



**Submission on
Reform of the Australian Federation
to the
Senate Select Committee on the Reform of the Australian Federation**

by
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INTRODUCTION:

On 17 June 2010 the Senate referred the following matter to the Select Committee on the Reform of the Australian Federation for inquiry and report.

That a select committee, to be known as the Select Committee on the Reform of the Australian Federation, be appointed at the conclusion of the Select Committee on the National Broadband Network, to:

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

THE AUSTRALIAN MONARCHIST LEAGUE”

The Australian Monarchist League is a not-for-profit membership organisation, currently incorporated in New South Wales. Our main purpose is to retain the Crown in the Australian Constitution. However, the League also has concerns regarding other proposals to amend the Constitution, particularly those designed to tamper with the existing federal arrangements. The Australian Federation was, of course, established ‘under the crown’ and is, we believe, a vital ingredient of our constitutional stability.

THE AUSTRALIAN CONSTITUTION:

The Constitution is the document by which the independent British Colonies in Australia united into one nation, whilst still retaining their separate constitutional integrity. Limited power was allowed to the Commonwealth and it was initially, perhaps naively, thought that the States would continue as before, with the Commonwealth acting as a liaison between the States and handling matters such as defence.

Sir Samuel Griffith, then Premier of Queensland and later to be the first Chief Justice of Australia, said at the 1891 Convention: "*We must not lose sight of the essential condition that this is to be a federation of States and not a single government of Australia*". He emphasised that "*The separate States are to continue as autonomous bodies, surrendering only so much of their power as is necessary to the establishment of a general government to do for them collectively what they cannot do individually for themselves, and which they cannot do as a collective body for themselves.*" (Records – National Archives of Australia)

Sir Owen Dixon, the sixth Chief Justice of Australia, in his judgement in *Melbourne Corporation v Commonwealth* (1947) 74 CLR 31; [1947] HCA 26 emphasised that: "*The foundation of the Constitution is the conception of a central government and a number of State governments separately organized. The Constitution predicates their continued existence as independent entities. Among them it distributes powers of governing the country*". He also stated: "*The considerations upon which the States' title to protection from Commonwealth control depends arise not from the character of the powers retained by the States [that is, the old reserve powers doctrine] but from their position as separate governments in the system exercising independent functions*".

CHANGES IN CONSTITUTIONAL EMPHASIS AND INTERPRETATION:

Whilst the Constitution itself has remained relatively unchanged since Federation, various High Court judgments, such as the *Engineer's Case* (*Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129) as well as the dominance of the two political party system, have radically changed the actual, if not the constitutional, relationship between the Commonwealth and the States.

A major constitutional change in Australian governance took place, without a referendum, in 1986 when the Federal and State Parliaments passed the Australia Acts legislation. The primary purpose of this legislation was to free the States of any residual authority which continued to reside in the UK Parliament, even though it had not been and would never be exercised. However, it can be held that the Australia Acts have consolidated the federal system in Australia.

THE USE OF TAXING POWERS:

Since Federation, there has been an increasing divide, and even hostility, between federal and state politicians, and consequently governments, with an emergent attitude towards centralisation on the part of the Commonwealth. The need for the States to access taxpayer funds in the hand of the Commonwealth have led to an almost complete dependency, which was not what was envisaged by the States when they agreed to enter into federation, but seems to have been foreseen by Alfred Deakin, Australia's 2nd Prime Minister.

Writing in the London Morning Post in 1902, Deakin said: "*As the power of the purse in Great Britain established by degrees the authority of the Commons, it will ultimately establish in Australia the authority of the Commonwealth. The rights of self-government of the States have been fondly supposed to be safeguarded by the Constitution. It left them legally free, but financially bound to the chariot wheels of the Central Government. Their need will be its opportunity. The less populous will first succumb; those smitten by drought or similar misfortune will follow; and finally even the greatest and most prosperous will, however reluctantly, be brought to heel.*"

"Our Constitution may remain unaltered, but a vital change will have taken place in the relations between the States and the Commonwealth. The Commonwealth will have acquired a general control over the States, while every extension of political power will be made by its means and go to increase its relative superiority".

It was to protect the interests of the States, and in particular those of the smaller States that the Constitution ensured that, at least 75 per cent of revenue from customs and excise revenue should be passed back to the States in the first 10 years of Federation. However, three years prior to the expiry of this term, in 1908, the Federal Parliament legislated that any such surpluses should be paid into a trust account and thus avoided having to pass them on to the States and in 1911 the Commonwealth terminated this arrangement and assumed full control of the subject revenues.

In 1915 the Labor Federal Government introduced an act for an income tax to be collected by the Commonwealth and by 1918 income tax amounted to one third of federal revenues.

The effects of the Depression meant that, in 1939, Australia entered the war with its services in a vastly depleted state. The Commonwealth Government had carriage of the War but was finding it increasingly difficult to fund war production.

This impasse eventually led to the States, in 1942, agreeing to pass for the duration of the war, their taxing powers, then comprising about 60 per cent of their tax base, onto the Commonwealth. Whilst the main reason given was the desperate need to fund the war effort, particularly with the threat of invasion from Japan, it should also be admitted that the States were finding the administration of separate income tax schemes to be very complicated and extremely onerous.

South Australia challenged the ensuing uniform taxation legislation, but the High Court ruled, in what is termed the First Uniform Tax Case (*South Australia v Commonwealth* (1942) 65 CLR 373), that it was a valid use of Commonwealth power.

EMPOWERMENT REFERENDUMS:

In 1944, the Curtin government held a referendum (the Constitution Alteration (Post-war Reconstruction) Bill), the purpose of which was to transfer from the States fourteen of their powers to the Commonwealth for a period of five years. The referendum was defeated nationally as well as in four of the six States.

Thereafter, the Commonwealth sought constitutional recognition of local government. It was thought that this was a means of extending Commonwealth control and bypassing State authority.

RECOGNITION OF LOCAL GOVERNMENT:

Two referendums on Commonwealth funding and recognition of local government were held, one in 1974 and the other in 1988, both of which failed.

Local government is a State responsibility. It is not competent to assume any more powers than it already has. The frequency of corrupt practices is, in itself, an argument against further empowerment.

Restructuring local governments into regions will add a third professional tier of paid politicians at a time when the people are already grumbling about the number of politicians already paid out of the public purse. There is also the unhealthy potential for Commonwealth centralised control of regions/local governments, thereby bypassing and weakening the governance of the States.

However, it is quite clear that the workload that has fallen on local councils is far in excess of their income earning potential. Similarly with the State administrations, yet, according to the NSW Business Chamber ('Australia's Future Tax and Transfer System'), it is the Commonwealth which raises and has control of 82% of national tax revenue with the States and Territories reliant upon the Commonwealth for around 45% of their total income.

The problem is Australia, as a society, is living far beyond its means and cannot maintain the current salary and cost structures.

Local government obviously needs a share of the national tax revenue, but a system of filtering down must be devised to avoid overt political control and centralisation into Canberra.

THE COUNCIL OF AUSTRALIAN GOVERNMENTS:

The Council of Australian Governments (COAG) was established in 1992 as the forum for cooperation between the Commonwealth and the States and Territories. A recent addition has been representation from the Australian Local Government Association. COAG has no set meeting date, but generally comes together four times a year

The Council of Australian Governments Secretariat is located within the Department of the Prime Minister and Cabinet and provides assistance to the Prime Minister in his or her capacity as chairman of the Council.

We submit that a major problem in the failure of inter-government relations is that the Council of Australian Governments is not working as originally expected. The Commonwealth uses its ownership of the tax base for political opportunism, often pitting itself against the States to its advantage.

Under the current arrangements, the States are essentially powerless to stand up to the Commonwealth. Either they agree with the prime minister or they do not get the funding they need. In 1972, the premier of Victoria, Sir Henry Bolte plainly explained: "*As a State premier I want the cash on the most favourable terms; but if the terms are not all that favourable, I still want the money*".

Not having any constitutional status, COAG is essentially subject to the personal prerogative of the prime minister and the Secretariat is subservient to the prime minister. We submit that this is wrong and that, rather than being totally reliant upon politicians themselves deciding upon the distribution of revenues, perhaps an independent secretariat could receive submissions from the State governments and make recommendations to COAG.

Such recommendations should be made public to avoid or expose undue politicking. Indeed, all decisions made by COAG should be in the public domain. The Secretariat should be independent from the office of prime minister and it, or some other independent authority, should be required to audit all Commonwealth monies received by the State administrations. There is also a notable absence of direct parliamentary involvement in the COAG processes.

There are massive areas of duplication, particularly in health and education and we concur that these areas, in particular, need to be streamlined. However, we do not agree that centralising control into Canberra will resolve these problems. The Commonwealth bureaucracy has an equal, if not a greater, record of inefficiency and public waste. A centralised authority would still require State based bureaucracies. Furthermore, each State and each area within each State have different requirements and thus priorities which are best handled by the State governments.

PROPOSALS FOR A CONVENTION:

There are proposals for a convention to debate potential constitutional changes on matters relating to the federal system. If such a convention is to be held, it would need to comprise delegates truly representing the community, and not just those sympathetic to the Commonwealth's point of view. Otherwise any recommendations put to the people at referendum could well be widely challenged and potentially lost. For instance once it was found that over ten percent of delegates to the 2020 summit were from one organisation (GetUp) now found to be partly funded by Labor unions, the summit recommendations were treated with suspicion.

CONCLUSION:

We submit that the unique federalist structure in Australia is a major factor underpinning our constitutional stability and thereby the democracy and freedoms we enjoy in this country.

Sir Robert Menzies, who was the successful counsel in the Engineer's Case later wrote in 'Central Power in the Australian Commonwealth; (University Press of Virginia. Charlottesville. 1967): *"Now, I am a federalist myself. I believe, as I am sure many of you do, that in the division of power, in the demarcation of powers between a central government and the State governments, there resides one of the true protections of individual freedom."*

We believe that any constitutional alteration to our federal system would need to be very carefully examined to ensure that such amendments will not impair the checks and the balances that are an integral part of our system of governance.

Constitutional Monarchists would naturally be wary of any proposals for amending the Constitution. Many of those advocating change are one and the same as those promoting a republic. We consider that the electorate would be cautious and even suspicious of any proposal for amendment, unless it could be proven that such proposals would better our system of governance.