

Constitutional Recognition of Local Government: The Politics



Graham Sansom

UTS Centre for Local Government



Context

- Growing centralisation of power and resources federally
 - How much longer will the States be meaningful governments?
- Australian LG is heavily involved and ‘recognised’ federally - as much as in countries with constitutional recognition
- It receives a relatively high level of federal funding support
 - But most councils are not ‘largely dependent’ on federal funds
- LG’s problems relate to:
 - State attitudes and mismanagement
 - Smaller rural and remote councils



Styles of Recognition

■ **Symbolic:**

- Practical and legal problems with using the Preamble
- Value lies in High Court's power to interpret, but this may be circumscribed

■ **Financial:**

- What's the point? – direct federal funding already and quantum will never be written into Constitution

■ **Institutional**

- Problem is that it would rely on State legislation to implement, unless major changes to federation



Avoid the 1988 Formula

“Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and make by-laws for, their respective areas in accordance with the laws of the State.”

- Guarantees elected local government, but that’s all
- Ties LG exclusively and indefinitely to the States
- May reduce federal links and close the door to necessary change
- May still be seen as too ‘full-on’ and opposed by conservatives



'Foot in the Door' or 'Safety Net'

1985 Constitutional Convention wording:

- (1) Within every jurisdiction in Australia there be a system of local government.
- (2) The system extend to all areas in which a sufficient number of people reside to warrant a local authority in their area.
- (3) Except in special circumstances the local authority be elected by all adults resident – but not as to exclude property owners – in the area administered by the local authority.
- (4) Local authorities be granted adequate powers and the right to manage and regulate the affairs of the local community within the framework of the laws applying to such local authorities.
- (5) Each local authority be provided with access to adequate funds to enable it to perform its function with equity and efficiency.
- (6) A local authority not be subject to arbitrary dismissal or suspension.

NB Possible problem of the ACT. Could delete (4)-(6)



The Danger

- What are the risks of another failed referendum?
- What message would it send to the federal government?
- What licence would it give to local government's opponents – especially increasingly cash-strapped and aggrieved State governments?
- What would be implications for LG's hard-won place in federal forums?
- Don't forget Howard's two attempts to offload FAGs



On the Canadian Government's retreat from local affairs....

“For a federal government that is ambitious to act boldly in its areas of responsibility....and eager to cut taxes as well, there needs to be an excuse not to act in other areas. Insofar as Canadian municipalities are concerned, the constitution provides such a rationale. And so the pendulum has swung”.