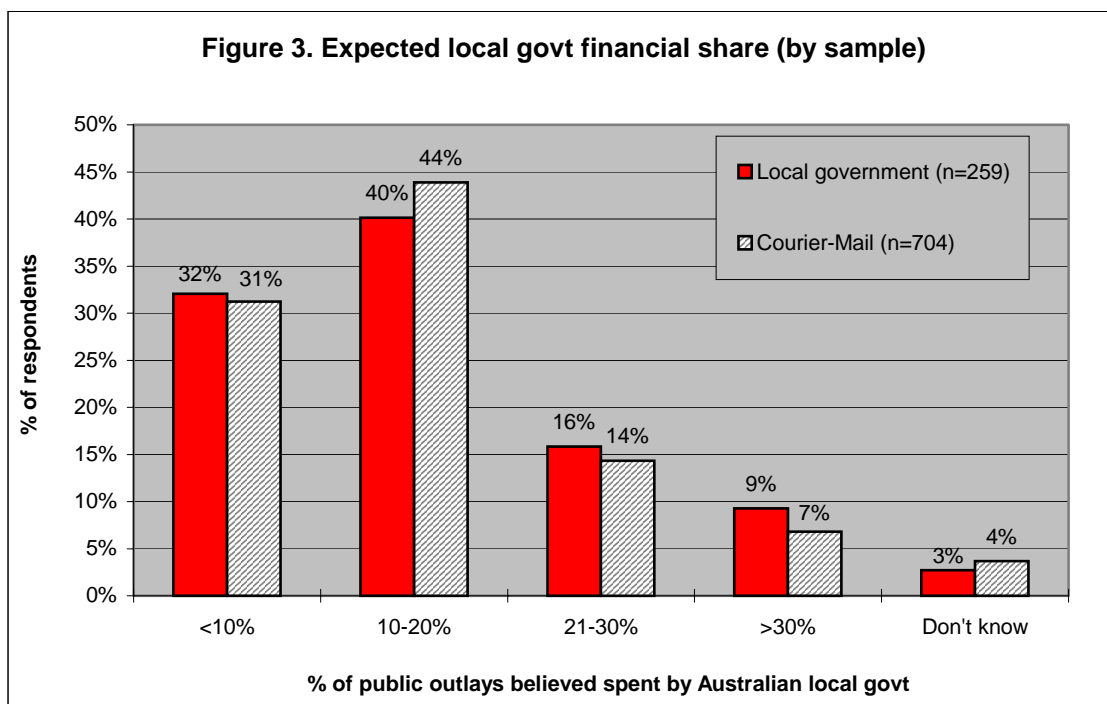
- A separate question asked respondents directly about local government's relative financial position: ‘How much of all public money do you think is spent by local government, compared to state and federal governments?’ The question offered three examples from the sister federations indicated above, saying:

‘Different federations allocate different amounts of public money to different levels of government. For example, in the USA local governments spend 25% of all public money; in Brazil 12%; and in Malaysia 4%. How much do you expect is probably spent by local governments in Australia? (Less than 10%; 10-20%; 21-30%; or more than 30%?)’

Figure 3 below sets out the result. Only 32% of the local government sample got it right, choosing ‘less than 10%’, but a further 40% chose the second option. This was the option to which uncertain respondents were most likely to be drawn, since it represented the ‘middle example’ of the three. The real significance of the result lies in the fact that a total of 72% chose either this ‘middle’ example (Brazil) or the ‘low’ one (Malaysia) when neither country represents a usual or popular role model for Australia. Only 16% of respondents guessed our local governments might have

a share comparable to those of our preferred constitutional cousin, the United States. The response thus provides direct evidence of, if not complete consciousness, then at least strong suspicion of local government's position on the part of both that sample and the *Courier-Mail* sample.³

This level of awareness of local government's comparatively weak functional position becomes imperative, in the next two sections, to understanding current disquiet and changing attitudes towards regional institution-building, scope for the rationalisation of roles and responsibilities, and the general future of federalism.



Local government's theoretical position

The second major issue left unresolved by the 1970s-80s debates was local government's position in Australian constitutional theory. As with its functional and financial position, the debate about constitutional recognition ended in something of a non-answer to the question, not only because referenda question twice failed, but because the preferred theoretical solution – recognition in State constitutions – was really no more than an attempted revalidation of the status quo. However, how well did anyone even understand the status quo?

This question was too complex for our survey, but historical research alone is enough to suggest the debates of the 1970s-80s were based on substantial confusion. The case for constitutional recognition included the idea that local government was simply ‘missing’ from the federal Constitution. In fact, claims that local government was so unimportant to Federation in 1901 that it was not even mentioned have never been accurate. For example, 1897-98 federal convention leader Edmund Barton made it quite clear that Federation was not just about settling the constitutional relations between central and state governments, but a system that, in principle, would work at three levels: ‘general’, ‘provincial’ and ‘municipal’ **Error! Bookmark not defined..** Other important examples can also be found, as will be discussed below.

The question becomes not whether Federation ‘ignored’ local government – it didn’t – but why so many people now either misunderstand, or disagree with the 1890s constitutional relationship between state and local government. Debate a century later has gone some way to explaining local government’s constitutional foundation in state law, but has never re-evaluated this as a matter of theory. Simply restating the outcome of the 1890s compact does not answer some ongoing questions: for example, if we have so clearly recommitted to a constitutional structure based on Barton’s 19th century hierarchy of three separate ‘levels’ of government, why does the language of 21st century federalism continually speak of partnerships between three equal, interdependent ‘spheres’? There seem to be ongoing confusions, if not double-standards in our constitutional theory, again relevant to how Australians and their local government community see the future.

3. Regional cooperation and institution-building

TOR 3. The capacity of local government to meet existing obligations and to take on an enhanced role in developing opportunities at a regional level including opportunities for councils to work with other councils and pool funding to achieve regional outcomes

Background

Regional-level cooperation and restructuring have long been identified as the most logical route for achieving relief from local government’s weak structural position. As

identified in TOR 3, efficiency gains and economies of scale have been a favourite focus for how local government might do more with less, particularly in some states' 1990s amalgamation programs. Elsewhere, informal cooperation rather than formal restructuring has achieved similar goals.

In both cases, particularly as some states have become more familiar with the idea of councils operating on scales akin to the City of Brisbane since 1925, or Gold Coast City since 1995, the idea of regional government has come a step closer to more general reality. Part of this development has stemmed from the realisation that regional-scale government can provide not just increased efficiencies, but increased functions and capacities.

The question prompted by TOR 3 is: what is there to do at the regional level, which local government is not already doing?

An unexpected answer to this came from the local government community itself in the 1990s. The peak evidence of ongoing local government disquiet after the 1988 referendum outcome came when the constitutional question began to be reborn in another form. In 1993, the Australian Local Government Association (ALGA) initiated the National Assembly of Australian Local Governments, which went beyond symbolic federal recognition to endorse the idea of a restructure in which 80 mega-councils would ultimately replace the states **Error! Bookmark not defined..** This 'upping of the ante' had the appearance of a somewhat extreme reaction to the 1980s debate and state-imposed reforms then underway. This policy survived as more than merely a passing fad. Towards decade end, the Constitutional Centenary Foundation's Local Constitutional Conventions detected an ongoing interest not simply in local government's position *per se*, but the need for a broader review of federalism to bring about "a system based on regions or, at least, a larger number of States" **Error! Bookmark not defined..**

This debate began to suggest that the 'next generation' of discussion about regional-level reform needed to move beyond the question of regionalism at simply the local government level. This is not the first time this has happened in Australia: repeatedly, over the past 160 years, the creation of more states has been seen in many parts of Australia as the logical route to more 'regional' general purpose governments **Error! Bookmark not defined..** At the same time, there has been long running debate about

alternative regional frameworks without state government, which refuses to go away (Galligan 1995; cf Hall 1998). The ALGA policy of the 1990s gave the impression that an important new page was turning in this debate.

Regionalism and constitutional structure

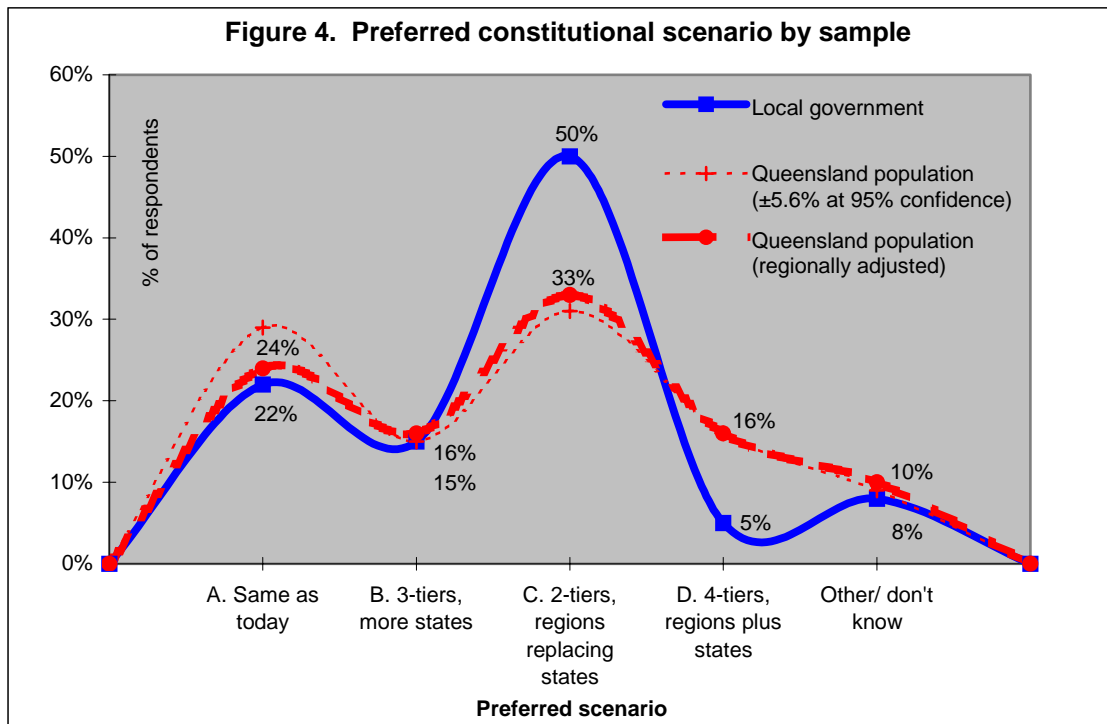
Our survey was designed to directly attack the question of where regional-level institutions might fit in our future constitutional structure by asking about the performance and development of the Federation, 100 years old in 2001. We asked:

‘Australia currently has a three-tiered system of federal, state and local government. Thinking forward, which of the following best reflects how you think our system will probably look 100 years from now?’

- A. ‘The same system as today’
- B. ‘The same three tiered system, but with a larger number of states’
- C. ‘A two-tiered system, with regional governments replacing state governments’
- D. ‘A four-tiered system, with regional governments as well as the states’
- E. ‘None of the above (tell us what you think)’.

We then repeated the question, asking ‘which best reflects how you think our system should look 100 years from now?’

The broad results of the second question are set out in Figure 4. They reveal unexpected interest in a general overhaul of federation. This was not restricted to our local government respondents: about 62-63% of Queensland adults appear to be both expecting and looking forward to significant regional-level structural change in the next 100 years, with perhaps two-thirds of those (40% of the total) envisaging that this change will be moderate to major in scope **Error! Bookmark not defined.**



As shown by Figure 4, the local government respondents also revealed a particularly accentuated version of this trend. Three particularly clear messages can be drawn from their response:

- The question of federal constitutional recognition of local government *per se*, in isolation, appears to be a dead issue at least among the Queensland local government community. Obviously, the survey did not ask respondents about this directly, but only 1-3% of respondents⁴ took advantage of any opportunity to volunteer it as an issue, even despite being directly reminded about it in a conference question by the ALGA's chief executive.
- The 1990s ALGA policy of replacing the states with a larger number of regional governments, not called states, has deep support in the Queensland local government community as by far the most preferred option (at least 50% of total sample; 71% of all those preferring change⁵). It was also the single most popular option across the general population, followed by keeping the system the same.
- The Queensland local government community sees negligible value in pursuing regional-level general purpose government as well as the present states. Only 5% of respondents thought there was room for formalisation of regional cooperative structures into a permanent fourth tier in the system. However, this contrasted

greatly with the general public who found this option just as attractive (16%) as the traditional option of more states. In fact, a regional analysis finds the idea of a fourth tier to be strongest in central and north Queensland, apparently replacing collapsed faith in the new state idea (see breakdown in Appendix 2).

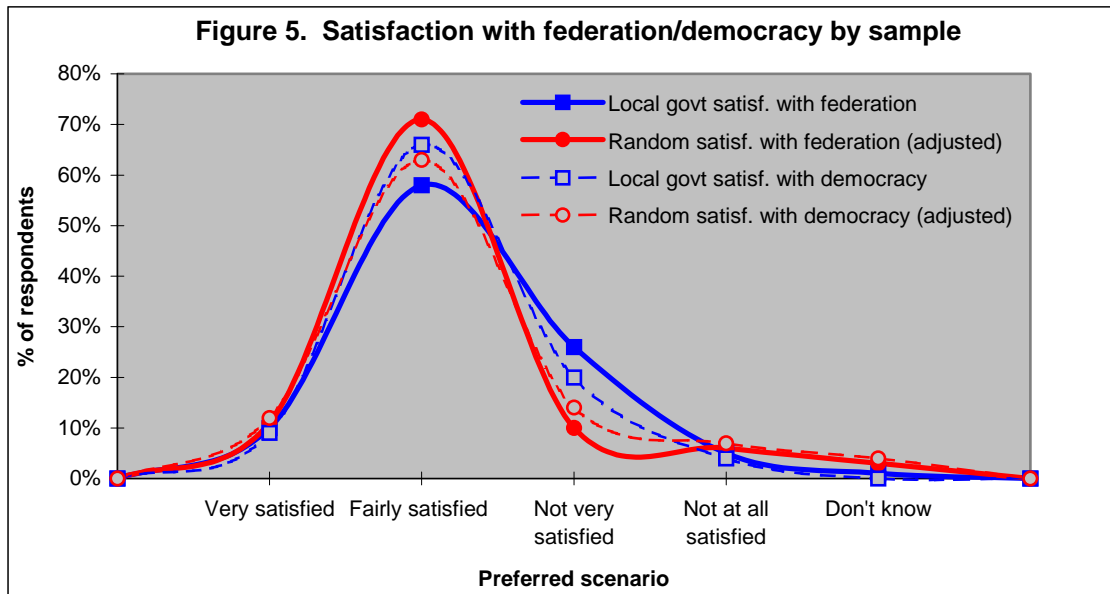
These responses confirm the extent to which debate about the position of local government has moved since the 1980s. Assuming it was ever politically important, the symbolic goal of federal recognition appears definitely to have given way to interest in overhauling the system as a whole. This suggests that regional-level institution-building is not only an informal, administrative question, but increasingly a constitutional question for government in total.

In several ways, this interest in constitutional reform appears to reflect a comparative open-mindedness about regional-level institutions that has not been evident in recent decades. The general public sample tended to defy major 20th century stereotypes, which suggested interest in reform was polarised on urban/rural and party political lines so as to render meaningless any real prospect of change. Here, however, age and regional analyses in Appendix 2 indicate a strong body of opinion in favour of a significant restructure which is not conventionally polarised, instead existing right across the community. It is probably more important to look for indicators of the extent of change contemplated by respondents, rather than the type or mere fact of their interest in change (Appendix 3).

Why do people have such an unexpectedly open-minded outlook? On the part of the general public sample, the high interest in and expectation of change did not appear to stem from active disaffection with the present structure. Figure 5 shows responses to background questions about satisfaction with democracy and the federal system generally. In each case, the public sample maintained high faith in present structures; most people therefore seemed to engage positively with the prospect of a changing system without feeling the current one was necessarily broken.

The local government sample, on the other hand, had a more mixed view, sharing the same general faith in 'the way democracy works' (Figure 5, dotted lines), but significantly less positive about the current working of 'federation' (solid lines). In the local government sample, there was not merely interest, but a solid demand for change.

In the context of Australian political history, what becomes dramatic is the substantial preference for the single most radical option.

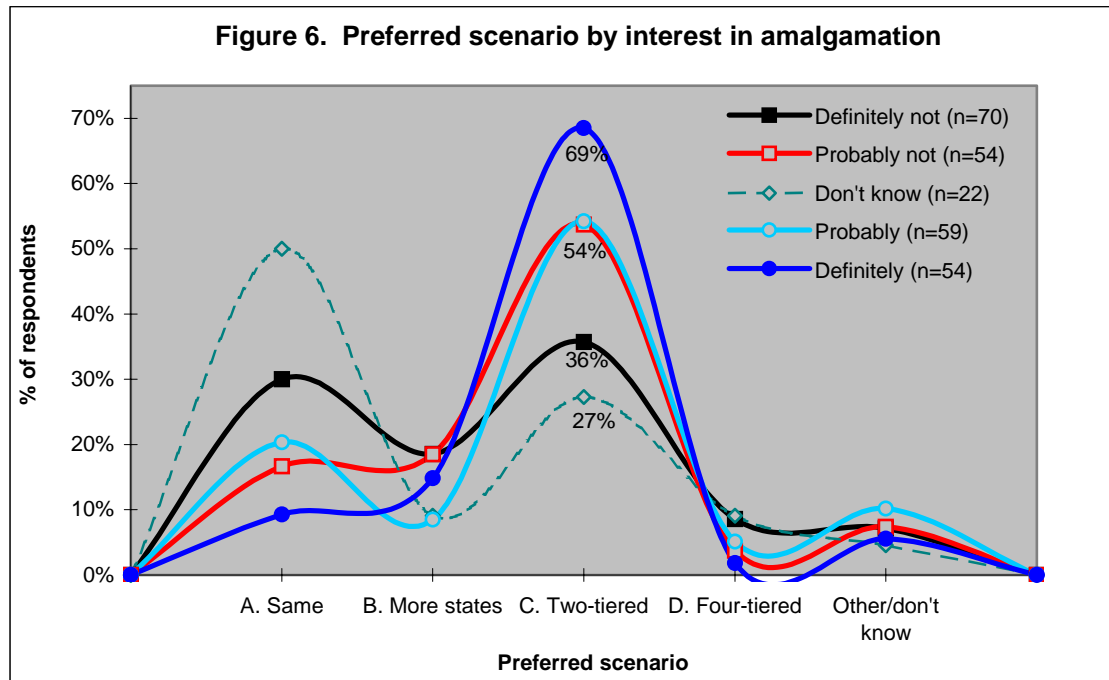


Broadening of ideas and narrowing of options

Even if it suggests a new open-mindedness, how real a possibility is that strongest option: a total rebuild of regional-level institutions which replace the states? Putting aside issues of constitutional process, the political issues include whether local government leaders are serious about such massive tumult in their own sector. The obvious analogy is that of local government area amalgamations. If general amalgamation policies based on “crass simplicities” **Error! Bookmark not defined.** are so unpopular, how do we expect local communities and their leaders to accept such a massive program of amalgamation in another form?

We explored this by comparing respondents’ preferred future constitutional scenario, with how they answered a separate question directly on amalgamations. As indicated in Figure 2 earlier, 44% of respondents answered ‘definitely’ or ‘probably’ to the prospect of seeing “larger local government areas (councils amalgamating into bigger blocs)”. Forty-eight per cent answered probably or definitely not. The fact that the response was so evenly balanced was itself a surprise, given the stereotype of

amalgamations as a ‘no go’ area of policy. However, the test came in comparing this response to the 50% of respondents who wanted a two-tiered regional structure.



As Figure 6 shows, here we find strong evidence that the local government community is prepared to consider reform to its own institutions if undertaken as part of a general overhaul, on a scale it would never consider if proposed for local government alone:

- Those ‘definitely’ supportive of amalgamations were the strongest supporters of regional governments, while those who didn’t indicate a view or were definitely opposed were the most inclined to leave federation the same; however:
- Between these two extremes lies an eruption of common ground. Thirty-six percent of those who answered ‘definitely not’ to normal amalgamations, and a majority (54%) of those who answered ‘probably not’, were prepared to consider it in a federal overhaul.
- In fact, those answering ‘probably not’ to amalgamation were less likely to want to keep the federal system the same than those who answered ‘probably’, and exactly as likely as them (54%) to support the goal of two-tiers and regional government.

This common ground indicates much about the convictions underpinning the new reform interest. If the support for a federal-regional structure was simply symbolic or rhetorical, or purely short-term political posturing, one would not expect to find signs

of flexibility on issues normally considered so contentious. Instead, we find empirical evidence for the view that amalgamations might be more logically discussed in an examination of “the functions, finance and geographical structures of all three levels of government” **Error! Bookmark not defined.** rather than one level alone.

At the same time, the size and breadth of the view that new regional governments are needed, which are not state governments, indicates a hardening of opinion around this option. There is clearly a strong demand for institutional autonomy and capacity above and beyond that provided by present informal regional-level cooperation. However, the traditional, theoretical legitimacy of the ‘state’ as the unit of federation which supplies regional-level general purpose government has imploded. This has historical significance, given that town councils such as Townsville and Rockhampton have traditionally shown strong interest in following Melbourne and Brisbane, leading their region into full membership of the federation. Now there appears to be a strong conviction that the answer lies in more formal regional institutions, as opposed simply to cooperative ones, but that these need to be based on a substantially new model. After a period of disconnection, it is again clear that the demand for regional-level capacity and autonomy cannot be met simply administratively or politically, but rather must also be addressed as an issue of constitutional structure.

4. Rationalising roles and responsibilities

TOR 5. The scope for achieving a rationalisation of roles and responsibilities between the levels of government, better use of resources and better quality services to local communities

Options for rationalising roles and responsibilities between levels of government begs the question how many levels there should be. As indicated above, both the local government community and general public regard this as a serious question, demanding an answer. However, the identification of such options also relies on having a theory of how governments relate, or might relate in an ideal world, irrespective of number. As a nation with its present three tiers, Australia has gone through three main phases of theory about intergovernmental relations.

Coordinate hierarchy (1901-1920s)

As noted earlier, colonial leaders such as Barton operated on a Victorian-era assumption that, like social classes, separate levels of government could be assigned distinct responsibilities by subject matter, and carry these out autonomously. This hierarchy of ‘general’ (national), ‘provincial’ (state) and ‘municipal’ (local) affairs was shared between relative conservatives like Barton, who saw clear hierarchical separation as maintaining state autonomy and limiting national power, and progressive liberals who saw separation as enabling each level to operate without limits or constraints in its areas of competence. Thus NSW politician A B Piddington argued in June 1899 that the separation of roles in the draft Constitution did not go far enough:

In a Federation we should have expected that the Federal Government would be absolutely supreme in its own sphere. It would owe no obligations or duties to the states, which in their turn would be independent within their field of powers. Let the two planets - the Federal and the State planets - revolve in entirely different orbits, because should their orbits cross there be serious danger of collisions. **Error! Bookmark not defined.**

This thinking was consistent with the initial phase of attempted ‘coordinate’ federalism which Australia experienced to the 1920s (Sawer 1969: 65-70). However, these concepts were increasingly challenged, given that different levels were frequently concerned with the same issues, and found themselves unable to fulfil responsibilities without the participation of others. From the early 1920s, ‘cooperative’ federalism became the focus of the next two phases of intergovernmental relations, at least in respect of relations between federal and state governments.

Cooperative hierarchy (1920s-70s)

The first period of cooperative intergovernmental relations, from the 1920s on-and-off until the 1970s, still respected the traditional hierarchy of three separate levels. To the extent that cooperative federalism involved negotiation between the federal and state governments as constitutional ‘equals’, the 1890s constitutional hierarchy and new approach were not in conflict. However, local government’s position had the potential to become problematic. It remained entirely dependent on state legislation and state budgets, meaning that while it stood in a hierarchical relation with its parent state, this was a very different relation to the new federal-state one; and local government still stood without any direct relationship with the federal government. It was not Federation, but this first phase of cooperative federalism that left local government

potentially excluded from the contemporary theory of intergovernmental relations
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This potential conflict did not become overly evident, however, because the precise nature of these two different hierarchies did not matter. They were still both consistent with the new theory of how roles and responsibilities were best shared, which became about each level's organisational role in the national scheme as opposed simply to specific subject-matters. The role of national government was seen to be central policy and planning, particularly in economic affairs; while the states were to take on administration, implementation and delivery of the agreed plans, with whatever regional inputs and variations. This functional split stemmed from growing faith in centralised national planning, and while it became most closely associated with post-1942 Labor programs, it was in fact introduced in the 1920s reforms of Country party founder Earle Page **Error! Bookmark not defined..**

As long as centralised planning remained popular, this role-based hierarchy tended to prompt a "perennial question" as to whether the states were sensible regional vehicles for these roles **Error! Bookmark not defined..** However, the more fundamental conflict buried in local government's status slept, until problems arose in relation to both hierarchies.

Cooperation without hierarchy (1970s-)

Since the 1970s, cooperative federalism has tried to move away from both these hierarchies. The first trigger for a new theory was direct federal general purpose assistance for local government, discussed earlier. This was a new relationship which left the federal-state hierarchy as it was, but disturbed the previously untouched state-local hierarchy. At the same time, the mid-1970s saw the general post-1920s idea of subsidiarity come under attack, as international instability triggered a collapse of faith in centralised planning. The states thus simultaneously began rejecting their own previous role as administrative agents of national policy, reasserting their 1901 constitutional stature as autonomous sovereign governments. These, combined with party-politics, provided for spectacular conflict (**Error! Bookmark not defined.****Error! Bookmark not defined..**

The answer was a new form of cooperative federalism, from the late 1970s. This was based not on hierarchy but effectiveness: how governments could get results working as three interdependent ‘spheres’ rather than in a hierarchy. ‘Subsidiarity’ retained a hierarchical component but began to work in the reverse direction: a formula of decentralisation under which roles and responsibilities should be devolved to the lowest, i.e. most local effective level **Error! Bookmark not defined.** The 1970s conflict meant constitutional change to cement this was impossible. Cooperative federalism became a web of informal, administrative and legislative systems, short-circuiting unproductive debate about the Constitution **Error! Bookmark not defined.**

However, Constitutions can be ignored only for so long. As noted earlier, this created a problem. For all the rhetoric about co-equal, interdependent ‘spheres’, the structural relations between the three types of government remain based in different concepts. The rhetoric, including the new concept of subsidiarity, once again held passably as a description of federal-state relations **Error! Bookmark not defined.**, as well encouraging discussion about general devolution of governance to “smaller and more transparent” scales **Error! Bookmark not defined.** However, taken into the reality of federal-local or state-local relations, the rhetoric defies actual constitutional structure. Symbolic recognition of local government in the federal Constitution might have gone some way to relieving this, but not very far, since neither the 1974 or 1988 proposals would have removed local government’s primary dependency on and subservience to state governments. Federalism adapted, but it left local government behind, still trapped in the hierarchies of the 1890s.

The conflict in intergovernmental theory

It is vital the Committee understand the extent and significance of this theoretical conflict. The attempt to read a would-be ‘third sphere’ into constitutional theory has to do more than fill a silence in the Constitution, it has to confront the 1890s presumptions on which the Constitution was based. Here, what was said in the 1890s federation conventions becomes critically important. Far from being unimportant, local government provided Federation with the most powerful example of what the status of the states was not to be about. The state-municipal relationship was based on a centralised version of Britain’s unwritten unitary constitution. Under Federation, this was the antithesis of the federal-state relationship intended in Australia’s new written federal constitution. Two examples are particularly clear:

- In 1897, Tasmania's Edward Braddon captured the consensus when rejecting the Canadian federal division of power as reducing the states to "simply so many municipal councils -- glorified municipal councils, I believe, they have been called... the right honourable gentleman is apparently prepared to bring our sovereign states down to [this] level" **Error! Bookmark not defined.**;
- In 1891, NSW Treasurer William McMillan had met with swift rejection when he suggested the reverse, i.e. that local government did provide the right precedent for future intergovernmental relations:

[Federation] will bring us into a central form of government which will not only be a machinery for utilitarian purposes, but will also be a real live government in the centre of this country, radiating from itself the national life of the people... When we come to consider the question of what has been called by some delegates state rights... what, after all, are those state rights -- what, after all, are there [sic] provinces with their machinery for local government -- machinery for doing exactly in certain areas what we do within our municipal areas?

Mr. CLARK: No!

Mr. MCMILLAN: I repeat, what we do within our municipal areas. If we are about to establish a constitution which will be divided against itself, in which all parts do not work harmoniously together, which is not consummated step by step by a proper process from the lowest to the highest, we commence the creation at the very outset of a structure which, antagonistic as it will be, in its different parts, will be subject at any moment to fearful dislocation. **Error! Bookmark not defined.**

McMillan was isolated in 1891, but prophetically in step with post-1920 concepts. His colleagues, and the Constitution, instead used local government to define everything that would not be repeated in the new states' self-image. This contrasts massively with America, where the strength of local government made it not subordinate, but rather the "residuary authority" within each state, comparatively free to relate directly with the federal government without undermining the states [Sawer, 1969 #407: 81]. Australian federation, however, left no room for local government to join the national partnership as an equal to either the federal government or the states, because to do so destroyed the very benchmark of state standing. Direct sharing of federal revenues brought this to a head. What was left to distinguish the states from mere municipal servants of the Commonwealth, once they became six large pigs jostling with hundreds

of smaller piglets at the one trough? What is left to define their superiority once their poorer constitutional cousins are released from imprisonment in the basement?

The key role of local government in the states' self-image does much to explain the vigorousness of the state counter-attack against the Whitlam reforms. However, the same conflict also does much to explain the resulting transformation of local government attitudes. Against the modern rhetoric of cooperative interdependency and subsidiarity, since the 1970s local government has suffered emphatic reassertion of its complete subservience to the states. The Australian Council for Intergovernmental Relations (ACIR **Error! Bookmark not defined.** made a total retreat to the 1890s values when it gave this explanation of local government's "subordinate, not sovereign" position:

[L]ocal government in each State has been established by the State government with the dual roles of satisfying some local needs from locally raised taxes and of assisting the State to implement some of its policies at the local level (where the State wishes this to occur). However, ... the fact that it is also a democratically elected organisation, ... implies that it is a partner to the State in government, much as the adult son working the family farm with his father is a partner in the family enterprise, rather than a hired hand bound to do the employer's bidding.

This archaic 'family farm' metaphor is now proving doubly accurate. Not only does it capture local government's true position, conflicting with the modern rhetoric, but the above evidence of attitudes to the future of the Federation shows that the bulk of the local government community are now responding accordingly. Indeed, they appear to be banking on its logical result. The normal solution flowing to adult children on the family farm, is that sooner or later – hopefully after a long and full life, but before the farm falls into bankruptcy -- their parents will either retire or die. This appears to be many local government leaders' expectation for the future of the states.

Roles and responsibilities will not be further rationalised, between the present three tiers, without coming to grips with this conflict. On one hand, public and local government attitudes demand that the inquiry extend to how responsibilities might be discharged by entirely new regional-level institutions, not simply through further tinkering with the current configuration. However, even if three tiers remain, there is little prospect of major rationalisation as long as the theoretical conflicts go unaddressed. Until state and federal government alike take subsidiarity seriously, and also find the states a new constitutional self-image which does not work to directly

defeat subsidiarity in practice, then efforts towards any major devolution of power and resources appear likely to fail.

5. Conclusions and recommendations

The first conclusion that flows from the above analysis is that, to be meaningful, investigation of local government's financial position must extend to new or renewed options for structural reform. Local government can no longer be considered in isolation from its constitutional context. The evidence suggests that significantly greater reform potential exists if questions of local government structure and finance are considered as part of a general overhaul of the federal system; but that unless this occurs, there may be limited advantage in rehashing old ground.

Second, there is substantial scope for the investigation of how regional-level institutions might deliver further capacity, autonomy and efficiency to government, but again principally if this is undertaken through a holistic review of constitutional structures rather than further tinkering with the present system. Reforms of the 1980s-90s brought greater efficiency and transparency to the local government sector irrespective of constitutional change, but the gains of that path are now increasingly exploited. Thoughts are now logically returning to overall constitutional role, but with symbolic or 'minimalist' options now gone, discussion about reform needs to be more comprehensive, holistic and serious.

Third, we need to revisit constitutional theory and face the fact that both formal and informal change is required if intergovernmental rhetoric is to match reality. Australia's constitutional structure is likely to remain federal in nature, but at least in Queensland, current attitudes show a range of possibilities for how Australian federalism could or should develop; and indeed, how federal values might be given better operation. Making subsidiarity measurable and enforceable is an internationally recognised challenge, whether in Europe or the United States **Error! Bookmark not defined..** In Australia, the next substantial investment involves taking subsidiarity beyond rhetoric about devolving Commonwealth functions back to the states, to a full investigation of formal long-term devolution of responsibilities to the regional and local levels.

Finally, a cautionary note must attach to whatever deliberative processes the Committee envisages for advancing its proposals. Our pilot survey was designed to flush out rather than suppress the importance of party-political ideas. However, the present political circumstances surrounding the inquiry, including the fact that all state governments are currently of the opposite party persuasion to the Commonwealth government that initiated this inquiry, carry high risks that these vital, long-term questions will become easily polarised. Twentieth-century intergovernmental relations were littered with examples where deliberative processes failed to overcome short-term realpolitik and party political tactics, leading to many constitutional non-results on issues of longstanding importance (see e.g. Saunders 2000). Our pilot revealed that scant information exists to inform decisions as to how the Committee's ideas might be effectively tested, politically and economically, in an accurate and dispassionate manner without deteriorating into partisan debate. It is with this in mind that the following recommendations are limited to further research and deliberation.

Recommendation 1

That the Committee and Commonwealth support further detailed research into public attitudes toward the performance and reform of governmental structures at state and regional level. Further research is needed to identify accurately the real extent of interest in change on a national level, as well as identify more accurately the reasons for views held. Our pilot survey showed that useful answers can be obtained notwithstanding the past biases and party-political connotations inherent in these questions, and in so doing may unlock a new source of insight into constitutional values central to the future role of local and regional-level government. However, this research is needed at a finer level of detail and on a national scale.

Recommendation 2

That the Committee and Commonwealth support a research program into cost/benefit analysis of major options for redistributing functions and resources within the present system of government, expanded to include those options identified by the pilot survey. This research must model not simply the costs/benefits of reallocated functions in

isolation, i.e. in public finance terms, but the contextual institutional and economic factors necessary to identify how past concepts of “pure regionalism” might be married with federal principles in a “realistic alternative design” **Error! Bookmark not defined.** **Error! Bookmark not defined.** This research should have a special focus on measuring the costs/benefits to be achieved by making ‘subsidiarity’ more operational in Australia. When government engages fully with this principle, our research suggests, we may find century-old questions about the position of local government begin to be resolved.

Recommendation 3

That these research tasks be undertaken with the involvement and participation of all three existing tiers of government through mechanisms with independence from party politics, for example a collaborative research project involving the university sector, Commonwealth Grants Commission and Productivity Commission, with opportunity for research leaders to be nominated by the Australian Local Government Association and the Council of Australian Governments. Further, that the findings be submitted in due course to a reconstituted, standing Australian Constitutional Convention including legislators and the broader community, for deliberation on optimal paths for reform.

References

AAP Case **Error! Bookmark not defined.**

Endnotes

¹ Local government respondents completed their written survey over approx. 5 hours following a 90 minute discussion involving prominent figures from both traditional sides of politics and all three levels of government: federal workplace relations minister Tony Abbott MHR (Liberal), former Western Australian state premier Richard Court (Liberal), and Brisbane City Councillor and lord mayor Jim Soorley (Labor). Commentary was also provided by director of University of Melbourne’s Centre for Comparative Constitutional Studies, Professor Cheryl Saunders. For further context see *Courier-Mail*, Tuesday 4 September 2001, p.11, also at <http://www.gu.edu.au/centre/kceljag>.

² Section 96: “During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.” See **Error! Bookmark not defined.**, pp.103-4.

³ These questions were not suitable for the short telephone interview used to survey the random population sample, leaving only the self-selecting *Courier-Mail* sample for comparison.

- ⁴ 1% (3 respondents) explicitly nominated constitutional recognition of local government; a further 2% (6 respondents) might be taken as implying it by nominating 'greater say for local government' (or similar) in the context of an otherwise unchanged (i.e. three-tiered) system. The general population sample telephone interview had no 'free text' opportunity, but none of the 704 self-selecting *Courier-Mail* respondents (who had 'free text' opportunities and often used them) volunteered the issue.
- ⁵ Figure 2 actually under-depicts the level of interest in a radical overhaul, since the 8% of 'other/don't know' responses includes at least another 2% of respondents similarly seeking straightforward abolition of the states, without any transformation of local into regional governments.

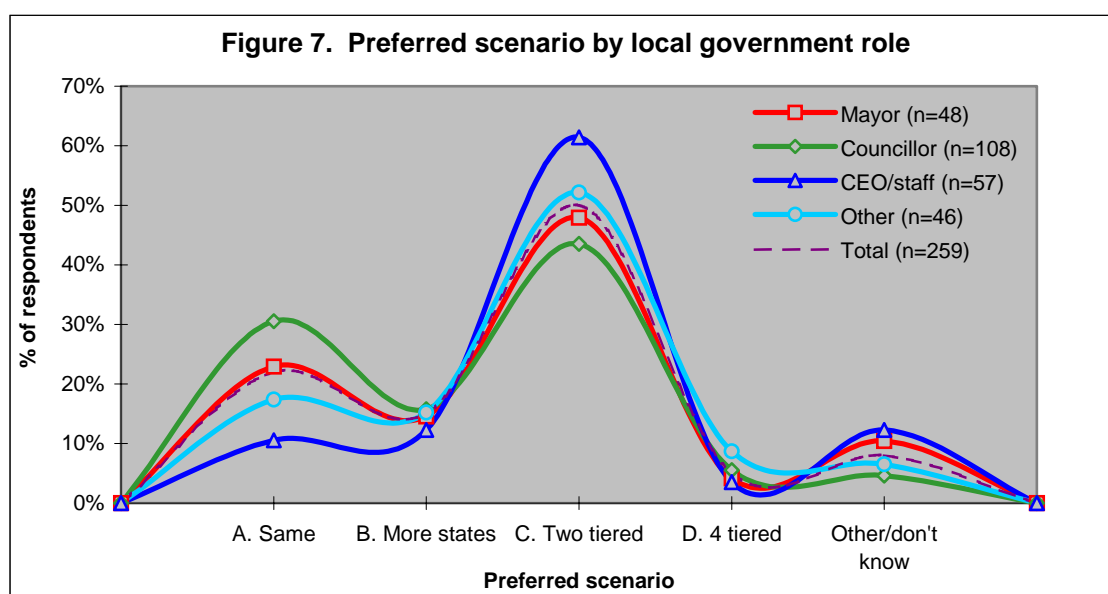
Appendix 2.

Breakdown of responses to ‘Australian Regionalism: From Federation to Future’ survey (Question 7) by role, age and region

As indicated in the body of the submission, a major question (question 7) asked respondents to our survey to choose between four major future constitutional scenarios. The following breakdowns further inform the summarised responses.

Analysis by local government role

The local government sample showed strong support (50% of total) for restructuring state and local government in a general constitutional transformation. However, the sample included members of the local government community with a wide range of roles, from mayors to simple observers. Figure 7 shows that the responses were nevertheless shared across all role categories and were not particularly polarised. Different players in the local government system do have different outlooks, for example non-executive councillors¹ being happiest and executive staff least happy with the status quo. However, the distinguishing feature of each group was still high interest in the option of replacing the states, irrespective of role.

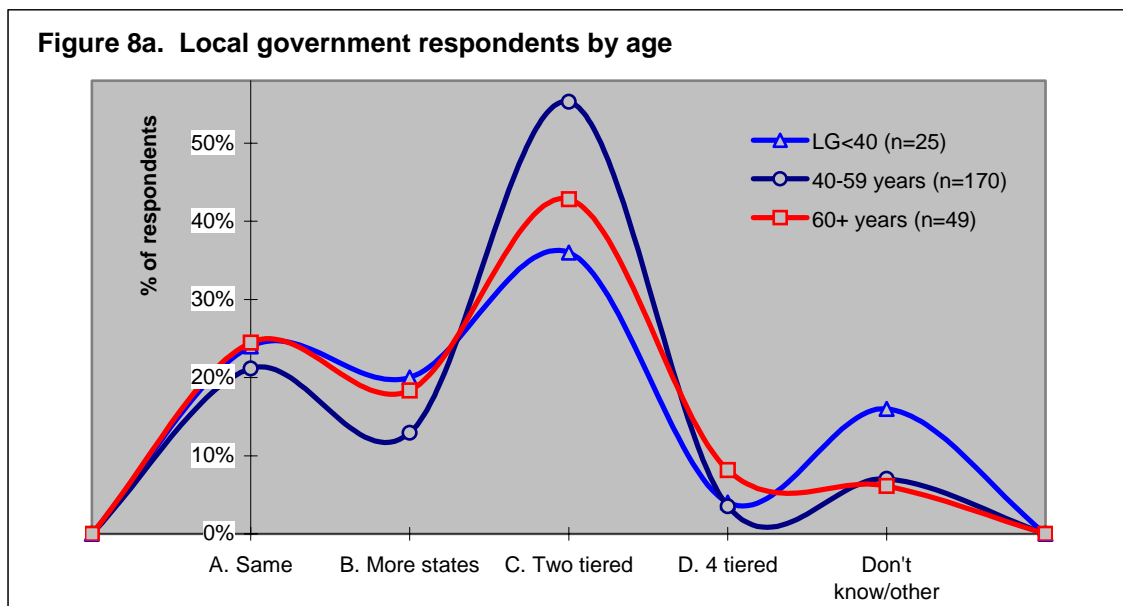


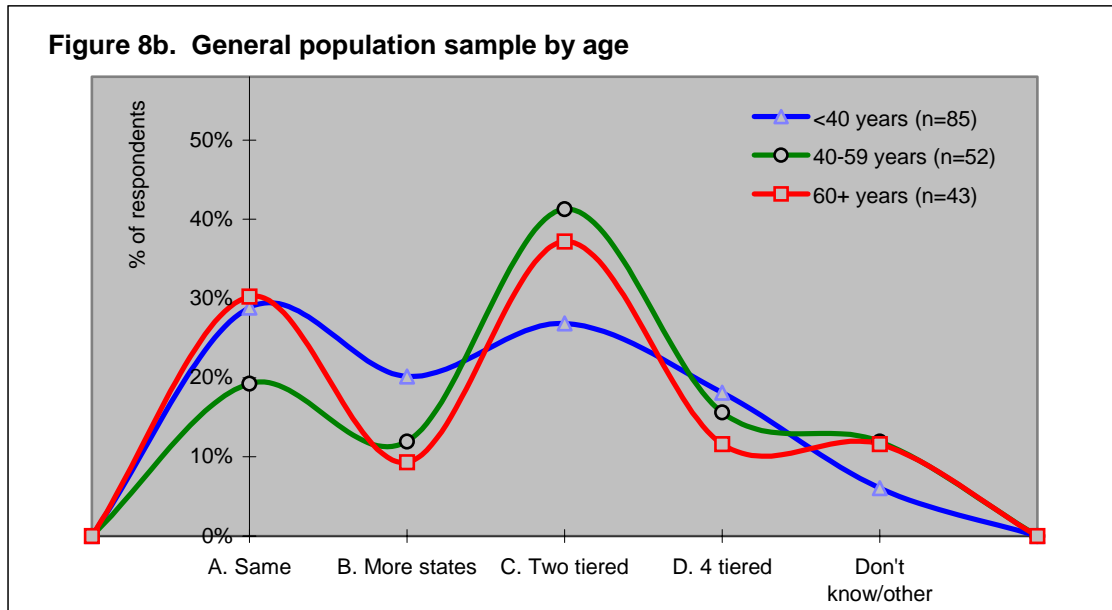
Analysis by age

The age and regional analyses are particularly important in establishing how views of the future relate to traditional presumptions about political attitudes to constitutional change. Given the dominance of provincial and rural interests in the local government sample, the strong interest in replacing the states does not sit well with stereotypes of local government and/or rural communities as politically conservative. Nor does it sit with stereotypes of relative conservatism on the part of Queenslanders as a whole.

Figure 8 shows how respondents answered by age (8a for the local government sample, 8b for the unadjusted general population). We thought perhaps the picture might be less significant if, as seemed possible, those with greatest experience were indicating greater faith in the status quo, and only younger respondents were attracted to apparently simplistic ideas like doing away with the states.

In the local government sample, however, the ‘simplistic’ option still tended to hold sway across all age groups, those in the middle age bracket (40-59 years) leading the way. The random sample reveals an even greater departure from stereotype. Younger people were easily the most conservative, as well as being most interested in the ‘traditional’ option of dividing Queensland into more states, while older respondents remained likely to favour total restructure.



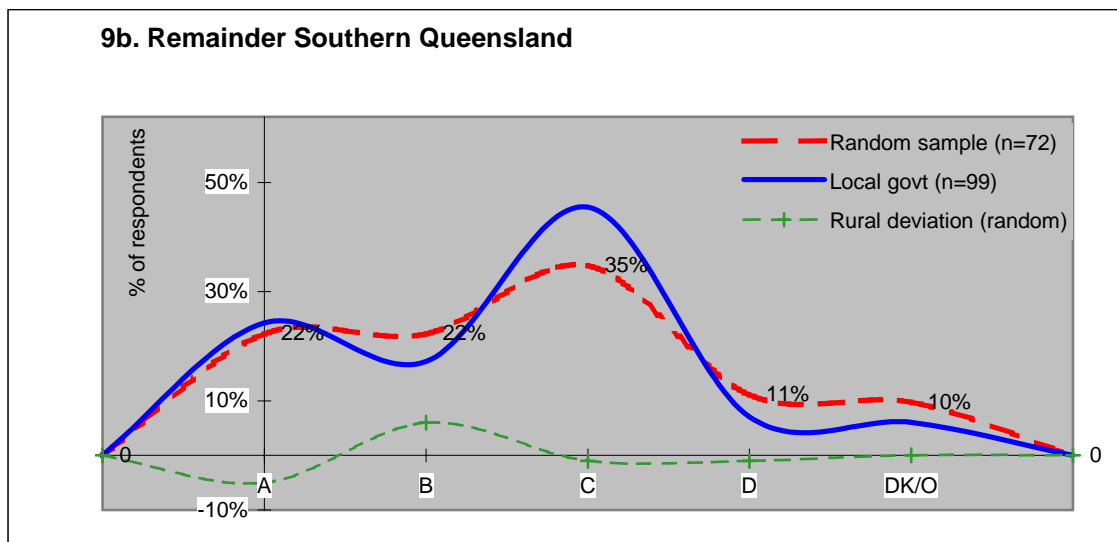
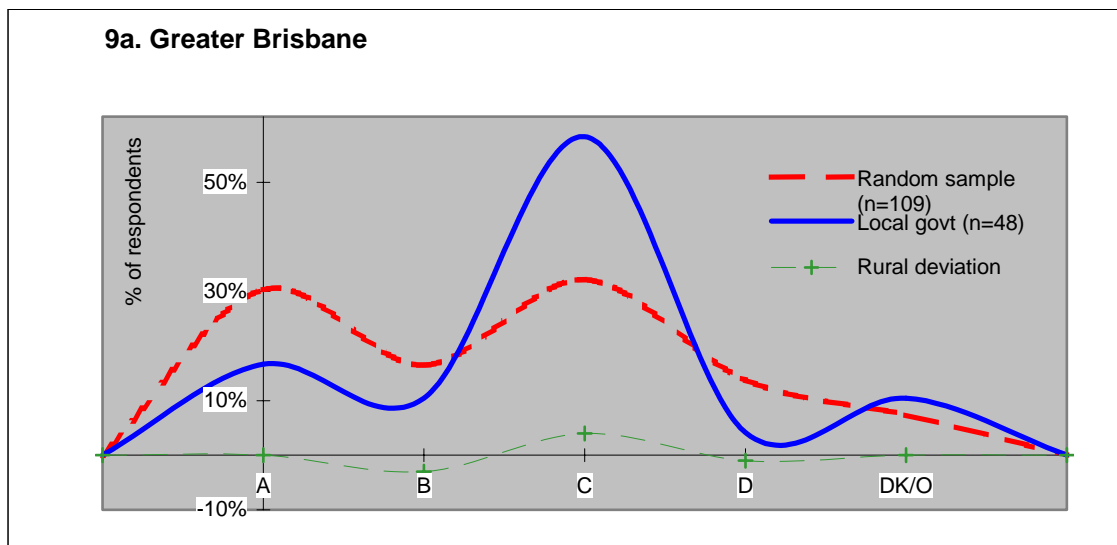


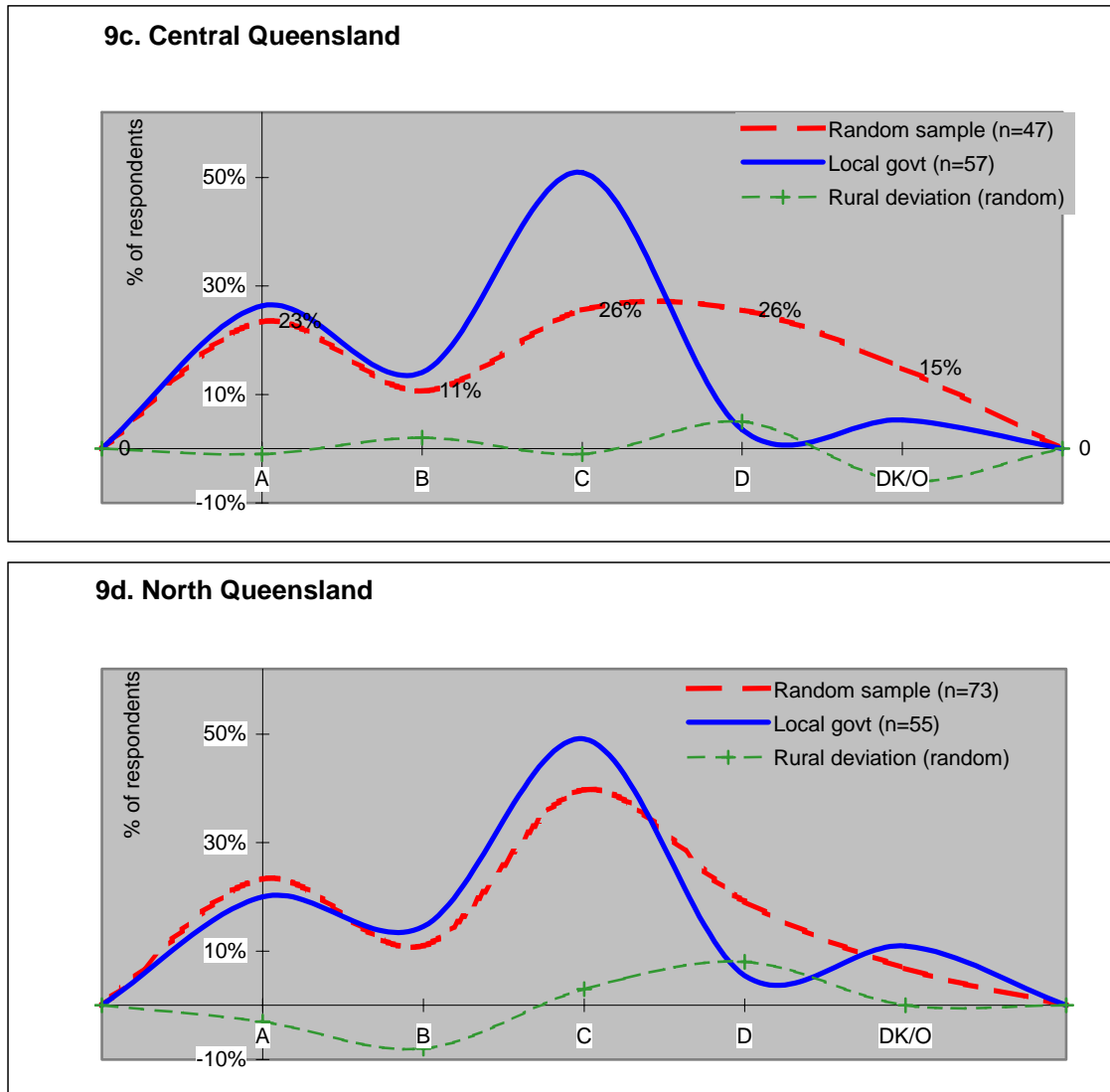
Analysis by region

Did preference for the future correlate with stereotypes of different regions (Figures 9(a-d))? We looked for a number of features, beginning with general signs of rural conservatism, in the form of preference either for the status quo or for the traditional federalist option of new states, particularly given the historical rural foundation and new state advocacy of the Country (now National) party. We also looked for higher urban interest in abolishing the states, possibly only in south-east Queensland, given that since the 1920s this idea has been most associated with Australian Labor Party centralisation policies **Error! Bookmark not defined..** Finally, we looked for higher interest in new states in central and north Queensland, given that for over 140 years, these divisions have been repeatedly touted as possible states **Error! Bookmark not defined..** If true, any of these stereotypes could mean opinion was divided so as to prevent any real new opportunity for change.

As it turns out, each assumption appears to be out of date. Local government preferences were sufficiently uniform across all regions to defy any idea of dependency on traditional geographic splits. With its more balanced spread of preferences, the population sample revealed significant stereotype reversals. Far from a fount of radicalism, the greater Brisbane area was the most conservative, as well as having surprising support for dividing off other regions as new states. In the two historical new state candidates, however, this idea has apparently collapsed, at least by

comparison with the prospect of moving to a region-based system **Error! Bookmark not defined.**. To find greater consistency with our stereotypes, we had to look for the rural deviation within each region (i.e. the extent to which each scenario was preferred more or less outside major urban centres²). In southern and central Queensland, at least, rural respondents showed somewhat higher interest in the idea of new states, but in north Queensland the trend was the reverse, and nowhere were rural respondents happier than urban ones with the status quo.





Conclusions

First, the strong body of general public opinion in favour of a significant restructure does not seem to be polarised on conventional regional or party-political lines, but exists right across the community. This poses a substantial problem for traditional notions of the federal system. Along with theoretical quandaries discussed in the companion article, there has been a slump in the presumed legitimacy of the 'state' as a unit of regional self-determination within the federation. A majority of the population in regions such as the centre and north of Queensland appear to remain interested in achieving more autonomous status in the national structure, but no longer see 'statehood' as the vehicle. Perhaps the fact older respondents seem particularly convinced of this, means that previous unkept promises have finally had an effect

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Second, the collapse of local government interest in new statehood has its own significance. Historically, town councils such as Townsville and Rockhampton have had a strong pragmatic interest in following the path taken by Melbourne and Brisbane, leading their region into higher self-government. With the existing framework no longer offering a clear option for this, other options are preferred that may or may not be consistent with traditional ideas of federalism. This has a consistency with the lack of evidence that symbolic recognition of local government's place in the federal system remains a priority, if it ever was. The dominant attitude, irrespective of conventional divides, is that the worthwhile options for change are those which would see both subnational tiers subjected to substantial reform.

Notes

¹ 'Other' in the local government sample included part-time or honorary councillors (as opposed to those for whom representation formed their 'main employment'), spouses of delegates, consultants to local government, LGAQ staff and other Queensland-resident LGAQ conference observers. While a few thus had no formal role in local government, all were considered a valid part of the sample by dint of their presence at the conference, and in any event due to survey design could not be excluded without excluding the part-time councillors.

² I.e. percentage indicated is difference between rural preference and regional average. Deviation for greater Brisbane not truly reliable since based simply on the Brisbane and Moreton statistical divisions (latter including Gold and Sunshine Coasts). For other regions, centres excluded for this analysis: Toowoomba, Maryborough, Hervey Bay and Bundaberg (southern Qld); Gladstone, Rockhampton and Mackay (central Qld); and Townsville, Cairns, Mt Isa (north Qld).