

**CONSTITUTIONAL RECOGNITION FOR LOCAL
GOVERNMENT**

AUSTRALIAN FEDERALISM – RESCUE OF REFORM

TENTERFIELD, NSW

CR PAUL BELL AM

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Ladies and Gentleman,

I feel very fortunate to be here at Tenterfield. When Dr AJ Brown spoke to me about speaking at this conference, it was over a year ago and certainly the idea appealed to me – to return to the birthplace of Federation, where it all started, and have the opportunity to talk about unfinished business. For local government, as I am sure many of you are aware, there is unfinished business and it is called Constitutional Recognition.

As I look around me today I am struck by the very Australian, and in many ways very low-key, nature of these surroundings which played host to one of the most significant speeches in Australian history. It was at Tenterfield that Sir Henry Parkes, then Premier of New South Wales, called for Federation on 24th October 1889 – 119 years ago. Let us pause to reflect for a moment on what actually happened here. There is no mistaking the fact Henry Parkes presided over a momentous event written into the annals of our history and since then taught to each one of our children and grand-children.

Federation was an idea that germinated into the flower of our nationhood in 1901, 12 years later after Parkes' speech. There is no doubt Parkes was a visionary and once the idea of a unified nation was out there it was unstoppable. Without wishing to draw too many parallels, we can all learn from the lessons of history and I believe there is a lesson here for us in local government in terms of presenting a case for reform, arguing it clearly and persuasively, and ensuring the best minds of the era – the 'experts' if you like - are involved in its implementation.

Local government has been building momentum for some time and with two referendums under our belt, this time we are determined to get it right and ensure local government is finally enshrined in our Constitution. I will outline our approach towards achieving this most cherished goal of Constitutional Recognition in this speech.

But firstly I will speak more broadly about that great idea – Federation – and the opportunity we have to make sure the Federation is ready to face the challenges of the 21st Century.

The theme of this Conference is Federalism – Rescue and Reform. The focus of most of our speeches over the next couple of days is on just that – reform of the Federation, perhaps through reform of the Constitution. I want to talk today not just about reform of the Federation, however, but about completing the Federation. Addressing the big omission in the Constitution of leaving out the third sphere of government in this country – local government.

Ladies and Gentleman, like Sir Henry Parkes 120 years ago, I believe the time for reform is now. I believe that the current system is tired and no longer represents the reality of life in Australia today.

Local government has been thinking about solutions to the challenges ahead for the Australian Federation.

The challenges the Federation face mean that there is a 'once in a generation' opportunity to shape the future of governance in Australia. The new and changing national landscape as defined by the new Federal Government, relates to local government's roles and responsibilities, the long term sustainability of councils and local communities and local government's place in the Constitution of Australia.

Local government in Australia, contributes more than 2 per cent of economic activity to GDP. It employs around 168,000 people (or about 1.6 per cent of the total workforce) and is responsible for an estimated \$183 billion of non-financial assets/infrastructure.

More important than these mere statistics however, local government provides an increasing range of services and infrastructure to thousand of local communities. Local councils reach out and interact with just about everybody in Australia – and everybody relies on local government. And as local government struggles to meet the needs – and expectations of local communities – we become keenly aware of the inadequacies of the current system of governance in this country.

The role of local government has been evolving over the past few decades. Perhaps we can be a little sympathetic to the authors of the Constitution and the founding fathers of federation who looked at local government in the 1890s and asked whether it was really a sphere of government in its own right or whether it was simply a mechanism for looking after local roads and rubbish collection and local water and sewerage.

The answer to the question today is a resounding YES. Yes, local government is a sphere of government. In fact the role of local government has changed substantially in recent years.

It's been 20 years since the issue of constitutional recognition of local government was last put to the Australian people. 20 years during which the fortunes of local government have ebbed and flowed. 20 years during which many state and territory governments have imposed major structural change through amalgamation on their local government sectors. 20 years during which the finances of local government have come under pressure. But they have also been years in which local government has come of age as a responsible sphere of government with general powers of competence to govern for the benefit of local communities.

The ability of local government to meet the needs of its communities will always be dependent on its ability to play an appropriate role in the Australian Federation and receive adequate funding.

What about the role local government plays in the Federation?

As a sector, local government is represented within states and territories by state and territory local government associations and at the national level by the Australian Local Government Association (ALGA).

Through ALGA, local government is deeply involved in intergovernmental relations and is part of the intergovernmental machinery which keeps the Australian Federation together. Through ALGA, local government has a seat at the Council of Australian Governments and in 13 Ministerial Councils.

Local government's engagement in these forums ensures that the role and views of the third sphere of government are heard and acknowledged and that local government is able to play an appropriate part in developing and implementing intergovernmental reforms and initiatives.

Our ability to play an appropriate role is however hostage to the legitimacy of our roles and responsibilities and the adequacy of our resources. Speaking bluntly, we in local government sit at the table as an invited guest rather than an equal partner and lack the fundamental legitimacy which flows from acknowledgment in the Constitution. For me, this is a powerful argument for reform of the Constitution – to strengthen our national unity and by giving local government a greater voice, our democracy will in turn be strengthened.

Constitutional Recognition in ALGA's Strategic Agenda

Constitutional Recognition has been a long-standing aspiration of local government and a long standing policy of ALGA for many years and it is reflected in ALGA's Strategic 4 Fs agenda – Fair Funding, Fair Treatment, Formal Recognition and Meeting Future Challenges.

Successive National General Assemblies of Local Government have unanimously passed resolutions supporting recognition.

The question, however, has always been one of timing. And I like to think that now with the will of the Federal Government behind us, and with the growing momentum, that ‘the ducks are lining up.’ But the months ahead will be a testing time and certainly crucial to building the climate for a successful result. I will now outline the process that we have undertaken and some of the initial progress that has been made.

ALGA recognized that we needed two important preconditions satisfied before we could think about advocating for another referendum on constitutional recognition.

Firstly, we needed a process for developing a shared understanding across the local government sector of the options for recognition and the mechanism for obtaining recognition, including the costs, timing and political hurdles.

Secondly, which we have now received, we needed some indication from the Federal Government that it was prepared to consider and advance the issue.

After consultation with state associations, the ALGA Board agreed last year on a process to advance constitutional recognition which would include facilitating conversations at individual council level, convening an experts forum of state associations to further develop options and then finally holding a Summit at the end of the year for all local government to agree on a way forward.

It was ALGA’s view that we needed a process which would engage councils and state associations jointly. A process which would not pre-empt an outcome by stating a preferred option, but rather a process which would seek to guide debate and provide the opportunity to reach agreement. It would also be a process which would make clear the complexity and challenges of the task.

Council Conversations

ALGA distributed a Resource Kit with an invitation asking Councils to conduct a Council Conversation and provide initial feedback to ALGA. This kit contained a range of fact sheets and technical information as well as a PowerPoint presentation and CD ROM. Over 60 Councils provided feedback to ALGA with the initial indications showing that financial and institutional recognition were highly important.

Our Experts' Forum in August

The Experts' Forum held in Canberra on 21 and 22 August (which included some prominent academics and constitutional experts such as Professor George Williams, Professor John Williams, Professor Dean Jaensch and Dr AJ Brown) provided an opportunity to consider the various ways to achieve change to the Australian Constitution to better reflect the role of local government.

Those attending comprised of Presidents and CEOs of State and Territory Local Government Associations, council representatives, constitutional experts and representatives from the States and the Federal Government.

The Forum did not decide on a preferred option but rather vigorously tested and debated each option to ensure that the background information provided to delegates at the Summit would be comprehensive.

Overall, the Forum did consider a number of factors would be key in local government getting a successful referendum outcome. These factors were - Bipartisanship; Adequate popular education; Popular ownership of the proposal; and the proposed amendment needs to be sound and sensible.

Australian Council of Local Government (ACLG)

The importance and timeliness of ALGA's decision to advance the issue of Constitutional Recognition of local government was highlighted by the Prime Minister's announcement that it would be on the agenda for the first meeting of the newly established Australian Council of Local Government (ACLG).

For the first meeting of the ACLG, Prime Minister Kevin Rudd has invited all 562 Councils from around Australia to attend a one day meeting in November 2008. The one-day meeting will address issues of national and local significance including:

- » Building national and local infrastructure to boost our economic capacity and improve the quality of life in our communities;
- » Tackling immediate challenges facing major cities and growth corridors, including urban congestion, urban planning and design; and
- » Steps towards constitutional recognition for local government.

Through ACLG, the Prime Minister is reflecting the importance of local government as the sphere of government closest to the community and is reigniting the spirit of co-operative federalism with local government central to their agenda.

The Current Situation

Local Government is working to be ready to present a proposal articulating options for Constitutional recognition of local government. We want to be sure that local government has a place in any reform process which moves forward in the near future. After all, reform of the Constitution is such a rare event these days that you don't want to miss the boat given the very occasional sailings!! Our experience tells us that having a referendum on recognition of local government is not enough. This time we have to win it.

For that reason, local government is exploring the various options for recognition.

There is a possibility of symbolic recognition of the sector, should there be a decision to recognise the prior occupation of the Australian continent by indigenous people.

There is also a possibility of some degree of institutional recognition, should there be a decision to make a technical amendment to the Constitution to remove any doubt about the capacity to allow Commonwealth and State Parliaments to invest functions and powers in each others public service, so as to efficiently give effect to decisions made by bodies such as COAG.

The consensus view of the Experts Forum was that there should be some degree of recognition of local government in the Australian Constitution.

Local government is the third sphere of government and should be recognized in the Australian Constitution - the paramount political document of the Australian Federation - to reinforce and strengthen accountable local democracy.

Equally, the Forum felt that on balance the Constitution shouldn't provide the Commonwealth Parliament with the power to make laws creating a system of local government.

This was because:

- ultimately a large federal government would create large regional entities – it would be difficult for something the size of the Commonwealth to be able to deal efficiently with large numbers of small governments; and
- where there is a national interest for the Commonwealth to be involved with a function commonly associated with local government, the current constitution provides sufficient powers to permit the Commonwealth to operate – see for instance environmental and biodiversity legislation.

The August Forum identified a suite of components that could be inserted into the Constitution.

Either one component, or a selection of them, could be adopted as the local government preferred option.

This will be the ultimate task of a Constitutional Summit on local government recognition to be convened by ALGA in December. The Summit will aim to reach a conclusion on what is considered to be politically viable – an important consideration given the proven historic need to gain bipartisan political support and the need to prove to the electorate that the provisions will advance the local community.

Possible components include:

- “Pure symbolic” recognition in something like a new preamble to the Constitution. This offers nothing tangible, but does mean that the third sphere of government is recognised in the Constitution. This means that should the current model of cooperative federalism through devices like COAG continue, local government has an unimpeachable argument to remain at the table;
- Financial recognition, through giving the Commonwealth to directly grant financial assistance to local government and to manage local government debt, through inclusion in the Finance and Trade Chapter of the Constitution. This is seen as quite important because, given the vertical fiscal imbalance that exists within the Australian federation, community sustainability can really only be guaranteed if there is an unambiguous relationship between local government and the entity that collects government revenue. Moreover, there is an argument that a provision like this would also be “practical symbolic” recognition of the sector – recognising the need to ensure that the funding is available to maintain sustainable communities is itself recognition of local government as the third sphere of government in the Australian federation;

- Insertion of some degree of institutional recognition of local government, along the lines of the South African constitution which would require the states to retain some degree of local government. This could include some sort of requirement to provide “due process” to the local community before a local government area is amalgamated or dissolved without, for instance a referendum –something the previous Parliament considered important when it enacted legislation that would permit the Electoral Commission to conduct a plebiscite to determine whether electors approved the amalgamation of local government areas in Queensland, lest there be a breach of the International Covenant on Civil and Political Rights;
- The insertion of a specific chapter in the Constitution, dealing with local government, which sets out the requirement for the sphere of government to be retained by state governments, as well as unambiguously allowing the Commonwealth to grant financial assistance and to manage debt.

Summit

As I said earlier, ALGA is convening the *Local Government Constitutional Summit—A Special National General Assembly* from 8 - 11 December to bring local government together to discuss and debate formal recognition and local government’s place in the Constitution.

It is important that sufficient time, resources and thinking be dedicated to ensuring the outcome of the Summit benefits all Australians now and into the future.

This year’s Constitutional Summit program is designed to give delegates the maximum opportunity for participation; to ensure that all Australian communities and states are represented and to reflect on the views of other Councils.

This Local Government Constitutional Summit is the culmination of this process with the aim of developing a convincing and comprehensive case to take to the Australian Government.

Conclusion

As we look beyond 2008, the future of local government is inextricably tied to the future of our local communities and how we face the challenges of economic, demographic and climatic change.

Local government plays an important leadership role as an advocate for communities, to stand up for local rights, and also to provide essential services and infrastructure.

Local government is indeed at a crossroads - it can stay as it is with the existing limitations and be largely taken for granted, or it can fully effective. Only when local government enjoys a real and comprehensive partnership with the other spheres of government, based on shared respect and a shared vision, will we be able to really fulfill our charter to local communities and be fully equipped to meet the needs of the people we serve.

Over the next few days, while you are here in this special place, I invite you to consider your community, its aspirations and needs, the role of your community leaders and how all of these elements should be reflected in our Constitution and in our future.

Thank you