



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

SELECT COMMITTEE ON THE REFORM OF THE AUSTRALIAN  
FEDERATION

**Reference: Relations between federal, state and local governments**

WEDNESDAY, 9 MARCH 2011

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BY AUTHORITY OF THE SENATE



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**SENATE SELECT COMMITTEE ON  
THE REFORM OF THE AUSTRALIAN FEDERATION**

**Wednesday, 9 March 2011**

**Members:** Senator Trood (Chair), Senator Furner (Deputy Chair) and Senators Back, Ludlam, Moore and Ryan

**Senators in attendance:** Senator Trood (Chair), Senator Furner (Deputy Chair) and Senators Back and Moore

**Participating members:** Senators Abetz, Adams, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Minchin, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Scullion, Stephens, Sterle, Troeth, Williams and Wortley

Terms of reference for the inquiry:

To inquire into and report on:

- (a) key issues and priorities for the reform of relations between the three levels of government within the Australian federation; and
- (b) 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.

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**Committee met at 10.00 am**

**CHAIR (Senator Trood)**—I declare open this public hearing of the Senate Select Committee on the Reform of the Australian Federation, the third in the series of public hearings the committee is holding to inform its inquiry. The committee is to report by 12 May 2011. I welcome you all here today.

I remind everybody that witnesses giving evidence to the committee are protected by parliamentary privilege. Any act which may disadvantage a witness on account of their evidence is a breach of privilege and maybe treated by the parliament as a contempt. It is also a contempt to give false and misleading evidence to a committee. Witnesses should be aware that if in the giving of evidence they make adverse comment about another individual or organisation, that individual or organisation will be made aware of the comment and given reasonable opportunity to respond to the committee.

The committee prefers to hear evidence in public but we may agree to take evidence confidentially. The committee may still publish confidential evidence at a later date but we would consult the witnesses concerned before doing this.

[10.02 am]

**SCHEGGIA, Mr Wayne, Deputy Chief Executive Officer, Western Australian Local Government Association**

**CHAIR**—Thank you for coming, Mr Scheggia. We appreciate your time. The committee has received and published your submission as submission No. 33. Do you want to make any amendments to your submission at this stage?

**Mr Scheggia**—No, Chair.

**CHAIR**—You can make an opening statement, if you would care to, and then we will ask you some questions.

**Mr Scheggia**—Thank you for the opportunity to appear today. I appreciate the time the committee is taking to explore this matter. It is a question we are vitally interested in. We appreciate that reforming the federation is a broad ranging subject matter. Our specific interest as an association representing local governments in Western Australia and contributing to the national local government forum through the Australian Local Government Association is on the potential for constitutional recognition for local governments as part of any federal reform process.

Given that you have taken our submission into evidence, I think our statement is fairly straightforward at this point, and that is that local government should be recognised in the constitution and that the form of that recognition should be directed around addressing the certainty of the Commonwealth's ability to invest directly in local government.

What our proposition is not is that the Commonwealth should take over local government responsibility from the states and territories, and it is not that the states and territories should in any way be disenfranchised in terms of their current rights and responsibilities for local government. We are not trying to organise a massive revolution in the way local government interacts with the states and territories as its founding authorities, we simply just want to confirm financial arrangements in essence with the Commonwealth. It is simply that the constitution needs to be amended to confirm the Commonwealth's capacity to do what it currently does, and that is make payments directly to local governments by addressing the legal doubt that we think has been created by the case that Brian Pape brought on the Commonwealth.

To restate that in simple terms, as we know, Mr Pape took the Commonwealth to task over what we would define as the retail stimulus package payments. The court decided 4-3 against Mr Pape's case but essentially on the basis that the Commonwealth was making the payments in that instance to deal with the global financial crisis and therefore a significant international incident or occurrence and in that instance the general executive power was appropriately used. It can be argued, then, that this effectively restricts the Commonwealth power to make payments in anything other than globally significant circumstances.



Therefore, we are concerned about the impact that this could have in a flow-on consideration of things like the current Roads to Recovery payments that the Commonwealth makes directly to local government and the Community Infrastructure Program payments directly to local government. In WA this accounts for many millions of dollars worth of Commonwealth funding to local government and our contention is that the long-term financial sustainability of the local government sector needs to be facilitated and depends to a large extent on greater Commonwealth investment in the local government sector, and that constitutional recognition is what is needed to clarify that.

To understand the Commonwealth investment in Western Australia, financial assistance grants, which we believe are not affected by the Pape case in particular, is \$148 million in general purpose grants; \$98 million in general road funding grants; Roads to Recovery funding equating to \$50 million this year for Western Australia—and \$256 million over the five years of the program—and \$120 million in CIP in Western Australia in the last three years. That is a significant Commonwealth investment that we are interested in and looking for ways to augment.

To compare that perhaps to the significant state investment in Western Australia in local government, we have a road funding agreement with the state government over periods of five years recurring. Under that agreement there is \$140 million per annum directed from the state to local government. You may be familiar with the state government's Royalties for Regions program, and within that there is a country local government fund which currently directs in the order of \$100 million towards local government from the state annually. Sport and recreation funding for capital infrastructure equates to \$20 million per annum to local government. They would be the significant investments the state makes in local government.

To put those investments in the context of tax collection data, research tells us that 83 per cent of the tax take occurs at the Commonwealth level, about 14 per cent at the state level and about three per cent nationally at the local government level. To put that in context, when you look at what the Productivity Commission has said in its analysis of local government rating, it has indicated that local government makes a very high taxing effort for the taxing streams that are available to it. In other words, its effort for return is high and by implication there is not great flexibility to expand on its rating effort in order to augment its income stream. Therefore we think that, given that the major tax take is at the Commonwealth level and local government is making a substantial effort in its own right, there are great potentials for enhancing and indeed securing that Commonwealth direct funding investment in local government.

I would like to talk about this argument in terms of the advantages to each of the players that constitutional recognition might give to the nation. From a Commonwealth perspective, local governments as service providers are not simply a property-based service deliverer. The Productivity Commission and the Henry tax review have both identified the complexity and scope of local government's activities and indicated that they present a very sound and good return on investment option for the Commonwealth. So from the Commonwealth's perspective being able to invest in local government directly provides the potential for a great deal of increased on-ground outcomes for national programming.

From a state or territory perspective an increased Commonwealth spend through local government, and increased security for that spend through local government, is by the same

terms an increased spend within that state or territory jurisdiction. Therefore, there is a state advantage that can be recognised in securing constitutional recognition for local government. Within our state of Western Australia, and in most other states, there are formal arrangements between state and local governments that are built around strategic cooperation.

So by supporting local government in its case for constitutional recognition, the state already has a mechanism in operation that it can use to negotiate and discuss strategic priorities with local government. For local government there can be an alignment with state priorities, which then creates a strong case to the Commonwealth about strategic alignment, investment opportunity and return on those investments, which can then be negotiated and discussed within the greater framework of the federation in forums like COAG and its associated councils and committees. The ultimate advantage for local government is the security of its financial relationship with the Commonwealth and, I would suggest, the maturity of relationship with the Commonwealth and state governments that will flow from that formal recognition.

When you put all this together, there is a national advantage for the people of Australia in that their governments have the potential, with constitutional recognition for local governments, the associated mechanisms of partnerships with states and territories, and the refined operation of COAG, for a truly national strategic government effort, which if used correctly should produce better outcomes for all.

**CHAIR**—We are very familiar with the argument about local government. The argument, as I understand it, rests largely on the difficulty of cost-shifting between various levels of government and the expectation that local government will assume greater responsibilities for which there is, sadly, no increase in revenue—or at least the capacity to raise revenue or any adequate grant funding to support the activities. How healthy, financially, is local government in Western Australia?

**Mr Scheggia**—As an initial response, I would certainly agree that the initial impetus for a push for a stronger direct relationship might well have come from the cost-shifting argument, but I think it is now more about a maturity of relationship between the levels of government, and local government wanting to play a significant and contributory role in the governance of the nation. That is equally as important as addressing the actual financial scope and capability of the sector.

In answer to the question, we have done a number of years of research around what we term the systemic sustainability of the sector. Within that analysis a range of financial measures and research is done. I think it depends on what particular aspect of finance you are looking at. For example, and I think these are 2004 figures, the identified infrastructure backlog of the sector—the proportion of investment that was needed to address infrastructure assets that were not being appropriately maintained—was about \$1.75 billion and it is probably in the order of \$2 billion in today's dollars. So the financial state of the sector is concerned around that infrastructure deficit and the capacity of the sector within its own sourced revenue—I will refer you back to my previous comments about the rating effort—to address that infrastructure backlog is of concern.

If you look at the way the sector finances activities, particularly its indebtedness, as a sector of government local government is actually a net lender in Western Australia. So I think you could argue that our financial management as a sector is particularly well-managed, if that is your

measure, and that has been in response to a better financial consciousness at the local operative level.

It has also been in response to a number of pressures from state and Commonwealth governments over the years around concerns about the level of public debt of all levels of government and local government being seen to play its role in the national debt scenario, particularly through the eighties onwards. Local government has taken a responsible position around controlling and managing its level of indebtedness in response to those concerns and also from the perspective of making sure that they live within their means at a local level. Reflecting on that, you could also argue that as a net lender there is probably still some scope for local governments to increase indebtedness as a financing means but by no means is it at the level where it could address, for example, the level of infrastructure backlog within its own means.

**CHAIR**—So there are not many or any councils in Western Australia that are financially stricken, which are running significant deficits and things of that kind.

**Mr Scheggia**—Depending on your terminology and your definition of ‘stricken’, certainly councils facing major deficit budgeting scenarios are not widely known to us. It is more an issue of their capacity to expand. What they are is limited by their financial capacity to grow.

**CHAIR**—The Royalties for Regions program is presumably for regions rather than necessarily benefiting councils in metropolitan areas around the state—is that right?

**Mr Scheggia**—Royalties for Regions program is an original policy position by the National Party in Western Australia. It was adopted as part of the coalition agreement to form government after the last election and yes, it is directed at regions. Within Royalties for Regions is the Country Local Government Fund specifically directed at local government and then there are broader funding perspectives which local governments can participate in through regional cooperation and influence and advocacy to regional agencies but are not necessarily direct funding sources for local governments.

**CHAIR**—What advantage does that give regional local government over the government in Perth, for example? What percentage increase in revenue do they get relative to metropolitan government?

**Mr Scheggia**—The percentage I cannot quote to you.

**CHAIR**—Is there a measure?

**Mr Scheggia**—There is \$100 million roughly—

**CHAIR**—Spread among many councils?

**Mr Scheggia**—among about 115 councils in rural WA. The metropolitan area does not have access to any of that funding. Having said that, the policy pretext for establishment of the fund was an investment in rural and regional Western Australia.

**CHAIR**—I understand the policy background to it, thank you.

**Senator FURNER**—You mentioned that the Royalties for Regions fund is \$100 million distributed to 10 councils?

**Mr Scheggia**—No, within Royalties for Regions there is the Country Local Government Fund. Royalties for Regions is larger, but there is \$100 million for country local governments from the specific local government fund. I cannot remember exactly but there are about 115 qualifying local governments out of the 141 entities—139 mainland plus the Cocos Keeling and Christmas Islands.

**Senator FURNER**—On the matter of the \$1.7 billion deficit, what are councils doing to prepare themselves for that situation?

**Mr Scheggia**—Part of the response to our sustainability investigation of the sector was to drive reforms in administration and management which included greater investment in asset management programming for infrastructure. The Commonwealth and also the state have been very supportive of that approach financially and morally. There now are large asset management programs being rolled out across the state so that councils are not only fully aware of the assets they have but also the maintenance requirements, the longevity requirements and the reinvestment requirement for those. Part of that process will be a continual reviewing of the changing nature of that ultimate problem in financial terms, but it will give councils on the ground an immediate picture of the state of their assets and then the financial response that they need to plan for in order to address that.

**Senator FURNER**—Has that led to the contracting out of services in terms of asset management?

**Mr Scheggia**—I do not think that the asset management approach necessarily leads to one way or another in service delivery. I think that is more about a reform of business operations and indeed, in part, government direction about the types of activities that it wants to see councils take that might be driven by efficiency or effectiveness gains and measures. Asset management is designed to recognise the problem and identify the quantum and policy that need to be put in place to address it. Having said that, there is, at the end of the day, a capacity issue about how you address the problem of magnitude once funding becomes available to it. There is a limit to the capacity of any individual council, and ultimately the sector as a whole, to respond to available funding in order to address those infrastructure backlogs. For example, if you put \$2 billion on the table today and said, ‘Councils, go away and fix your infrastructure asset problem,’ the capacity of the council to actually do that work themselves would be limited and there would have to be alternative means addressed in order to provide a workforce, attendant resources and capital equipment in order to address that. Asset management of itself does not lead to a change in approach to the way you deliver a solution to a problem, but the availability and rapidity of funding will.

**Senator FURNER**—Okay. Your submission indicates that you have consulted broadly in terms of most of the councils. Unfortunately I will not be here to hear evidence from the City of Mandurah. Would you be able to respond to some of the matters that they have raised in their submission?

**Mr Scheggia**—I would be happy to make the effort.

**Senator FURNER**—In this concept or view of theirs on horizontal fiscal equalisation they indicate that it certainly favours metropolitan areas of high population as opposed to regional centres. I am wondering what your view is on that.

**Mr Scheggia**—Is that a reference to financial assistance grants?

**Senator FURNER**—No, it is purely based on their view of a different model. They describe it as a national distribution model where it would bypass the states and be based on need and not population.

**Mr Scheggia**—At the moment as you would be aware the financial assistance grants, which are the major Commonwealth investment and distribution of the national tax take, work across a formulaic analysis of both vertical and horizontal imbalance. It is dangerous for me to suppose what Mandurah might be proposing, but I will put it this way—I have heard an argument elsewhere about the relatively antiquated notion of a per capita distribution for financial assistance grants. They should in fact be based on a national needs assessment model. Then an investment in the greatest area of need would be the best return on, in this case, a Commonwealth funding pool. Particularly when you take the perspective of high population growth areas in coastal locations that face significant environmental and climate change issues associated with coastal development, the idea of a needs identification and then a targeted investment seems very logical and indeed very desirable.

Equally, one might argue that there is a need for strategic investment in areas of both economic and social decline in order to address those things that might stem population decline, that might reinvigorate economic growth and that might enhance environmental protection in those locations to make them return to being a desirable place to live. Therefore, the idea of just a per capita distribution does not necessarily address either of those ends of the strategic spectrum. To that extent I can appreciate what appears to be the logic of that argument. It is not a confirmed state association policy perspective to promote one particular view around that at this time but I can certainly understand the rationale for an argument.

**Senator FURNER**—Okay. Thank you.

**Senator BACK**—Mr Scheggia, others who have appeared before the committee, particularly in Queensland, have spoken about regionalisation as an approach—not putting local government to one side but having a conglomerate regional approach rather than individual local governments. In the context of the Western Australian move to encourage amalgamation of local governments in areas where it was deemed appropriate, can you tell us whether or not you think there is room for greater efficiencies in Western Australia in that approach?

**Mr Scheggia**—Firstly, the question of amalgamations per se is a vexed one. Amalgamations often get promoted as a gut reaction to any critique of a system. We would argue that there needs to be an understanding of the purpose for which the sector needs to change in order to determine the best and most appropriate structural arrangements for that purpose. From our perspective, there still is a lack of clarity around the ultimate purpose or vision for the sector.

I am sure a case could be argued for some amalgamations. But the association's research around the form and the function of local government suggests—and this might sound

controversial—that largely there is not a lot to be gained from just amalgamations in the longer term. It is far more important to identify the opportunities for whatever your ambition is—increased efficiency, effectiveness or service scope, or a change in target. It is important to identify those things and then have the local governments identify the best and most appropriate response on a holistic basis. We would suggest it is dangerous to look at just an economic outcome, for argument's sake, without looking at the other two elements of the sustainability chain: the social and environmental implications of any change in activity or direction.

Amalgamating councils creates another fixed structure which is appropriate for some circumstances—it is adaptive or responsive to a set of circumstances that the previous system was not able to deal with. Our modelling suggested that it is better to create a flexible engagement among local governments and a range of mechanisms they can use that suit the purpose. For example, let's use the hypothetical of the Commonwealth wanting to invest in better environmental outcomes for particular regions or across the nation. Environmental outcomes are likely to be based on a catchment perspective. I do not know of a single local government that represents an entire environmental catchment. Therefore, having a structure that deals with the catchment to address that specific requirement of the Commonwealth would be an advantage. But, if you amalgamate a council to create that structure, you will probably create a structure that is not socially viable, although it might be environmentally viable. Adapting to the specific requirement and the flexibility of the structure are what we see as important.

**Senator BACK**—Going back to the stats you gave us, which are in front of us, you gave us the tax collection figures; do you have an equivalent set of figures in terms of the delivery of services by, respectively, Commonwealth, state and local government in Australia?

**Mr Scheggia**—I cannot quote them to you.

**Senator BACK**—You are pleading for a higher level of recognition and a more direct and, if you like, permanent route of funding from Commonwealth directly to local government. Is this an indication that there has been a failure of adequacy of funding from the state to the local government sector? An argument would be that the Commonwealth, in whatever arrangements, provides funds for the states with the intention that they flow through to where the services are delivered by local government. Where and why has the failure of flow-down occurred—the failure that is causing local government to now say it needs to leapfrog the state jurisdiction and get funding directly from the Commonwealth?

**Mr Scheggia**—Those are not terms that I would use to describe the situation, as you might appreciate. I do not think this is an opportunity for us to beat up on the states. What we are after is a more mature relationship between the levels of government. I think talking about the hierarchical relationship and power definitions between the levels of government, as traditionally plays out in state-Commonwealth relations—and, indeed, local government, to the extent they have tried to participate in those—rarely works in terms of fostering a truly effective strategic outcome. Our ambition here is to enhance our relationship with the states and the Commonwealth and not to apportion particular blame. That is why I am reticent about exploring too much discussion around the cost-shifting argument: because I think that is an old argument, notwithstanding the significance made of it. In terms of a relationship, and the capacity to be mature about that, we acknowledge it but we move on from it. We are looking at solutions and advantage for all here, rather than apportioning a degree of blame around those things.

As to tax reform in Australia—again, I will go back to those statistics—you would argue that the major tax reform in recent times has been the GST. I will stay away from talking about mining taxes at this point. The GST would be the major significant tax reform around general distributions. If you look at the way that is predicated, it is effectively around the states surrendering small and piecemeal taxing opportunities and passing those off in favour of a return from the Commonwealth. Therefore, you could speculate that the capacity for the states to manoeuvre around new revenue generating taxation means, in order to fund local government, is somewhat diminished by that. Hence the centralising of tax revenue in the Commonwealth through mechanisms like that—and the statistics support this—indicates that there is the opportunity to address the funding question more broadly through a stronger relationship between the Commonwealth and its interests and local government, mediated around a discussion forum such as COAG and the individual state and local government arrangements. I think that is a more strategic and mature way of talking about national expenditure patterns, revenue raising patterns, and how we address the big issues for our communities.

**Senator MOORE**—I want to follow up on Senator Back's questions about the RDA mechanism, because we had a lot of evidence from RDA groups. From your perspective in the Western Australian Local Government Association have you had any interaction with the RDA mechanism and exactly how it works? My knowledge of Western Australian geography is not great but it seems to me that, when people talk about WA, they often talk in regional terms—the Kimberleys, the west and those things—which incorporate, in my understanding, a number of local government authorities. Has there been any interaction between the Local Government Association, the department and the RDA about how that would work?

**Mr Scheggia**—Certainly. Indeed, the RDA system for the metropolitan area of Perth is supported by the WA Local Government Association. We provide a secretariat to that particular RDA. So we are very much engaged in that specific RDA. We are also vitally interested in the experiences of local governments in terms of the other RDAs. Western Australia is perhaps unique—I say 'perhaps' because I don't have a detailed knowledge of the systems in the other states—

**Senator MOORE**—Most Western Australian do not put 'perhaps' in!

**Mr Scheggia**—I qualify that by saying I am from Victoria. I like to think that I have a broader perspective, nationally. But don't hold that against me, either. I think the Western Australian regional development commission system, which has been in place for quite a while now and covers all of rural Western Australia, sets a very strong basis for regional activity, strategy and effort that the RDAs might be trying to fulfil in other states where that system does not exist. I am aware that there was a lot of negotiation between the federal minister and our state minister for regional development about the interchangeability and concurrency of RDCs and RDAs, but in the end they did not merge the entities and they maintained a separate system.

In the long term you would have to think that there is call for a single regional entity rather than a multiplicity of them, provided you can get agreement about the interests that they pursue and the strategies that they embark on. I would take that back to the sorts of discussions I referred to earlier, where there needs to be a greater alignment between the three spheres of government about what the strategic objectives are for these entities—whether they are focused

on economic development, sustainability or if they have a different purpose. This would be to simply research and inform the federal perspective.

It seems that part of the RDA focus is on being the eyes and ears of the federal government to inform it about what is happening in regions. Why would you need to replicate a system, if there was true faith and trust across the spheres of government? Perhaps it begs the question—you might gain some efficiencies around that. But that could well be idealism too, because I appreciate that there are nuances of government and politics that mean that purely idealistic systems do not necessarily work out as people intended when writing the model. I think in the longer term you could see a refinement down to a single regional agency informing federal, state and local regional objectives.

**Senator MOORE**—So we have one more level in Western Australia? I will follow up with the department on that to see how they merge and where the boundaries are. I was unaware of that.

**Mr Scheggia**—I would be hesitant to call it a ‘level’. I think it is about focus. They focus on areas that perhaps other spheres of government do not. In looking at the nuances between them, it is important to understand their value and how they interact in the governing of the state.

**Senator MOORE**—And whether they talk to each other?

**Mr Scheggia**—Indeed—or us.

**Senator MOORE**—I want to follow up on the way that Aboriginal communities are handled in the local government area in Western Australia. In Queensland they have become actual local governments. In another committee I have visited Balgo a number of times. I am just wondering when you talked about the 100-odd local governments, whether they take in a place like Balgo and where that fits, because there are two other communities that link in with Balgo very closely. Is that a local government entity, as you would define it?

**Mr Scheggia**—Not of its own. All of Western Australia is incorporated under the Local Government Act with, I think, the exception of Kings Park in Perth. All of Western Australia comes under the control, care and authority of a local government. They are not based around the specific idea, for example, of the Indigenous community being its own local government.

**Senator MOORE**—So they are not a separate council in their own right?

**Mr Scheggia**—They are incorporated within the local government for that area. We have had discussions before at the state government level and from time-to-time certain state government politicians and ministers have had the view that the Indigenous community should be excised out from the local government structure and created as their own local government entity.

**Senator MOORE**—But that has not happened?

**Mr Scheggia**—It has not happened. Our discussions have been about their capacity to financially, economically and socially create and operate a level of government and whether it does not just fracture the system and create another unsustainable entity.



**Senator MOORE**—I have a question about your paper. Many local governments who have come to this committee have talked about their desire to have a referendum on the acknowledgement and identification of local government in the Constitution. It has been tried a couple of times before and has not been successful. Has your group of councils looked at what the approach should be and how it should be done differently to ensure that when it goes up again it gets up? It is not baseball—strike three, you're right—but it is a bad message if you put it up a third time and it does not get up. Have you given thought to that?

**Mr Scheggia**—Yes, we have, and we are in a process right now. I am on my way to a national meeting in Hobart of my counterparts to discuss strategy for constitutional recognition campaigning where the sorts of questions you are asking now we hope to start to arrive at an answer on. We would be the first ones to acknowledge that local government going to referendum for a third time and failing would be a significant problem long-term for the sector in terms of its credibility—not because the question does not have validity but it would actually represent a lack of recognition by the Australian people of what was being argued. So putting the case for recognition is critical for local government not just in terms of the referendum itself but in terms of the acceptance of local government in and around the community.

Our strategy is manifold but centres primarily in Western Australia on increasing the community's awareness of local government and profile of local government. We have done that through an intensive advertising campaign over the last three years on television and in the print media and our tracking of the community perceptions of local government over time we have recognised about a fourfold increase from something like a 16 per cent recognition rate to about 60 per cent recognition rate in the community generally of local government's worth and value. So we think we are substantially on the path to getting the community acceptance and understanding of the sector such as would support putting the referendum question forward with a reasonable degree of success.

But obviously it is more than that. It is also about making sure that the state and territory governments see benefit in the proposal around recognition and seeing that benefit coming on board and supporting the call so it does not become a state versus Commonwealth debate and it does not become also a political party versus political party debate. At the moment I have to say I think we seem to be more successful on the party debate. There seems to be general support—I will use that term—for the notion of local government recognition across the wide spectrum of political parties, albeit some wanting to see more detail and some wanting to have nuances around recognition, but generally at the political party level they see merit in the question being posed.

**Senator MOORE**—Is it possible to get a synopsis of that advertising campaign for the committee: the background, how long it has been going, what the messages are, and any feedback you have or any review you have had on success? I think that would be really interesting to see how that process operates.

**CHAIR**—On this matter of recognition, it undoubtedly has a superficial appeal but it seems to me there are a couple of problems with it. Not least is the reality that across the country local government is the creation of state governments, it is the creature of state governments, and large amounts of revenue that come to local government come from state governments. You are proposing essentially a constitutional change which would not only give recognition to local

government constitutionally at a federal level but also I think change the nature of the relationship that exists between local government and state government. You said in your opening remarks that you are not in the business of profoundly changing that relationship, but it seems to me almost inevitable that if you get recognition one of the reasons you want it presumably is because you will have potentially a more secure source of revenue from the Commonwealth government and in doing that you are almost certainly going to change the nature of your relationship with state government and indeed vastly complicate it and make the lines of authority which exists within the constitutional arrangement and the structures of government that much more complex, that much more confusing. You may end up with a further centralisation of power in Canberra because that is where the money is going to be. What do you think about that set of propositions?

**Mr Scheggia**—Interesting. I guess I would make an initial response by saying no, it does not change the fundamental nature of things, because these arrangements already exist. Roads to Recovery already exists. The Commonwealth already pays money to local government. It also pays in the community infrastructure program directly to local government. We say that is a good thing and a valid thing. That is something that has been happening for a reasonable period of time.

**Senator MOORE**—Over many governments.

**Mr Scheggia**—The point for us would be that the existence of that capability has not fundamentally changed the nature of our relationship with the states or indeed the states' relationship with the Commonwealth. The test of time has proven that, indeed, this situation can work successfully without destroying all of the other aspects of our representative democracy.

**CHAIR**—I acknowledge the success of the Roads to Recovery program. I think it is a great program and it has been a great boon to local government. The examples that I know of in Queensland are that local government have acted very responsibly in the way in which they have dealt with those funds, and there are no questions of impropriety of any serious nature that I know of that have come up. So I think local government across the country have acted very responsibly in the way in which they have managed those grants.

But that does not necessarily solve my constitutional problem, which is that that is a very limited program. It relates to a bucket of money that has gone on for a few years and, of course, it is constrained. When you establish a constitutional arrangement, a constitutional recognition, the relationship between local government and the Commonwealth changes profoundly, and those concerns that I expressed earlier could well become an endemic part of the relationship.

**Mr Scheggia**—I understand that perspective. I put it to you that, again, net of the existence of constitutional recognition, previous federal governments have taken a decision to invest directly in local government for programming purposes.

**CHAIR**—Yes.

**Mr Scheggia**—So making the constitutional capability for that to occur in a legal and unchallenged way does not indicate that indeed the fundamental nature of the tripartite relationships between the various levels of government will significantly change. If federal

governments felt they had the power to date to do what they have done, and indeed they had that inclination to rapidly and widely expand their direct investment, why would they not have done it?

I think the answer to your dilemma actually lies in the motivation of the federal government. I do not anticipate that the federal government wants to become substantially and expensively responsible for local government. It is only going to be on this specific program level, where there is a specific federal imperative that aligns with a local government desire. The model I have been describing to you would be endorsed in a discussion that took place at the COAG level between the spheres of government, including the states; it would have the imprimatur of all levels of government to proceed. I think that is the sort of framework we should be looking for in constitutional recognition and the attendant mechanisms that support it to improve the Federation in the future, so that the valid nature of the concerns that you voice can actually be addressed in a mechanism that protects those relationships.

**CHAIR**—You could also solve the problem like fixing up the consequences of Pape. A lot of people have made that submission to us, and that would seem to require some kind of tinkering with the formal constitutional arrangements, which would allow what is now perceived to be an injunction against the Commonwealth providing money directly to local government. We could clean that up and then there would not be that constraint on the Commonwealth sending money in relation to program activities, without necessarily having the constitutional recognition. Would that meet your concerns?

**Mr Scheggia**—That is effectively what we are advocating. At a fundamental level it is not particularly important to us as a sector that the Constitution be emblazoned everywhere with the term ‘local government’. What we are fundamentally after is the removal of any suggestion created by Pape that the Commonwealth does not have the capability of investing in the sector. That, as we understand it, will actually require a constitutional amendment. It might be as simple as section 96, I think it is, having the words ‘and local government’ added after the term ‘states’ in order to put beyond doubt the Commonwealth’s capacity to do that. I think you would find that the local government sector, certainly in Western Australia, would be very happy to support that proposal.

**CHAIR**—So are you saying to us that that would be the extent to which you would require constitutional recognition, just by cleaning up the consequences—

**Mr Scheggia**—That solves our dilemma.

**CHAIR**—Your association is not seeking more in relation to constitutional recognition?

**Mr Scheggia**—No, and as I said at the start, we do not want to fundamentally change the nature of the federation and the nature of what is Australia; we want to clarify the capacity for the federal government to invest in local government. I suggest to you today that there are opportunities beyond the specific requirement that local government is putting on the table, but there are opportunities—indeed the COAG process and within states and territories their arrangements for the local government structures—and to achieve a better directed and focused

strategic outcome which might indeed foster increased or changed federal investment in both state and local government.

**Senator MOORE**—In your discussion with the other groups representing local governments, there could be a variation of use on exactly what people are seeking. Certainly that is what has been said to our committee and also the way the acknowledgement will appear in the Constitution is still being discussed. So the process which you and the chair, in his attempt to put the no case so that you could respond to it in many ways in the discussion you had—that is one view but that there could be other views about how local government is acknowledged in the Constitution.

**Mr Scheggia**—There are a range of views certainly about how local government could be acknowledged.

**Senator MOORE**—That has not been agreed yet.

**Mr Scheggia**—I can tell you unequivocally that local government in Western Australia has agreed as a sector that what it seeks fundamentally, in the reform of the Constitution, is clarification of that federal power to invest directly in local government. If you like, that is the minimum sum game for us. There are lots of other things we could talk about and various elements both within Western Australia and within the local government sector nationally will have varying degrees of support for those other mechanisms and ideas but in a very fundamental level if we can get recognition of local government in the Constitution to the extent that it clarifies the federal government's capacity to make payments to local government directly, that will meet our minimum expectation as a sector.

**CHAIR**—In relation to the COAG process and the extent to which local government should have a part of that, does your association have a view on the extent to which local government should be recognised within COAG?

**Mr Scheggia**—Local government has a seat at the COAG table at the moment. The president of the Australian Local Government Association is a full voting member of COAG and we very much support that presence. Beyond that though, our association has not done a detailed proposal about reforms to COAG but we would certainly see expanded opportunity for local government, as a sector, to be participating in and informing the COAG processes around the strategic agendas that need to be identified and worked through for the betterment of the community of Australia.

**CHAIR**—Thank you very much for coming and for giving us your time today. It is very much appreciated.

[10.54 am]

**MURRAY, Mr Andrew, Private capacity**

**CHAIR**—It is a great delight to welcome you before the committee. For all of us who know you it is a great pleasure to see you again, so thank you very much for coming along. I have just been discussing with the secretary the precise nature of your contributions to our deliberations and I am told that they are in the category of ‘additional information’, and you will no doubt understand that, perhaps better than I do. But we have received additional information from you and it has been published. Do you have any comments to make on the capacity in which you appear?

**Mr Murray**—I appear as a private individual. It is important to state that I do not speak for a government, for an entity or for any organisation but just for myself. Firstly, my compliments to all of you. I think you are engaged in a pretty vital task.

I took an interest in your committee because it reflects terms of reference in which I have had an interest for over two decades. The two additional bits of information I provided to you I think were directly germane to your inquiry. One was a lengthy response to the government’s electoral reform green paper, *Strengthening Australia’s democracy*. In there I picked out nine different areas which are relevant, a number of which directly relate to your terms of reference and which I think are worth your while considering as a result. The other thing I provided you with, which is available in hard copy from the Department of Finance and Deregulation, is my review of Operation Sunlight, about overhauling budgetary transparency, which the finance minister of the day asked me to do for the government of the day. It was a most unusual request. I am not aware of any other sitting senator from another party who has been asked by the government of the day to do such a thing. I will stress that not only was it independent but it was unpaid, so it is truly independent.

**CHAIR**—And all the more virtuous for that.

**Mr Murray**—All the more virtuous for that—indeed. If you are happy, Mr Chairman, I will give a brief opening statement and then take questions from the committee.

**CHAIR**—We are more than happy for you to do that. As I said, it is a great delight to have a distinguished former senator from Western Australia before us. Please address us as you see fit, and of course you know the procedure. We will then ask some questions.

**Mr Murray**—Thank you. Looking at the terms of reference, I wondered what should be in and what should be out, and in my view there is no interest in changing from a Federation to a unitary state or interest in breaking Australia up further into regional governments. I read and hear very little on that, except from the occasional academic. Secondly, there is no republican passion. The republican movement is constipated, so it is not a high-level issue as far as I can see. That is despite a personal interest and writings of my own on the matter. So where is there interest? There is concern about standards in our democracy, there is concern about management and efficiency, there is concern about money and there is concern about the future. I think

Australia's democracy does have to be strengthened, and that is why I welcome the federal government's green paper on that matter. I have been campaigning for significant reform to our democracy for two decades, as have a number of senior state and federal politicians from all parties and academics and thinkers in the field. All have canvassed various constitutional, political, parliamentary, financial and electoral reforms. In a welcome and long-overdue initiative in September 2009, the Australian government issued its electoral reform green paper on strengthening Australia's democracy. In November 2009 I submitted a response, which you have here, as did many others. Shamefully, at the time of writing the government has still not reported on its findings or final proposals.

Turning to the Constitution, our political compact, our social contract, is under strain in certain respects. Some of the strain comes from a constitution and institution with roots in the 19th century that do not fully nourish the 21st century, and there is a consequent need to refresh and modernise Australia's governance. The foundation of any nation is characterised by the political compact, the social contract. Australian federalism is a political system of checks and balances. No reform of the Australian system will be successful unless it accommodates revised checks and balances to ensure that the social contract is strengthened and refreshed. Those of you who have a background in political sciences will recognise that the language I am using has a specific meaning. It is difficult to improve the economic or the social entirely without also improving political governance. That means reassessing the Constitution, the separation of powers, the powers states and the Commonwealth should each have, how power is acquired and restrained, who has power over what, how money is raised and spent and by whom.

In my view constitutional reform is necessary. To make progress on constitutional reform you should divide proposed reforms into two types—those that have all-party parliamentary support, which will include minor and technical matters needing to be attended to, and those that are contentious. The former category should be put to a referendum, first and at lowest cost, that is coincident with a general election. For the rest, the Australian Constitution needs holistic review. A standing elected constitutional convention should review the Australian Constitution and related matters, be in place for a number of years, be serviced by a permanent secretariat and have sufficient resources to allow for full engagement and dialogue with the Australian people.

Western Australia is an example of a failing in our federation. Turning first to the concept of a big Australia, the data is irrefutable as to WA's present and increasing shortfall in skills and labour rapidly moving into very large numbers. There will be a doubling of WA's population in the next few decades. Recent WA government estimates indicate that nearly half a million more workers are needed in the next decade, only half of whom will be provided by internal generation. Action is necessary. It may prove too difficult to persuade those in the southern states, and therefore their politicians, particularly in the cities of Sydney and Melbourne, that a higher migrant intake is essential. Nimby it may be, but that may continue to run the national politics. Instead, it would be better to persuade them that a higher migrant intake will not affect them over east because it will go west and north to where it is needed.

To believe that proposition, the eastern states will need to believe that (a) there is a genuine need in WA (b) WA can cope with a population surge, particularly in country WA (c) the federal government can direct new migrants to the west and north and keep them there. On the face of it I cannot see why not. Quotas already apply on a disaggregated basis—there is a humanitarian category, a family category, a skills category—and occupations are ready prioritised, so

geographic quota for WA emphasising WA's regions should also be possible, meeting WA's needs but not threatening eastern state sensitivities.

In regional development Western Australia is the California of Australia and the big prospects are in WA's regions, yet there is no genuine media, political, bureaucratic, academic and community belief that regional development, both in WA and nationally, is a long-term policy rather than a passing political fashion and that there not only can be but will be significant growth in WA country towns and cities and in WA's rural areas. Australia must be clear in the expression and understanding of what it means by regional development and must enunciate its regional development philosophy, policy and destination.

The Commonwealth's financial power leads to attitudinal problems. The Constitution is unequivocal in its federal nature, but that is not reflected in the financing mechanisms for Australia. Sorting out the money issues is the most important task of any review and reform of the Federation. One of the reasons I provided the committee with the document *Review of Operation Sunlight: overhauling budgetary transparency*—which I am told is now used as a textbook in places like the ANU and is referred to by the OECD because it captures the issues it captures—is that many parliamentarians do not attend to the financial frameworks of our country. They attend to politics, policy and financial consequences but not to the frameworks. I think that, at the heart of all the issues of government, money lies very large indeed and is a very significant issue. That is, really, why I put that issue before you.

The Commonwealth's power to tax and spend is arguably its most important power of all. The money must flow to where jobs and wealth creation are happening or can happen. WA has been penalised by a policy attack on its royalties regime and a Commonwealth Grants Commission attack on its revenue, particularly but not only on its share of GST. If Australia is to prosper as a federation, the mendicant and charity case status of the states has to be addressed.

Turning to efficiency, COAG is an institution widely perceived, perhaps unfairly according to those who work hard supporting its efforts, as being run as a national and not a federal institution and as a forum for grandstanding and browbeating by the national government. That COAG mechanism does need resolution. It aggravates policy leaders in our states and yet it is an absolutely essential mechanism for increasing the efficiency and competitiveness of this country. It is a prime issue for the committee to address.

**CHAIR**—Thank you again for sharing your wisdom and your experience with us. It is extremely valuable to the committee to have available the breadth of your knowledge, and we are very grateful to you. You have opened up so many fronts that we cannot unfortunately pursue them all. I want to begin on the matter of the more permanent constitutional convention. Is at the centre of your view about the needs of the federation a belief that there needs to be formal, legal constitutional change or can we get to some of the reforms you think are necessary by other means? I do not mean by subverting the constitution, but is constitutional reform critical to all of those changes or can we do a lot of them without necessarily reforming the constitution as a document?

**Mr Murray**—Experience dictates, no matter what country you look at, that it is a really difficult process. I have had a look at the American constitution; I have been briefed on its origins and on the finalisation of the South African constitution, which is amongst the most

modern and advanced constitutions available. All of those processes require real care and an open mind, because individuals and political parties do not have received wisdom—you need to develop it over time. That requires debate and proper research and engagement over a period. In the formation of Australia, as you know, there was a 10- to 15-year process at inception, and that is even when it was guided by a relatively small number of thinkers.

I am not sure what the outcome will be, whether it will be holistic change or whether it will be a series of small changes, but when those are put to the people it is always a difficult matter in our country. I agree with that, by the way. I think higher law, which the constitution is, should be difficult to change and I admire those who constructed the original mechanism of a majority of states and a majority of the population. It is a very intelligent mechanism. If we accept the proposition that arriving at major change takes a long time, in the meantime you have to work with what you have and make it more efficient and more productive. That is why I believe there are certain areas in the constitution that could be addressed in the meantime, which all parties agree with.

You would immediately say, ‘Give me an example.’ I will give you an example—section 44. 1981 was the first time a House of Representatives committee examined the issue. There have been a series of reports on section 44 from the legal and constitutional committees and from the Joint Standing Committee on Electoral Matters. They all agreed on the way in which section 44 should be resolved and, as far as I am aware, no party in the parliament opposes it. Those sorts of things can occur.

You would then ask, ‘How should this constitutional convention be formed?’ The difficulty with an appointed convention is that people will point to it as representing sectional interests. So there needs to be some mechanism of election. That could be direct—in other words, by the people—or it could be representative—in other words, by the parliaments or a mechanism of that sort. I am open-minded about that. I just think you have to have credibility in its formation. But the key to its function, of course, is the permanent secretariat, because they will provide the underpinnings and foundation on which the convention can sit.

**CHAIR**—In your view, should the cost of that be borne by the Commonwealth itself or is that a cost that should be borne equally or in some proportion by the states and the Commonwealth?

**Mr Murray**—It is a national endeavour, so the more people who cough up the better. But we are realists, so I suspect the feds will end up paying.

**CHAIR**—You made some observations about regionalism. The first part of your observations was that it tended to be a marginal interest amongst a few academics. But I detected in your later remarks some interest and indeed recognition of its potential value as a way of managing some of these issues. I just want to clarify that. You may well be right that there is a lot of interest in it, but you seem to be making a case that we ought to be spending more time thinking about regional solutions and regionalism as a phenomenon and trying to make something of it, or at least much more of it than we are at the moment. Is that an accurate understanding of your position?

**Mr Murray**—Yes. My own political party, when it was alive and well, which it no longer is, had a deep interest in regional government and believed that system could deliver greater and



better managed development. Western Australia is actually quite a leader in its organisation and in its government set-up. Many years ago—maybe two decades ago—it formed nine regions. Effectively, WA is 10 regions, including Greater Perth and the nine country regions. By and large, it seems accepted that those boundaries are credible and make sense. Within those regions sit local governments. For instance, in the region for the Kimberley, which is right at the top of Western Australia, you have four local governments simply in the Pilbara. It gets messier when you go south because, as you know, local government is population based. So in the wheat belt region, for instance, there are 48 or 51—around that number—local governments. That then gets more difficult to interact and interrelate with. For a state government to interact properly in the regions, it needs a system through which it can do that.

There are a few principles which need to be developed. The first is the realisation of the subsidiarity principle. Local government is founded on the subsidiarity principle, which is that decisions should be made at the local level. Effectively, they are resourced to do that. They have their officers and their offices on the ground and they occupy that space. If you move into regional government—and I do not mean that in the sense of political decision making; I mean it in the sense of government decision making and service delivery—sometimes you have subsidiarity. For instance, you might have local police organisations, justice organisations, health organisations and educational organisations. But, by and large, WA is typical of Australia in that most decision making and much of the service delivery comes from the capital, and that is a problem, frankly, for this issue.

Even recognising the difficulties, the fact is that the framework is out there. The issue is resources and money and the issue is having a philosophy and a policy and a destination for regional development. Most regional development in Australia has been reactive, not proactive. There are exceptions, obviously—the Snowy River scheme was an obvious exception. There was a plan with a regional consequence. The Ord, in the north of my state, is similar to that. But most regional development has been the result of somebody going out there and putting down a cattle station or finding some minerals or saying, ‘This is a great spot for a tourist operation,’ or whatever, and then government services react to fulfil that. The idea of regional development, if you look at the OECD and EU experience, is that it should be part of an overall plan which includes a philosophy, a policy and a destination. What are you trying to get to? Where are you trying to go and why?

**CHAIR**—Senator Furner.

**Senator FURNER**—What would you foresee as the composition of a constitutional convention?

**Mr Murray**—By that do you mean numbers or agenda?

**Senator FURNER**—Both.

**Mr Murray**—I would not constrain the agenda at all, simply because you can never be sure of how smart people will be and what they will come up with. I would let it free flow to begin with and then slowly massage it into a form which produces an outcome. It cannot be the same as a parliamentary body. Parliament, in theory—even though in practice it does not occur—should represent the country in all its complexity. A constitutional convention cannot be that. It

does need to have people there with an essential understanding of the basics of law and finance and government and political theory and history and so on. I do not mean by that that they need to be tertiary educated, because some of the brightest people you will find in that field might not be. You do need characters to come forward or to be made available who have that characteristic. I think that will be resolved by the election process. If parliaments, for instance, around the states were to elect delegates to go forward they would put forward delegates that met that criteria.

**Senator FURNER**—Do you think it should be proportionately based on population throughout the states and territories?

**Mr Murray**—Sometimes great thinkers come from really tiny places and duds come from the massive states—not in an exact sense, but it would plainly dismay New South Wales if they only had 10 per cent of the delegates, for instance, when they are 30 per cent of the population. I have not given a lot of thought to exactly how it should be done. I think, first, the proposition has to be accepted that it should be done, and then you work out the best way in which to do it.

**Senator FURNER**—Do you think that will create an easier path for referendums?

**Mr Murray**—No, but I think it would produce a better understanding in the populace as to what is being put before them. I have read the 1988 constitutional papers—I think around about then. At the time money did not sit as large as a problem as it is now. The concern was in other directions. I think at the heart of much federal concern is money. The states do not like their status, as I have described it, as mendicants or being in a charitable framework where they have to beg for money or they have the threat of revenue streams being taken from them. The uncertainty of funding and who is responsible for what I think looms much larger now than it did then. In those days there were not—and I hope I have got my figures right—6,000 federal staff members of the education department. For the life of me, I have never understood why, when education is a state responsibility, there are 6,000 bureaucrats running education in Canberra.

**Senator BACK**—And none of them has ever been in front of a student in a classroom.

**Mr Murray**—Maybe, maybe not, but there has been a shift in terms of who does what since those days.

**Senator FURNER**—You are strong on the matter of COAG reform: how would you foresee reforms to COAG?

**Mr Murray**—Money remains the issue. You can reform what you like but who pays the piper truly does call the tune. Governments of all stripes who want to get on with the job—and it does not matter what party they are from—will find ways to go round and pressurise the states to get outcomes that they want. So I do not think that it is easy to reform COAG until that money issue is resolved, and that needs to be a constitutional matter in the end, I think.

But if you just look at the way in which it operates, if it is a federal institution it should really have a rotating chairmanship and a rotation in siting around the country, which I think is how the European Union operates. They have a rather foolish system of changing the president every six

months but, nevertheless, the idea behind that is that every member has equal status and gets the respect given to them by that status. That is not apparent in our system.

Secondly, COAG needs to be divorced and separated from the situation where the federal government calls together the premiers and chief ministers and says, 'This is a problem. This is how we want to sort it out,' and they fight about it. That should be a completely different and separate approach to a COAG agenda which really should hinge on producing a more efficient, fairer, more competitive Australia. It is best captured in that phrase 'seamless economy'. There are lots of areas where we simply do not need the kind of differences we have in our system.

**Senator BACK**—Mr Murray, thank you. I very much enjoyed reading what you have submitted and what you have said. For a committee which is represented by senators from Western Australia and Queensland, I think that probably much of what you say is music to ears. I have two questions: when you referred to the question of money, I think you made the observation that money must flow to where it is needed now and into the future. There would be nobody on this side of the table who would disagree; I suppose, in a sense, it is bang for the buck. Frustration exists, perhaps, from Western Australia and Queensland in contrast with the other states that would say they do not see it that way. Can you advise the committee as to how you think in the context of our terms of reference it is possible for a committee to actually capture what you have said and put it into some form of recommendation that would go forward to the Senate?

**Mr Murray**—I think that it was John Keats who said 'love in a hut' is no love at all, by which he meant that unless you have enough wherewithal to make your way in life, your love will founder because you cannot provide for the essentials of food and shelter and so on. That is why wealth and job creation has to be first and foremost as an objective of the Federation. I think you have got two competing principles here. The one which I accept and which I think is a good principle, is that the better off should look after the worst off in our Federation, which in state terms means equalising the service delivery that they get. That is one objective which should remain.

Over and above that, you need to say: where is the future and where does it lie and what are the prospects that arise out of that? By the way, that is why I emphasise the need for a properly thought through regional development philosophy, policy and destination. To me that means the financing through the Commonwealth Grants Commission has to recognise those two elements. What happens in Western Australia and Queensland is that we are short of money for generating the wealth and creating the jobs that are required. When you get governments that come in who are determined to fill that gap they then face the dangers of being pilloried by populists or by those genuinely concerned about financial health. For instance, WA has shifted under its latest government from a debt position of several billion—I cannot recall the exact figure—to \$20 billion and people are starting to criticise them for that. But they needed to borrow that money and spend that money not only to catch up but also to continue the momentum which the whole of Australia is benefiting from.

There are two potential mechanisms that could be used to help in this area that I can think of—and others might be smart enough to think of others. One is if the Parliamentary Budget Office is created and is genuinely independent and genuinely resourced. In other words it should be a body of the parliament—by the way, I believe the parliament should determine its own

funding, if you believe in the separation of powers, but that is a separate issue. That office should oversight the Grants Commission activity on behalf of the parliament and the general trends and themes going on in the states. The second possibility is for the Commonwealth Auditor-General to start to have a far better look at what is happening in the states because of the federal money that goes into them and the uses to which the money is put. If you contemplate such an activity, obviously you need to resource it and for years the Auditor-General has been underresourced, and I think that is a great pity. If I were sitting on your side of the table, I would seek to find a mechanism which would enable the federal parliament—not the federal government, the federal parliament—to better appraise what is going on financially in state relations, which it does not at the moment.

**Senator BACK**—It is interesting. This equalisation concept of the Grants Commission up to a point is fine but it does not create the incentive for those states, which you have referred to as mendicant, to change their attitude towards becoming more self-sufficient. This committee had before it the Speaker of the House in the Northern Territory and the shadow, and I put that question to them. They were pleading statehood, and I put the question to them as to what extent it would alter their financial status in relationship to their contribution to the overall Australian scenario to be slightly less of a taker rather than a contributor. They did not see that as being an objective or a need at all. That then begs the question of our two states, and you are well aware of it. We are the quarry states and so long as we keep digging holes in the ground the rest of Australia will be happy.

I agree completely about regionalisation, but I have another question for you. You seem to make a plea that it is not difficult to put facilities in place which would allow us to increase the migrant intake for this state—I think Queensland is probably much the same—and to meet the burgeoning demand. You suggest that we would in fact be able to put statutes in place that would require them to remain in the regions. Given the failure that we have had in the past, for example with the medical intake from overseas, to get doctors to remain in regional Western Australia—you and I are both well aware of the fact that they stay for the minimum amount of time before they move to the city—I am interested to know how you feel we could create a legislative scenario that would direct or require migrants to remain in regional areas rather than migrate to the cities where they naturally would want to be.

**Mr Murray**—If you are familiar with economic theory you would know that in economic theory assumptions are made as to perfect knowledge, but the reality of markets is that perfect knowledge does not exist. The fact is that most migrants have very imperfect knowledge and do not have an understanding of where the best opportunities for them might lie and where it is best for them to go. Consequently, they are drawn to major cities which they know about through relatives and so on. And Sydney and Melbourne may not be the best for the country or for them, for all the various reasons you would understand. So, to a degree, I think government has a responsibility to direct people to where they want them.

So you then say: how would you keep them there? Most migrants who come in want to become citizens. They simply would not get their citizenship or their permanent residency if they moved away from the state to which they have been sent. That does not prevent mobility within that state, but that would be so. For key personnel, you can tie it contractually to a job. In case of doctors, as you know, they have tried to tie it to the Medicare provider number. There are mechanisms you can use. You are bound to get leakage—people will always find a way around

it. But once you put people in an environment where they can find jobs and make a home you find they settle and there is a better response. I think that down in Katanning there is a big Muslim population—I think Afghans, but I am not sure.

**Senator BACK**—Thursday Islanders.

**Mr Murray**—Are they?

**Senator BACK**—Slaughtermen.

**Mr Murray**—They landed there and they had absolutely no idea about the place or its prospects but got good jobs in the local abattoir, as I understand, and those places, and are now a settled, productive and absorbed community which is highly valued by the people who were there in the first place. So I think it is possible. I would not say it is easy but I do think it is possible.

**Senator BACK**—Thank you.

**Senator MOORE**—Mr Murray, there are many things in the various pieces of information you have given us. Certainly one of the things that we need to know, because of the way this process has been going, is around the issue of local government. We have had so many submissions on that and my formal question will be about how you think the issue of local government and its recognition in the Constitution, and the issues around that, could be progressed.

I have another question that I can put on notice because we have run out of time. I was transfixed by your report on what I always want to call ‘Operation Starlight’ but which I believe is Operation Sunlight. I want to go to that aspect about the appropriation bills, but we do not have time now to get into that effectively. One of the core things you were talking about was the issue of appropriation bills and you link it clearly to the Constitution and the process. I note with interest our government response, which is actually that they have ‘noted’ it—that was the full element. After the big argument in your paper about how it works and why it works this way and the impact it causes, the government response says ‘noted’ and nothing more. So possibly on notice, Mr Murray, could we get some more information about what should happen with that in terms of ongoing discussion and in terms of the Parliamentary Budget Office. That has been the subject of significant questioning at a Senate estimates—how it is going to work and what it is going to do. It was not public at the time of your report or the government response. The government made a number of statements that they were considering options for this kind of work which to an extent, I would think, with my limited knowledge of this area, will now be claimed to be part of the Parliamentary Budget Office’s responsibility. In fact when I read it I thought it could possibly be that as well. I would like to get that on record so we can have some more discussion with you, on paper if necessary, for the committee’s purposes.

To get back to the local government issue, which is very much an aspect because of the timing of this committee’s inquiry and the discussions we have had and because we have received many submissions around the issue of local government recognition: do you have any views about that and the issues around it and how that can be progressed? As you may have heard from the

previous witness, twice now it has gone to the Australian community and twice it has been rejected.

**Mr Murray**—I have two main responses. The first is that any constitution should establish clearly the forms of government which it envisages. Local government has vastly developed in its abilities since the 19th century. The 19th century writers of the Constitution did not conceive of local government as it functions and operates now. I have an open mind about how they are dealt with in the Constitution. My assessment of Australians and Australian thinkers in the field is that they regard local government as part of the governmental mix. To me that would mean that it needs to be constitutionally expressed in some way. Attached to that is the issue of money but frankly I think money is a red herring. Every government I have ever known deals directly with local government. I am not sure that that is the big issue.

The other point is that constitutions are sometimes wise in having flexibility within them and sometimes unwise in allowing flexibility. One of the questions a constitutional convention should put is whether it is possible to be more dynamic or more flexible in the future with the sort of government structures you operate. Some states might in fact want to introduce regional government in the genuine sense, as in the departments of France or in the provinces of South Africa. I do not know if that is a satisfactory answer, but I would answer it that way.

Briefly on your other area, as you know, I think you cannot approach these things unless you have a number of reforms in mind. You have to improve the ability that lies within state parliaments. In the federal parliament there is a lack of ability in some areas. Political governance, which is a part of that paper of mine on strengthening Australia's democracy, does try to address that. One of the great failings of our parliamentarians is not that they do not understand balance sheets, finances or do not have a business or financial mind, but that they have failed to follow-up those recommendations that have come to them and which would allow the parliament to take a grip on those issues.

It is a contest. The executive is a separate body to the parliament and the parliament needs to exercise its independence in its role and responsibility for oversight and accountability. So a simple set of measures, such as I proposed in those remarks on appropriations in my budget transparency report, would drastically transform the relationship of the parliament to the executive and hold them to account. There are simple things. Remember that 75 per cent of all appropriations are standing—in other words, parliament can no longer interact with them—and are not subject to review and do not include sunset clauses. Some that have expired are not removed or deleted despite the Auditor-General's recommendations in those areas.

To me that is a failure of the parliamentarians in my day and in your day. It is a failure. Frankly, appropriations and staffing, finance and public administration, and those sorts of committees need to catch a grip and be far more aggressive on that front than they have been. There is too much of this concept that, 'Eventually we will be in government and it won't suit us'. That is absolutely wrong in my view. Senators, above all, should understand that and respond to that approach.

**Senator MOORE**—And in fact they have, over many years, made recommendations that have been very strong. Your point is that they do not follow-up on them.

**Mr Murray**—I think Senator Forshaw was the chair at the time—

**Senator MOORE**—Yes, he was.

**Mr Murray**—of the Senate Finance and Public Administration Committee in 2007—which I took notice of in my own report. It had some outstanding recommendations. The parliament just let it sweep by. I do not think they should. Frankly, the Senate is the senior house. If you stand up to that lower house you can get improvements and accountability. That is all it is. It is not to the benefit of one side or the other; it is actually improving financial integrity for the country as a whole. Attached to that has to be having a better look at what is going on in the states.

In the states there is no tax expenditure report. The federal tax expenditure 2010 report is running I think to over \$113 billion now, which is, as you know, indirect outlays. I think the most advanced tax expenditure reports the states produce is a Queensland one which has seven pages. It is a joke. A condition of providing finance to the states should include that they report on their tax expenditures on the basis laid down or agreed between the governments.

**Senator MOORE**—Go back to the COAG process.

**Mr Murray**—And by the way it was done, in terms of budget outlays—accrual accounting and the financial systems across Australia are pretty consistent now, but not for indirect outlays, which is a huge amount of money. You are talking a couple of hundred billion if you add the feds and the states together.

**CHAIR**—We are way over time, not surprisingly.

**Mr Murray**—I give long answers, you know that.

**CHAIR**—You have made a great contribution to the committee's work by your presence here and by the additional information you have provided. We are very grateful to you for coming and sharing it.

**Mr Murray**—I appreciate the opportunity.

**CHAIR**—We may have some more questions for you.

**Mr Murray**—Senator Moore did give me a question on notice. I am uninclined to respond to that—

**Senator MOORE**—It was huge, massive.

**Mr Murray**—The response would have to be so detailed and massive. I do not have the time for it, and really I think the nub of what I think is in that report I provided to the finance minister.

**CHAIR**—Perhaps we can encourage Senator Moore to recraft the question in a way which allows a much more straightforward response.

[11.43 am]

**NEWMAN, Mr Mark, Chief Executive Officer, Mandurah City Council**

**CHAIR**—Welcome. We have received your submission and we have published it as submission No. 35. Do you wish to make any changes to that submission at this stage?

**Mr Newman**—No.

**CHAIR**—We are happy for you to make an opening statement if you would care to do so and then we will ask you some questions.

**Mr Newman**—If I could make a brief introduction. I thought I might actually answer some of those questions you were just asking in terms of, ‘where is Mandurah?’ Mandurah has a long history. In 1830, Thomas Peel settled in Mandurah. That is one year after the Swan River settlement in Perth. It is almost as old as the state in terms of white settlement. We are located some 70 kilometres to the south of Perth, and we are the first council outside of the metropolitan boundary to the south.

We are 50 kilometres long but only 176 square kilometres, so do the maths. We are not very wide, and that in itself is an issue for us, but to some extent that is governed by the fact that we have a huge inland estuary, which is our eastern boundary to the bottom half of the council. In terms of our budget we are about \$110 million a year. I think that ranks us fifth in size in the state in terms of total budget. That is something new, and it is partly because we have had a quite large capital expenditure program over the last three years.

In terms of our demographics, you cannot talk about Mandurah without talking about growth. I think Bernard Salt described us as a growth council on steroids. We have slowed—there is no doubt about that. You do get to a size where you slow, but I have a little picture here that shows how we have grown. Basically, back in the fifties we had about 1,000 people and we now have about 70,000. Over the last 30 years we have grown at an average of probably 6½ per cent per year and in the last five years at an average of 5.1 per cent per year, but it is dropping. We slowed significantly with the GFC. So growth is a major issue for us, and to some extent that is why we focused on grants in the submission.

We have a much higher age profile than the rest of the state and the rest of Australia, quite a degree above the normal age of the population. We have a gap between about 14 and 40 when people leave Mandurah for both education and employment. We are well below the state average in wealth, despite the fact that when most people come to Mandurah they have a look at the canal properties and the extravagances, I have to say, that exist down there. It is very much a two-sided economy in Mandurah. There is high unemployment, significantly above state and national averages, and education standards are well below state and national averages. So we have some significant issues in getting those indicators to grow.

In terms of Mandurah’s identity, there is a bit of an identity crisis because we are rapidly becoming increasingly urbanised but we do not consider ourselves metropolitan. We actually



believe ourselves to be the capital of the Peel region, which is the region immediately to the south of Perth. We are a sea change economy very much based on tourism. There is a lot of daytripper tourism but we are trying to grow that. We are a member of the National Growth Areas Alliance, part of the Peel region and part of the Peel RDA, of which I am a member.

I suppose our submission is focused on five things. There is a bit of history in the submission. We have focused on FAGs, financial assistance grants, and I know that is not the inquiry's purpose but we will continue to raise it, because you can see the anomalies in our submission in terms of a council of our size and with our growth compared to what would be the case in New South Wales and Victoria. We have spoken about the direct grant models and how successful they have been. I have spoken a little bit about local government enterprises. Again, it is not really an exercise for your review but it is an issue in WA. We are not as free to explore alternatives in terms of corporations as they are in other states or in New Zealand. We have made the general comment about constitutional recognition which you have heard from many other councils. That is my introduction.

**CHAIR**—Thank you very much.

**Senator BACK**—I should declare an interest because of a link to North Yunderup. I am particularly interested in your table contrasting the Greater Shepparton area, the Coffs Harbour area and Mandurah. Can you take us through that in some more detail and try to put it in the context of other forms of revenue that the City of Mandurah receives to be able to run the local government area? For a start, what proportion of your overall funding would be reflected in the figure you have given us here of \$16.74? Would that be two or three per cent of your revenue base?

**Mr Newman**—Our Grants Commission funding is around about three per cent of our total operational revenue and we might get another two or three per cent from capital revenues. So we are very focused on revenues from either rates or service charges. In fact, I would have to say in the City of Mandurah we have made significant effort in recognising the operational shortfall in funding and that our own resources were the only way to go. We have had significant rate increases over the last 10 years, which probably sees us as one of the most highly rated councils in the state.

**Senator BACK**—Having said that, you have a high proportion of residences in the city of Mandurah and, as you have told the committee and as I am well aware, a relatively low socioeconomic average. So how would your rateable income from residents compare with that of other councils?

**Mr Newman**—It is quite high. As I say, we have made a significant effort in relation to rating and we have made a significant effort in relation to those we see as speculators or investors in the city. We have a lot of vacant land—6,000 vacant blocks—and that is an issue for us with the state government at the moment. They are about to change the rules on valuations, which will cost us in the order of \$3½ million a year. But we have made an effort. If people want to invest in the city, we are trying to build a city and we would like them to come and relocate or to build. Our rate revenue is significantly higher than that of some of our neighbours.

**Senator BACK**—What would be the level of your industrial/commercial rateable properties in Mandurah compared to others?

**Mr Newman**—Very low. We have a CBD which basically evolved from being a fishing village. One of our problems in building a city there is that we would like to have commerce, but it is not a Bunbury or a Kalgoorlie or an Albany. It does not have that traditional commercial centre, and that is one of our challenges. So there is not a high rate from the commercial sector and in fact there is virtually no industrial base whatsoever. The industrial base is to Kwinana or in the shire of Murray to our east.

**Senator BACK**—You heard Mr Murray talking about the 10 regions or the nine non-metropolitan regions. How does that impact on your city in terms of your capacity to increase your overall revenue base?

**Mr Newman**—Not significantly in terms of our overall rating base. The Peel Development Commission was introduced in 1994 I think, so a bit after the other commissions. It was excised out of the South-West Development Authority. I think it has been highly successful for us for two things: bringing the five councils in the area together to act as one in terms of economic development particularly. There have been social and environmental impacts as well. There have been some fantastic outcomes. The greatest impact for us would have been in terms of infrastructure lobbying—so things like the new rail or the new Perth to Bunbury highway. They were heavily involved in lobbying and seeing us lobby as a group.

**Senator BACK**—So that has been a successful outcome.

**Mr Newman**—In my belief, yes.

**Senator BACK**—You heard Mr Scheggia speaking earlier. How would recognition of local government at constitutional level actually affect, help and assist your council? Perhaps you could also speak for others who might be an equivalent level to you—Bunbury, Albany, coastal Busselton?

**Mr Newman**—The level of recognition is arguable. I do not think I could say it much better than Mr Scheggia has said it—what we would like is recognition. I do not think it has to be all through the document. There is a fear that the funding we received in the last 10 or 12 years through direct granting from the federal government, if challenged under that case, could stop flowing. We think that would be a disaster. They have been such successful programs for growth councils like us.

**Senator BACK**—Mandurah, as you rightly say, has done quite well in recent years. The railway now extending down to Mandurah has had a profound effect, along with the new Forrest highway going past you and the extension of the Kwinana freeway. Do you think the relationship with state government would be adversely impacted if the Constitution were to recognise local government, possibly with the flow of funds more readily or assured from Commonwealth sources?

**Mr Newman**—Again, I do not think I can say it better than Mr Scheggia. My view here is that it has been happening for quite a while. We have had a wonderful relationship with both

state and federal governments. That is the way we work. I have never seen it as a competition. It is actually about how we best deliver projects. I spoke about our capital works budget earlier. The reason it has grown is that my local members, on both sides of the house and both state and federal, have combined to see funding come together to make projects work. That happened, for example, with the new Perth-Bunbury highway and our entrance road that came off that. If it had not been for both sides of the house recognising this is beyond the scope of local government, these things would not have happened.

**Senator BACK**—Nothing like having a couple of marginal seats at state and federal level. I am sure that is not confined to Western Australia, Chairman!

**CHAIR**—It may not be. Senator Moore.

**Senator MOORE**—You earlier answered a question about local government in the Constitution. The examples you have used in this graph on page 60 of your submission show such a deep contrast. The figures are a bit dated for 2005-06 and so on, but an equivalent in Queensland would be very telling. I am sure there are cities and councils in Queensland that would be similar.

We spoke with the Commonwealth Grants people very early in this process and they talked about their area. The change you are suggesting could be extraordinarily complex in terms of the number you would have to deal with. It is complex enough dealing with states and territories. Can you give me some idea of how you see it working? You have obviously expended some effort in this area. You would have to with those figures.

**Mr Newman**—Yes, I have. Over 20 or 30 years most Western Australian council officers who have worked in growth councils have been arguing this. Yes, it is complicated and I do not know how easily it could be changed, particularly with the Constitution as it is. But the reality here is that, when you have a model that sees money distributed to the states per capita and then the rules change and you have to distribute with, in effect, full horizontal equalisation, for a state like WA and, to a lesser extent, Queensland it just cannot work. I am the first to acknowledge some local government reform may assist a bit, but only a bit.

I once did an exercise to present to a meeting of the grants commissions of Australia to show what would happen if the south-west corner of WA was excised from the rest of the state. It would see a population of about two million go down to about 1.8 million, so 90 per cent of the pool that currently comes to WA would go to that new state and our grant would go up three times. So it is all about the size of the state.

**Senator MOORE**—And also the geographic concentration.

**Mr Newman**—Yes, exactly. We do not have large regional cities in the north. It is very complex. I have argued at the state grants commission level, at the Commonwealth Grants Commission level. They generally point the finger.

**Senator MOORE**—At each other?

**Mr Newman**—But the reality is, without total change, it cannot take effect. Our suggestion of having a national grants commission that allocates to all councils would see equity. I know how difficult it is, because it would see New South Wales and Victoria lose significant funding.

**CHAIR**—They would not see that as equitable.

**Mr Newman**—No, they certainly would not. I can only compare my council to a council like Greater Shepparton or Coffs Harbour. Greater Shepparton is probably not a great example because it is not a growth council like us, but Coffs Harbour is probably not too dissimilar in terms of growth. We are actually not that different but we see them getting 4½ times our grant, and this trend continues.

**Senator MOORE**—So the most recent figures would reflect the same?

**Mr Newman**—Yes, they are similar.

**Senator MOORE**—That contrast is a telling argument. But the most recent figures have the same model?

**Mr Newman**—Yes.

**Senator MOORE**—You could throw in a Queensland one, allowing for the fact that Queensland does have more decentralisation and it is not such an easy task to say that this percentage of the population would disappear if you cut off the cape or something like that.

**Mr Newman**—I think one of the great indicators of how inequitable it is for WA compared to the other states is how many councils are on the minimum grant. Basically the whole metro area and any council that is over about 25,000 people is on the minimum grant. So we are heavily subsidising the wheat belt and the north-west—and I can understand why.

**Senator MOORE**—On a population basis?

**Mr Newman**—Population, dispersion, the cost of goods and services up there. It is really difficult. I understand the formula; it is just that when you do a national comparison it does not seem very fair.

**Senator MOORE**—I have just one more question. It is why I have been asking about the link between the local government and the RDA process. You said in your opening statement that you are involved personally.

**Mr Newman**—I am a member of the RDA.

**Senator MOORE**—The WA Local Government Association talked about the other level, a regional structure that the state government already has. How does that compare in your region? How does the RDA and the state equivalent of a regional authority compare in terms of boundaries and engagement?

**Mr Newman**—They are not exactly the same. It is a slightly larger RDA, and I suppose their functions have been extremely different and their resourcing has been different. The Peel Development Commission, the state body, has been staffed and resourced to actually achieve things. I have to say, so far the RDA has not had a chance to do a great deal. The rules have not really been laid out that well yet. I, similarly, was a member of the area consultative committee prior to the RDA and the major role was prioritising and lobbying for major funding. We did it very successfully for the region.

Do I think they could be done as one? I think they could be. I think it is an area where politics is not actually that strong. I am talking about the Peel region, but the needs are quite clear. My experience—and I have been at Mandurah for 18 years now—is that both sides of government generally engage on the critical issues.

**Senator MOORE**—Thank you very much.

**Senator BACK**—Following on from Senator Moore's question, how does the RDA for that area compare as a footprint with the Peel Development Commission's area of responsibility?

**Mr Newman**—It is very similar. I think it is slightly larger.

**CHAIR**—The RDA is larger.

**Mr Newman**—Yes. The development commission is made up of the five councils—Mandurah, Murray, Serpentine, Jarrahdale, Waroona and Boddington—so it is quite a diverse region. I think the RDA goes slightly to the north.

**Senator BACK**—Towards the city.

**Mr Newman**—Towards Kwinana, yes.

**Senator MOORE**—Another council?

**CHAIR**—Why wouldn't they be the same?

**Mr Newman**—I think you could argue that also with a whole range of government services. Education, police and health boundaries are all very different as well from a state basis.

**CHAIR**—I agree with that proposition. I am very strongly supportive of it. In Queensland, the boundaries are all over the damn place. You have different health, education and police districts. None of them coincide and it makes absolutely no sense whatever, as far as I can see. In a state like Queensland, where there is quite a well-established and respected regional framework, why you would not, in creating RDAs, take them as the foundation of RDAs, is a mystery to me.

**Mr Newman**—I agree. I would hope, if local government reform ever does occur in WA, that some of these things might be taken into account when the boundaries are—

**CHAIR**—You may not know this, Mr Newman, but how many RDAs are there in Western Australia?

**Mr Newman**—I think there nine.

**CHAIR**—So there are about the same number of RDAs as there are commissions.

**Mr Newman**—I think so. And I might be wrong, but the RDA and boundary might have changed; the area consultative committee definitely included Rockingham and Kwinana. I am just grasping with whether they disappeared out of it when the RDA was formed.

**Senator MOORE**—Mr Scheggia did mention that there had been discussion between the feds and the state. In the end they went different ways, but it was on the table.

**Mr Newman**—I am aware of one stage they were actually looking at using the government structure of the development commissions to run the RDAs. It had some logic to it.

**Senator BACK**—A lot of logic to it.

**CHAIR**—One of the things that strikes me in your very interesting submission is that it is not often that you see local councils arguing for amalgamation. In fact, it is the most rare thing, I think. But indeed you do that in your submission, as I read your remarks. I am interested to know whether or not the amalgamation that you might be thinking of is an amalgamation with councils to create the area equivalent to your commission or equivalent to the RDA. Do you have in mind just an amalgamation with the council next door, or contiguous to where you are?

**Mr Newman**—A bit of all of that. As I said, the City of Mandurah was excised out of the Murray Roads Board in 1948. So our rather unusual shape of 50 kilometres long and 3½ kilometres, on average, wide, was a result of that annexation back in 1948. It was a different time, of course. Our council has recognised for quite a while that our boundaries are illogical and that much of our needs are actually across the border—regional recreation space, protection of our precious waterways, potential regional airport, regional industrial land—all those things potentially not in the City of Mandurah but over the border. With a council our size, wanting them, needing them, probably able to push for them with a country cousin not really ready for them. Our ability to influence those things is really quite limited. For those reasons we have been talking about maybe going back to what it was pre-1948 for some time, with an unwilling partner. My council's attitude has been, 'We're not going to push this if they're not willing.' Our submissions have always said, 'We think in the long term both communities would be better impacted if we were amalgamated but we are not going to push for it.' We have always strongly believed that at some stage the state has to act, because local government is unlikely to do the reform themselves.

**CHAIR**—That is the point, isn't it? You say voluntary amalgamation is going to be difficult, but you are quite happy for the state government to come in and say, 'You have got to do it.'

**Mr Newman**—The realist in me says that I have not seen it happen in any other way.

**CHAIR**—Yes.

**Senator MOORE**—It is not peculiar to WA, as you well know. It has happened in just about every state, I think—they have had this dispute.

**CHAIR**—I think the observation is that Western Australia is—

**Mr Newman**—We are harder, as a state. The north-west amalgamation is almost impossible; they are massive as it is. I worked in Broome for four years and I understand the tyranny of distance up there. There is the wheat belt too; amalgamating those councils is not going to make them any more viable than they are now. In my view, the real benefits of amalgamation are actually in the urban and regional centres, where we actually get the grunt do things.

**CHAIR**—Is Mandurah a regional area for the purposes of receiving royalties to the regions?

**Mr Newman**—Yes, we are.

**CHAIR**—You are arguing for both the constitutional recognition of local government and also for a change in the way in which general purpose grants are delivered. It seems to me that you do not necessarily need constitutional change to rectify that anomaly. Is that a fair proposition from your perspective?

**Mr Newman**—To be honest, I have not looked at the legal complications of how it would occur. I am sure there will be significant ones, given the way the Grants Commission Act is formed. But I do not think they sit alongside each other, no. I think they are potentially two separate acts.

**CHAIR**—You heard my observation to Mr Scheggia about the problem of recognition of local government constitutionally. As a very experienced council CEO, do you think it potentially causes difficulty in line responsibility management and the relationship that you have with your state government if, indeed, there were recognition of local government in the Constitution and a larger flow of funds as a consequence of that?

**Mr Newman**—I do not think so. In the short term there might be a little bit of blurring of the lines, but I think they would probably sort themselves out pretty quickly. The reality is that at our level we really are looking for funding generally for projects or services. It is not really a matter of where it is coming from, it is just trying to deliver the best services in the best way that we can. There may be a little bit between the state and the federal governments but I think it would be sorted out pretty quickly because there is recognition from most that the funding really sits with the federal Australian government at the moment.

**CHAIR**—That is where the revenue is, certainly. Whether or not that is the most desirable arrangement is part of the kind of work the committee is doing. You said that you have increased rates significantly over the last few years. Are you getting to the point where, to be politically acceptable, you are at the top of your rate increases?

**Mr Newman**—Absolutely. We actually recognise that we cannot do it any more. We are running probably 20 per cent higher than our neighbour at the City of Rockingham, and as I said earlier there is clearly a split economy in Mandurah; there are some really hard-up people, and we now recognise that we are starting to contribute to some of that hardship. I do not think we can any longer.

The reason we had to do this was because we had done some significant modelling about where we were headed; a 10 year plan about what our needs were. Our operating deficit was growing and we had to flip that. We had to get an operating surplus that could contribute towards the huge infrastructure gap that we had. In our case an infrastructure gap is not about renewal, it is actually about new stuff—new facilities. We had to flip that somehow. We were very lucky that we did it at a time when money came; there was federal and state money available. We have got four major projects on the go at the moment, which have been jointly funded by state, federal and local governments. It was a wise decision when we did it, but we know we cannot keep going with the increases.

**CHAIR**—You are not the only council across the country, of course, running against the political reality that you cannot keep raising rates, obviously, and remain viable or, indeed, in government, as it were. I am interested in that given the reality with which you are confronted—that is to say the limited extent of the rates base, which is a common problem across the country—have you turned your mind to alternative sources of revenue? Is it only to look for increased funding from the Commonwealth? Is that the only solution you see?

**Mr Newman**—No, it is not. One of the reasons we have included the local government enterprises in the submission, even though it is not really a federal issue but a state issue, is that we believe that there are opportunities, but our local government act in WA heavily restricts us in terms of entering into any form of company or partnership arrangements or land dealings. It is very difficult. That is why believe there needs to be some freeing up in our act, because we do need to find other, safe sources of revenue. This is not about taking massive risk, because we know what happens when councils take massive risk, but it is about finding other, safe sources of revenue.

**CHAIR**—Are councils in Western Australia uniquely disadvantaged in that respect, comparative to other states?

**Mr Newman**—Yes. We are the only state where we are virtually prohibited from setting up a corporation.

**CHAIR**—And you could see that as a way of increasing revenue, obviously?

**Mr Newman**—I can also see it as a way of delivering services, even on a shared basis with other councils.

**CHAIR**—Is that reform in prospect?

**Mr Newman**—We are lobbying heavily with the state government at the moment. There is some conservatism within the Department of Local Government, which we are fighting, but we will continue exploring. WALGA are lobbying on our behalf as well.

**CHAIR**—If you were to get that opportunity, have you done any modelling as to what percentage of your revenue might possibly come from that source?

**Mr Newman**—No we have not.



**CHAIR**—Do you have some idea? Are we talking about five here, or 10? If you are uneasy about giving me an answer, that is fine, but I am trying to get a sense of the possible sources of increase.

**Mr Newman**—It would be guesswork for me to give a number now. All I can say is that some councils have advantages in certain areas. In our case, it is water based, so we are already operating a marina on behalf of the state government, which operates at a surplus. In some cases you have issues of isolation. We run a cinema which makes a surplus. As we become increasingly urbanised, competition will come; we know that. There are areas where certain councils have an advantage and they should be able to take that chance—not to exclude the private sector from it, because if the private sector were there, local government would not enter it. But there are opportunities that can be taken.

**CHAIR**—Thinking about the possibility of a clearer line of authority from the Commonwealth government to local governments—in other words, if the Pape problem did not exist and it was constitutionally clear that the Commonwealth could deliver funds directly to local government, do you see potential areas where that might develop as a foundation for increasing your revenue? You have had Roads to Recovery funding.

**Mr Newman**—And the local government infrastructure funding.

**CHAIR**—Are there other areas that you can see the potential for Commonwealth direct grants?

**Mr Newman**—Potentially. Education grants and universities—if we were jointly involved with universities.

**CHAIR**—Do you think there is any limit to the range of areas where that could happen?

**Mr Newman**—I do not think so.

**CHAIR**—Does that raise any challenges for managing grants and ensuring that the integrity of the grant is sustained and the reporting mechanisms and things of that kind?

**Mr Newman**—I am pleased to say that, in Western Australia, we have not had many issues in that regard because the funding generally—look, I think those controls can be put in place. On almost all occasions, as long as the right administrative processes are put in place—I think that could have happened with the education money as well: if there had been greater administration we might not have had some of the errors. So it is about setting up not the bureaucracy but the administration of the grants at both the federal and the local levels.

**CHAIR**—Where the Commonwealth is bound to funnel money through states and eventually back to local government, have you found that a reasonably efficient process, or have you found it a process that causes a measure of frustration, or is it that this is the way the world is and you kind of accept it as being the reality?

**Mr Newman**—I think I would say the latter. You come to accept it and know the processes.

**CHAIR**—Senator Moore, do you have more questions?

**Senator MOORE**—No.

**CHAIR**—That is the end of my questioning, thank you, Mr Newman. It is a very valuable submission. It has been very creative in the way in which you have addressed some of the questions that are before us, and I am very grateful to you. I am sure the committee is grateful for that too.

**Mr Newman**—And I thank you for the opportunity to talk.

**CHAIR**—Is there anything else you would like to put on the table before you leave us?

**Mr Newman**—No.

**CHAIR**—Good. Thank you very much.

#### **Proceedings suspended from 12.15 pm to 1.24 pm**

#### **BURGES, Mrs Rebekah, Executive Officer, Regional Development Australia Wheatbelt**

**CHAIR**—I welcome Mrs Rebekah Burges from the Regional Development Australia Wheatbelt. You have made a submission to the committee, which is submission No. 26 and has been published. Thank you for giving up your time to come and share your thoughts with the committee. We will invite you to make an opening statement, if you care to do so, and then we will ask you some questions.

**Mrs Burges**—I would like to make an opening statement. The submission I made related specifically to item (v) of the terms of reference:

... strengthening Australia's regions and the delivery of services through regional development committees and regional grant programs.

My submission was made in August 2010, prior to the federal election. I want to note that, because a lot of things have changed with the introduction of a new minister and a new department for regional Australia. A lot of the issues I raised have recently being addressed or are in the process of being addressed.

As I am sure you are aware, last week Minister Crean announced that a Regional Development Australia Fund of \$1.4 billion will be made available to local government authorities and not-for-profit organisations over the next five years. One of the criteria for this funding is that any projects put forward must be endorsed by an RDA committee and aligned with their strategic regional plans. This is an encouraging step forward for RDAs, as it provides us with renewed importance and allows us to have more of an influence over where federal funds are allocated within our regions.

One of the concerns that our committee has with this new fund, and the increased expectations of the RDAs, is that our workload is likely to increase quite drastically, yet we have not been

provided with any additional funding to enable us to employ more staff. The lack of resourcing is one of the issues that I raised in my submission, and it does not appear that this is something that is going to change in the near term.

I will give you an example of what resources we actually have to work with. RDA Wheatbelt gets \$250,000 a year in operational funding from the government. Essentially, this allows us to employ me as the executive officer, and an administration assistant. It also covers our operational costs such as rent, telephone and those sorts of things. It also allows us to deliver on a small number of initiatives in our region. We have to source external funding for any other programs or initiatives that we wish to initiate for the benefit of our region. That in itself takes up a lot of our time and detracts from our ability to work with our local communities for the betterment of our region.

Due to our limited resources, I am personally finding—and I am sure this is the case for a number of the other RDAs—that we work well over our contracted hours; quite an excessive amount of hours. That is just to ensure that we can achieve our RDA outcomes and maintain the credibility of the network. I do not think this is sustainable. It is imperative that the department reassess this funding and allocate money specifically for a project officer to assist the executive officers in delivering on the RDA outcomes. In the case of the wheat belt this is particularly pertinent: we cover over 150,000 square kilometres and we have 43 shires and over 160 towns and localities that we are expected to engage with. So it is quite an extensive area, and a lot of work for one person to be doing.

Funding aside, one of the greatest frustrations that the RDA committees have is that one of our core roles is to act as a conduit between our local communities and the federal government and yet, when we have provided information in the past to the government about issues and concerns, we have very rarely heard anything back. We are also very much on the back foot when it comes to promoting government programs and initiatives in our region because we do not have access to information, other than what is available on the internet and via help lines. So, really, we do not know more than what the average person can find out for themselves. I think it is imperative that in future the RDAs are consulted more and utilised for the purpose for which they were intended, which is to act as that conduit between the local communities and the federal government.

One of the other concerns I raised in my submission is that there is a potential for duplication in Western Australia particularly, because there are two regional development bodies that operate in each of the regions. In our area we try to work very closely with the development commission; however, we find that there still is duplication of effort, simply because we both have close connections with our communities, we identify the needs and we want to act on them. We do try to communicate but there is sometimes a bit of overlap and duplication of effort. I think a more consolidated framework for the two organisations to work together is needed. It is my understanding that the state and federal ministers for regional development are currently discussing this very point, so we are likely to have an outcome on that shortly.

In closing, I just want to state my strong belief that the RDAs provide a real opportunity for the Commonwealth government to engage with all Australians. One of the most valuable components of the RDA network is that we live in the areas that we represent, so we really understand what the issues are. It puts us in an ideal position to provide real information about

the issues, and it also puts us in a good position to provide government with input into the potential impacts that any of their initiatives are going to have in our regions. Thank you.

**Senator MOORE**—Mrs Burges, my first question is about the issues raised in relation to the structure that exists in WA, the state-regional structure, which does not exist in my state in Queensland. I did not know about this double structure until we had the Western Australian submissions. Was that the same under the area consultative—

**Mrs Burges**—Yes.

**Senator MOORE**—So this is not a new duplication; this has gone on before?

**Mrs Burges**—That is correct. It was in existence prior to the RDAs being formed.

**Senator MOORE**—And they are talking. That is the obvious thing: the governments are talking to see whether they can do something about this.

**Mrs Burges**—Yes, it is my understanding that they are talking at the moment. But we have not been given any directive on that as yet.

**CHAIR**—Does your RDA cover one or more areas?

**Mrs Burges**—Just one.

**CHAIR**—So are the boundaries similar?

**Mrs Burges**—We cover exactly the same boundaries.

**CHAIR**—So what is it called?

**Senator BACK**—The Wheatbelt Development Commission.

**Senator MOORE**—In Western Australian terms that is a really clear region. If you talk about the wheat belt, everyone knows what it covers.

**Mrs Burges**—Yes.

**Senator MOORE**—My other question is about the issues you have raised, which are not peculiar in terms of the RDAs with whom we have spoken, particularly in Queensland, in relation to resourcing. My understanding is that there are opportunities for the CEOs to get together and share.

**Mrs Burges**—Yes.

**Senator MOORE**—I know that the chairs and deputy chairs were in Canberra last week, but the CEOs also have an opportunity to have their own network. Is that right?

**Mrs Burges**—To an extent it is, yes. We do liaise via email. We are brought together twice a year—this is based on last year, because I have only been with the RDA for a year—as a state network and are given the opportunity to discuss possible collaboration on projects. My experience is that there has not been any cross-boundary collaborations in the past, but we are trying to go down that path now because we see a real benefit. And there is a lot of cross over. Whilst our regions are distinct, there are still agricultural areas in other parts of the state. Likewise, we have a bit of mining, which crosses over with other areas as well. So there are obvious opportunities for collaboration.

**Senator MOORE**—So the issues you raised about resourcing, information sharing and not actually having enough information that makes you relevant have come up from the people from other RDAs as well? So there is a concerted voice saying this is what is not good?

**Mrs Burges**—Yes.

**Senator MOORE**—Has that gone to the minister?

**Mrs Burges**—Yes. Last week we were in Canberra as well. The issue was raised then. We have had some key policymakers from other departments, including the department of education and the Department of Health and Ageing. We had the opportunity to talk with them directly and outline some of our concerns about the fact that, if they come to our regions, or there is an initiative that is going to be rolled out in our regions, we really should be consulted about it—or at least given some information so that we can then prepare our communities for it.

**Senator MOORE**—Which is your reason for being, in terms of providing that conduit.

**Mrs Burges**—Yes.

**Senator MOORE**—Until you actually see a change, you will not know, but do you think it was understood by the people with whom you were speaking? Did you get a sense, when you had all these people together, with all this knowledge from across the country, that it got home to them, in terms of what was wrong?

**Mrs Burges**—One of the concerns that I had after last week was that the people in Canberra have been, from what I understand, told from their state counterparts that we are getting consulted, that we are getting the information. One example is the Department of Education, Employment and Workplace Relations. We actually run one of their programs. Our RDA has taken on a contract for Youth Connections, which is the DEEWR initiative. We do not have any other information coming through from them, which I find quite surprising because we are actually contracted by them to run this program, yet the person up the front was telling us that they connect with RDA very well and they have been in contact with RDAs on a regular basis, which just is not the case.

**Senator MOORE**—And then you had a chance to make that clear to them?

**Mrs Burges**—Yes, hopefully it was made clear.

**Senator BACK**—That Canberra disconnect!

**Senator MOORE**—And how confronting for the officer from the department to be using you as an example for how great it is, when you are sitting there going ‘no’.

**Mrs Burges**—Yes.

**Senator MOORE**—That is what has to happen—that communication has to be fixed. You probably have another six months before you have another get-together.

**Mrs Burges**—I think it is going to be more regular now.

**Senator MOORE**—Good.

**Mrs Burges**—The department has actually given us an additional amount of funding to allow us to travel to state meetings. That is another thing: we have to use our own operational funding if we want to travel to any of these events, so when we go to Canberra we use our operational funding for that; when we meet in Perth for our state network meetings, we use our own operational funding. So it is quite restrictive as well. But they have just provided us an additional amount of money so that we can actually get together on a more regular basis.

**Senator MOORE**—Because travel costs would be more punitive for WA than for Sydney travel, wouldn't they?

**Mrs Burges**—Yes.

**Senator MOORE**—The other question I have is whether you have a view about the local government call for acknowledgement in the constitution, but I think maybe another senator will take that up. Is that right?

**CHAIR**—I might.

**Senator MOORE**—I am just worried about time. So the communications link and the resourcing link are the things that you have been working on.

**Mrs Burges**—Yes.

**Senator MOORE**—And the role that you have has been determined such that you are going to be linking with all those government agencies—it is not just one; it is all of them—to be the face in the local area.

**Mrs Burges**—Exactly.

**CHAIR**—You say you have a contract to deliver certain services. Is that unusual? Have other RDAs sought to undertake that sort of service?

**Mrs Burges**—Not to the same extent that we have. My understanding is that there are some—for example, in the Goldfields/Esperance area, they have taken on the role of the regional certifying body for the Department of Immigration and Citizenship. They do not get paid to do that. So there are components of other departments' roles that we can take on.

**CHAIR**—Was that contract put out to tender, and you tendered for it?

**Mrs Burges**—Yes.

**CHAIR**—And were you in competition with other private providers?

**Mrs Burges**—Yes, we were.

**Senator MOORE**—Were you in competition with any local councils? Did any local council tender for that?

**Mrs Burges**—No, not local councils. It was private enterprise.

**CHAIR**—The Wheatbelt Development Commission did not seek it? It does not do that kind of thing?

**Mrs Burges**—No. Primarily the reason that we tended for the Youth Connections contract is that the RDAs were going to be closing down at the end of 2009, and our organisation had been building up a bit of a profile in youth services. We had actually run a previous program called Youth Pathways, which was another DEEWR initiative. We saw an opportunity for us to continue on with that work because we already had the expertise there and we thought it would be good to have that continuity in the region. So the committee at the time thought there was an opportunity for us to continue going, even if the federal government was not going to continue to provide operational funding. That is why they went ahead with that.

**Senator BACK**—That was going to be my first question: what competitive advantage might you have had? Just to satisfy myself, being a one ‘s’ Burges, are you a ‘Burges Siding’ Burges?  
**Mrs Burges**—Yes.

**Senator BACK**—I knew Keith and his wife very well. For the benefit of our colleagues, Gingin is not really part of the wheat belt; it is north of the city. Can you tell me why the RDA is based in Gingin?

**Mrs Burges**—The previous executive officer for RDA Wheatbelt actually lived in Gingin, so they based the office there.

**Senator BACK**—And the Wheatbelt Development Commission is based in Northam?

**Mrs Burges**—Yes.

**CHAIR**—Just for those of us who are not familiar with the area?

**Senator BACK**—Sure. Northam is 100 kilometres to the east of Perth, and would really be on the western fringe of the wheat belt. If you wanted a centre of the wheat belt you would probably say Merredin, which is halfway between Perth and Kalgoorlie—east of the city.

**Senator MOORE**—We have a Gin Gin in Queensland as well.

**Senator BACK**—You do indeed.

**Senator MOORE**—It is not a common name.

**Senator BACK**—Given the fact that the RDAs, to quote from your submission, bring ‘together the three levels of government’—federal, state and local—‘to provide a strategic and targeted response’, why is it that your RDA and the Wheatbelt Development Commission could not actually co-locate and share tasks, responsibilities, opportunities, administration et cetera?

**Mrs Burges**—We are actually looking at doing that now. In the past they had not the best relationship, I guess you could say. The Wheatbelt Development Commission CEO and the EO of RDA Wheatbelt did not have the best working relationship. And they were quite separate organisations back then; they had quite separate programs. Obviously, Royalties for Regions was not around at that stage, and we had the Regional Partnerships funding. There just was not the crossover that there is now. But we are definitely considering it.

**Senator BACK**—You are working in the same space. At the end of the day, it is the members of the community that fund it and therefore ought to be the recipients. For our benefit, can you give us an understanding of what you see as the key issues, opportunities and challenges for your RDA, having regard to the wheat belt?

**Mrs Burges**—One of the key issues that I can identify straight away is trying to work across 43 local government authorities. That is a huge issue for us. They are very much about their own little piece of land and they do not really want a regional focus. That is a real challenge for us and for the Wheatbelt Development Commission. It is a challenge to work with so many different shires and so many different little towns to try and attract some of these programs. We do not qualify for a lot of government initiated programs and initiatives because we have so many small communities who do not meet the criteria. So a real challenge for us is trying to shift that focus from being a local one to more of a regional focus and getting them to work across the shire boundaries. That is a key challenge. Also, as I mentioned, resourcing is a bit of a difficult one for us.

**Senator BACK**—Perhaps I should reframe my question. You have mentioned youth. Clearly, you have had wonderful outcomes there, because you are doing this work under contract to DEEWR. Somebody at some stage—whether you or your predecessor—recognised the challenges associated with connecting youth. Can you give me some other examples from within the wheat belt? What about ageing, suicide or economic stability? What are the challenges that you are going to ask the board to invest some resources in?

**Mrs Burges**—Ageing is one of them. There is a project that we have recently initiated, working with the Wheatbelt Development Commission. We have an ageing population, as a lot of regional areas in Australia do. We do not have a lot of facilities. We do not have fantastic hospitals. I do not know whether you have seen the news about the Northern Hospital. But we do not really have the greatest healthcare facilities and we do not have a lot of residential living arrangement support for elderly people. That is a project that we are working on.

One of the other really significant issues that we are facing in the wheat belt is drought. For the last nine years, the wheat belt has had below average rainfall. Last year we had the lowest



annual rainfall on record for the wheat belt. It is a huge issue. Not only are the farmers suffering but the local businesses in the region are really struggling at the moment. With the pilot drought reform measures that came out last year and that are still being trialled at the moment, a lot of those small businesses were not included in any of the support funding that was available. We have initiated a project across different organisations to try and provide some support for those small businesses. A business self-assessment is done in which a business can identify the weaknesses in their organisation and opportunities to go into other markets or to expand what they are offering—that sort of thing. That is another significant issue.

Youth is definitely one that is on our radar. Transport is another significant issue that we are trying to tackle. We do not have public transport in the wheat belt, and there is quite a large distance between the towns and between this region and Perth. The opportunities to commute from the wheat belt into the city are not really there unless you want to drive yourself. Further, within towns there is no public transport, so youth cannot get to different activities and elderly people cannot get to appointments and that sort of thing. So transport is a really big issue for us as well.

**Senator BACK**—I asked that question in the context of this announcement by Minister Crean to see what you are formulating in your mind to put to your board as to what should find its way into the funding round. I brought these Queensland senators here in the hope that they would bring some rain with them, but they let me down there! The rain helped resolve the droughts in New South Wales in Victoria. In the same vein, there is Royalties for Regions funding now, and the Wheatbelt Development Commission would have some influence there. Is it possible for you to work with the commission, divide up the task and divide up where funding might be sought?

**Mrs Burges**—Definitely. One of the initiatives that we embarked on last year with the Wheatbelt Development Commission was to go around to the regional organisation of councils—the ROC groups—in the wheat belt and get them to identify their priority issues and the infrastructure projects that they could initiate to address some of those key issues. The idea was that to apply for the component of Royalties for Regions called the Country Local Government Fund, which has a regional component to it as opposed to local government area projects. We intend to use that. Out of that process, we developed a plan called, ‘Towards a wheat belt infrastructure.’ That identifies some of the key issues across the wheat belt and the projects that we can put up. Our intention is to use that as a basis for our plan for this new fund.

**CHAIR**—We took some evidence at our Brisbane hearings from three different RDAs. One of the things that struck about that evidence was that they each had very different perceptions of what it was that they were supposed to be doing. I wonder whether or not you have a clear understanding of your mandate and the extent of it. Secondly, do you think that the mandate that you have been given is an adequate one for the kinds of tasks that you have been asked to do?

**Mrs Burges**—What our role is is a lot clearer now. Last year, when we were all in the formative stage—and Queensland was the last one to come on board, so they were a bit behind in those terms—it was not clear. We have a clearer understanding now of what our role is. My understanding of that is that there are five components to it. We are a conduit of information and the promoter of government programs and initiatives. Basically, we are the one-stop-shop for the federal government in our regions. We are also an advocate for our regions and we try and tackle

some of the bigger issues that we are facing. That is my understanding of the role of the RDAs. I think that it is the correct mandate for us.

**CHAIR**—You are comfortable with the responsibilities that you have been given. You are obviously not comfortable with the amount of money that has been allocated to fulfil them. Even with the additional funds that are now available, you are not going to get a lot of that.

**Mrs Burges**—No, that is right. The biggest issue that we have is that we cannot tackle all the key issues because we do not have the resources to do it. That is why we link in with the Wheatbelt Development Commission: so that we do have those additional resources to tackle some of those issues. There are a lot of expectations placed on the RDAs. Our ability to deliver on those effectively is limited, because we only have one person funded to it. So one person has to cover 43 shires, address the big issues and act as that conduit.

**CHAIR**—You may be uniquely challenged in that sense with so many shires to deal with. That was one of my other questions. We had some evidence earlier in the day about the desirability of amalgamations of shires in Western Australia. In a way, it is not our mandate to address that issue. But I am wondering whether you think that that possibility would be a desirable end in the wheat belt?

**Mrs Burges**—I do. There are some groups that are starting to look at amalgamation, but there is a lot of resistance to it from our local government areas. But a couple of groups are leading the way. A group of five shires is looking to form a super shire. But that has been a very long process, and there is still a lot of concern about how it is going to turn out. The biggest concern is that, because there are very small communities in these shires—some of the shires only have 500 people in them—they are worried that if the merge with the biggest shire they are going to miss out on things. There is a lot of resistance to it, but it is happening now.

**CHAIR**—That is a very familiar theme, Senator Moore.

**Senator BACK**—Before going of the topic of shires, how many of those 43 shires make a financial contribution to keep the RDA going? Any?

**Mrs Burges**—No. None.

**CHAIR**—Is it possible for RDAs to work with private enterprise to leverage some of the projects through commercial private activity? Have you investigated that? Do you see that as an opportunity?

**Mrs Burges**—Going forward, it is definitely an opportunity. It is not something that we have looked at as yet, but we definitely will be in future. One of the things that Minister Crean made very clear last week was that he wants to see projects that have leveraged funds from not only the state, federal and local governments but also from private enterprise, so that is something that we will be looking at.

**CHAIR**—Is it your view that your RDA is in fact covering too wide a geographic area? Are you operating with a functional boundary or, if you had your druthers and it was a more perfect world and you were drawing the boundaries, would you draw them in a rather different way?

**Mrs Burges**—The region makes sense, because it is predominantly agriculture that we are dealing with and that is the primary industry here. The boundary is okay. The number of shires is probably too high. And the amount of resources that we are given is too little. But the boundaries make sense.

**CHAIR**—You must spend a lot of time driving.

**Mrs Burges**—Yes.

**CHAIR**—What about the relationship that you have with the state government—if indeed you have any at all? I would be interested to know whether or not you see that as a possibility or whether you have met with resistance from the state government or if they are embracing the idea of RDAs—or at least yours—in a way in which you think that is advancing the notion of RDAs?

**Mrs Burges**—We link in with the state departments when we are focusing on a particular project, for example. Today I had a meeting with the department of health in Northam to talk about our aged care strategy. We also linked in with the development commission. They are both state entities. We link in with them when we need to, but the relationship could be improved. I do not know who supportive that they are of us. They link in more with the development commissions than with the RDAs.

**CHAIR**—Is there a tension there between the relationship of state government with its commissions and the RDAs? RDAs are a federal creation, so it seems to me that there is a measure of tension and a bit of confusion about who is doing what with who. I suppose the question is whether this is a structural problem with RDAs or whether it reflects a particular view of this state government or other state governments elsewhere.

**Mrs Burges**—From my understanding, in other states there is a lot of crossover between the state and federal governments. For example, my understanding is that in Victoria the RDA funds go to the Victorian government, with the RDAs being underneath them. That is my understanding. The crossover is a lot clearer there. In WA, however, they are very distinct bodies. I do not know if it is across the board or if it is just a WA issue.

**CHAIR**—Do you have a view on which is the better mechanism?

**Mrs Burges**—There needs to be closer collaboration between the organisations. There might be a bit of blurring of the lines if you have a state government run RDA. They are going to be looking after their own interests before they look after federal interests. There might be a bit of clouding of the waters if they were combined. So the model here is probably better with them being separate.

**CHAIR**—Part of my concern here is that, while there is some virtue in regionalism as an idea, we ought to be careful about creating yet another layer of bureaucracy. We have three levels of government already and one of them—or perhaps two of them—are dissatisfied with the level of their revenue. Now we are grafting onto this system a fourth level. While I am interested in the idea, I am not persuaded or convinced about it and do not completely understand how it

contributes to the overall good, I suppose. You have been on the frontline, as it were. Do you see these problems or is there a relatively uncomplicated relationship?

**Mrs Burges**—It is a complicated relationship. It adds that extra level. One of the issues that we have out in the wheat belt is that we do not have a lot of government representatives, so they need either the development commission at the state level or the RDAs to be that front for the government, I guess. We do not have a lot of the agencies out in our area. That changes the situation as well. The wheat belt is probably a bit different to other areas in that sense.

**CHAIR**—Is there a possibility that you might facilitate the movement of state government activity into your region? Is that something that you have turned your mind to?

**Mrs Burges**—One of the opportunities for the RDAs is that we could run some of the programs. Rather than having a new department or agency set up out in the wheat belt to deliver whatever service it might be, the RDAs are in a position to take that role on. We have done that with Youth Connections. Other RDAs have done that for the department of immigration. We can do it with AusIndustry and those sorts of agencies. There are opportunities for us to run the programs for the federal government so that they do not have to put additional resources out there.

**CHAIR**—Can you see yourself doing that in relation to the state government as well?

**Mrs Burges**—Probably not so much—not in our current capacity anyway.

**CHAIR**—Is that a reflection of your mandate or is it just the problem that state governments are relating more directly to the commission?

**Mrs Burges**—I think that is more what it is, yes.

**Senator BACK**—If you were co-located, both physically and in terms of sharing of workload, that could become a possibility.

**Mrs Burges**—Yes.

**CHAIR**—I think this problem may even be unique to Western Australia because the regional commissions are so well formed and developed. That is not true in other parts of the country—it is certainly not true in Queensland.

**Senator BACK**—I had not been aware of that until it was raised today.

**CHAIR**—You have a unique situation here. Insofar as there are any pressure points in the system, it may be a result of the fact that you actually have a relatively well developed system of regional government, or regional cooperation anyway, which puts you then in competition with the RDAs that have been created.

**Senator MOORE**—Mrs Burges, we put a question to the RDAs in Queensland about whether the RDAs had any view about the acknowledgement of local government in the Constitution. It is a core issue for this committee because of the timing aspect. We had some discussion in

Queensland with RDAs about whether that was something people had thought about. Has the RDA network in Western Australia turned its mind to that?

**Mrs Burges**—Not as far as I am aware. It is not something that I have ever had a discussion about.

**Senator MOORE**—With that large number of local governments in your coverage area, and I know that local government has a seat on the RDA board—I think that is the right term—how do they work it out? We had a large enough discussion in Queensland when we had three or four councils. How do the local regional councils determine who will be representing local government on the RDA board and then how does it feed back? Does that lead to any more concern? I do not know the geography of the wheat belt, but, if someone from one area is on the RDA, do other areas see that they might get preferential treatment?

**Mrs Burges**—Potentially. All of our board members are appointed by the minister. My understanding is that some of the councillors were approached by the department and asked to apply for a position on our board. We only have two local government representatives on our board and they are actually from adjoining shires in the central wheat belt, so we do not have a lot of coverage.

**Senator MOORE**—Do they have any role in going back to the local government network and saying, ‘This is what the RDA is doing; do you have any ideas?’ They do not take that kind of representative model?

**Mrs Burges**—No.

**CHAIR**—Is that your responsibility?

**Mrs Burges**—Yes, it is.

**CHAIR**—Thank you for coming this afternoon. We very much appreciate your evidence and your submission. You have helped us a great deal.

[2.00 pm]

**ZIMMERMANN, Dr Augusto, Private capacity**

**FINLAY, Mrs Lorraine, Private capacity**

**CHAIR**—Welcome and thank you for coming along this afternoon. We very much appreciate your giving your time to the committee. We have your submission, which we have marked as being submission No. 17. Do you wish to make any amendments or changes to it at this stage?

**Mrs Finlay**—No.

**CHAIR**—Our practice is to invite you to make an opening statement if you care to do so and once you have done that we will ask you some questions. If you would like to make an opening set of remarks please do so.

**Dr Zimmermann**—Thank you, Chair. I am very honoured to be here. This is something we had in mind and the opportunity arose with this proposal of changes that can be made to the Australian Federation so I approached Lorraine. My idea was to explain what was the intent of the draft of the Constitution and to show the manner in which we have departed from the original intention of the drafters. For a long time I have been very much concerned about decisions that have been made by the High Court regarding federal matters. The Work Choices case particularly caught my attention. I think that any change that we can propose could be somehow undermined as a result of the methods of constitutional interpretation that are available. So even if one proposes amendments to the Constitution, a further problem is actually to see whether the High Court will faithfully apply the provisions of the Constitution. So, if you think about, for instance, the Acts Interpretation Act, you see that is related to the interpretation of normal statute. We have a very clear rule that the law should be interpreted according to the intentions of the legislature. I find it quite unbelievable, or at least curious, that the most important law of the land, which is the Commonwealth Constitution, is not protected by this same kind of method of interpretation that has been demanded from judges when it comes to interpreting normal legislation. So I have been thinking about the possibility of including in the future a provision saying that the judges would have to interpret the Constitution according to the intention of the drafters and perhaps in combination with other methods.

Of course there are some judges who believe in the living Constitution approach, and I understand that. But I think Professor Goldsworthy is quite right to say that even this sort of analogy has its own limits. You cannot think about cutting the trunk of a tree because the result is to kill the tree. If you think about that in relation to the Constitution and changing needs, you have to be careful not to undermine the federal compact. I think at this point the situation is quite fuzzy. It is very hard now to know which tier of government you have to approach when it comes to a legislative matter. Perhaps one solution to make that clear again is to redefine the attributions. Also, you have to instruct the High Court on how to interpret the Constitution. I think that is the only solution, because even if one successfully amends the Constitution there is

the possibility that very soon the Constitution will again be quite chaotic in terms of finding the attributions or the competencies that are allocated to each tier of government.

**CHAIR**—Mrs Finlay, do you wish to make an opening statement.

**Mrs Finlay**—If I could just briefly add to what Dr Zimmerman said. Firstly, thank you for inviting us to appear before the committee this afternoon. It is a privilege to be here. From looking at the terms of reference of the committee, I think there are really three key questions that follow on from each other in relation to the work that the committee is doing. The starting point needs to be the simple question of: does federalism matter? Are federal principles still relevant in modern day Australia, and is this a constitutional value that we should be worried about? In the first part of our submission we have tried to look at the benefits of federalism. We have also accepted that there are some disadvantages to federal systems; but, overwhelmingly, we reached the conclusion that federalism is still an incredibly important value and something that is the best governmental structure for Australia.

If that is the starting point, the second question then becomes: is the federal system working effectively? Do the structures that we have at the moment allow us to achieve the optimum benefits from Federation? In our view the answer is no, because the shifting of the federal balance since the formation of the Federation has resulted in us getting the worst of both worlds. We are not effectively seeing the full benefits of federalism, and yet we have all of the negatives of an entrenched federal system, with duplication and delays being built into the system. If we say, firstly, federalism is important and then, secondly, the current federal system is not really achieving the optimum results, the third question and the difficult question for this committee is: what can we do about it? In our submission we have made a number of suggestions of quite small changes that can be made and also some larger structural reforms that would make a real difference to restoring the federal balance and to reinvigorating federalism in Australia.

Perhaps if I could just briefly focus the committee on two of the most important categories of changes. The first is the financial relationship between the Commonwealth and the states. We have made quite a number of recommendations about ways to reduce vertical fiscal imbalance and to make horizontal fiscal equivalence operate a little more fairly to all of the states and to reduce the dependence on specific purpose payments under section 96 of the Constitution. The second category involves the states, giving them an effective guaranteed role in matters of constitutional significance. This involves things like the appointment of High Court judges, the initiation of referenda to amend the Constitution and also the ratification of treaties by Australia.

I think those two broad categories are probably the most important that are mentioned in the submission, but there are a range of recommendations that we have put forward for your consideration based on the fundamental starting point that we think federalism is an incredibly important value and something that is the right structure for Australia today, but the current system is probably not allowing us to get the maximum benefits from the system of government that we do have.

**CHAIR**—Thank you both very much. And thank you for the submission, which, from my perspective and probably from that of other members of the committee, has opened up some interesting avenues of thought as to what we might do to improve and reform the state of federal compact at the moment.

Dr Zimmerman, can I pick up on the point you make about federalism being missing from the Constitution, if I can put it that way, which is a proposition you might be prepared to embrace looking at the way in which the High Court has decided many cases over a long period of time but is a perverse proposition in the context of reading the Constitution. If you read the Constitution you cannot be in any doubt that this is a federal constitution. There is a whole chapter on states and what they are to do. While I can see the point you are making and I am almost sympathetic to it in relation to the way in which the High Court has struck a balance between the two, I cannot see how you could do more than is already in the Constitution because it strikes me, if you just read that document, that it is manifestly a federal compact between states and the Commonwealth. How could you not see that as being an elemental constitutional interpretation?

**Dr Zimmerman**—I have no doubt that the Constitution is a federal compact, which means that there is a distribution of power and the fact that the Commonwealth government is only mentioned in the Constitution in terms of the powers which have been granted to the central government for the purpose of protecting state rights. I believe that the original interpretation of the High Court, the one that was exploded, as some constitutionalists say, by the engineers case, is actually the right approach for a federal document. If you want to change the Constitution in terms of increasing the legislative power of the Commonwealth government, there is a mechanism in the Constitution, provided by the Constitution, which is found in section 119—it is the referendum. What the High Court has been doing is, in a certain way, to unconstitutionally expand the powers of the federal government. If you interpret section 106 properly, it talks about the continuation of the states' legislative power and the state parliaments in section 107.

My interpretation is that we should read that as a state reserved power, which means that the states would only lose the powers which have been explicitly allocated to the central level of government. I know that this can cause problems because to change the Constitution some people say is very hard. I disagree with that. I think to change the Constitution is not as hard as people think. I think most of the proposals are unpopular or they have not had the support necessary from the majority of the people and from the majority of the states.

There are many constitutions which have been amended. It is much harder than in Australia and they have amended their constitutions several times, much more than here. I contend that it is not a matter of the Constitution being hard to amend; it is the fact that people are happy with the constitutional design, even though they might not be happy with the interpretation of the Constitution by the High Court. It is not so much the fault of the central government because they are looking after their own interests. I think it is the fault of the guardian of the Constitution, which is called the High Court of Australia. We have to think about that too. I think High Court has not fulfilled its purpose of being the guardian of the Constitution.

**CHAIR**—That is a rather heroic interpretation of the High Court's position, I would have said. It runs counter to a great deal of Australian jurisprudence.

**Dr Zimmerman**—That is right.

**CHAIR**—I am interested in the proposition but I am not confident that you are going to persuade many High Court judges that, in fact, you are right. However, it is on the table and that is the interesting thing about it. You make the point that there has been this shift towards



centralisation and you have identified the High Court as being at least part of the source of that problem. I am wondering whether or not you have a view as to other culpable parties in this respect. Is it a function of federal political failure, for example? You make the point about federalism being out of fashion in Australia but not necessarily out of fashion anywhere else in the world and, in fact, it is very much in fashion. I am wondering whether you have a wider perspective as to why you think federalism is failing in Australia.

**Dr Zimmermann**—It comes to the role of politicians. I actually think that the Senate has a very important role because, theoretically speaking, the Senate is not the house to represent the people but is the house to represent the states. So if we have a bicameral system in which one of the houses represents proportionally the people and the other represents the states in theory, I think senators should be there also to protect the rights of the states. If you have the passage of many bills that have been quite controversial in terms of perhaps undermining some of the original state legislative powers, I think that should perhaps be something that senators in particular should consider. We know that the Senate represents the states very much only in theory, because in Australia senators have never been appointed by the state legislatures, which I think is great. In America originally senators were appointed by the legislatures. Some people actually think that after senators became elected directly the Senate in America became less protective of the states and that led to a process of centralisation. I am not here to advocate for these sorts of things. But I think it is very important that the Senate fulfils its role of representing the states, at least making the point that the states should be heard at the federal level of government.

**CHAIR**—I will come back to that when we have some more time. I am sure Senator Moore has some questions.

**Senator MOORE**—There is so much to ask about and we have limited time. The two things I want to follow up are these. Your submission was so detailed but the bit about the role of the Senate only got a couple of paragraphs, and I know it is something that you have looked at so I would not mind getting a bit more on that. The other one is a proposal that has been put before us on a number of occasions by different witnesses. It is about having an independently funded constitutional convention whose role is to look at the way that the Constitution operates and to feed information through to governments—I think it is a feature that possibly they were looking at federally, but the idea was about governments—about the dynamic of the Constitution and how it operates. I would very much like to get your opinion on that proposal, which has been put by a number of the people that you quote in your submission. In the little bit of time we have, I will go to the Senate. The role of the Senate has always been, as was the original proposal, to represent the states—and all of us have to be signed off by our states. I suppose that is the nod towards the appointment element, that we have to go through the states approving we as the senators and then it all goes through to the federal area. The suggestion you put in your submission is that there be some kind of immediate link between the senators and the state parliaments. That is only one you have put forward. Have you given thought to any other way or to how in fact that could operate, being that there are 12 senators and possibly more to come from the NT although we do not know as it is still in discussion? How would you see such a mechanism operating, given that we have 12 senators in a different cycle of election, so there would be this more dynamic relationship between the senators and the parliaments from which they come?

**Mrs Finlay**—We will take that second question first and then make some comments about the constitutional convention. I think the important thing to recognise in relation to the Senate is we are certainly not advocating that the state parliaments should appoint senators, because I think you would have an issue exactly the same as the issue you have now, with political parties at the end of the day.

**Senator MOORE**—Absolutely.

**Mrs Finlay**—You do not solve that problem. But in terms of a linkage between the state parliaments and the senators, I think that is really important because once you are appointed that is the end of the communication. I do not think it should be a matter of senators simply being asked to turn up before the state parliament and report maybe once a year, once every two years or however often. There actually needs to be two-way communication between the state parliaments and the senators, so that the senators can inform the state parliaments more closely about the work that they are doing in the Senate on behalf of their states and also the state parliaments can feed to the senators critical information about the issues of concern to the states that the senators represent. How you do that is a more difficult question, but I would think there would be a number of ways of being able to put in place mechanisms that allow for that constant communication without, for example, simply saying that once a year every senator will turn up before the state parliament and give a mini state of the union type of address.

**Senator MOORE**—That would be a big day.

**Mrs Finlay**—Exactly.

**Senator MOORE**—People would be queuing up in the public galleries on that day.

**Mrs Finlay**—I am sure it would be of great interest to all of the citizens, but you would probably need to look at another way.

**Senator MOORE**—It seems to be a mechanism which has not really been considered. I could not find anything in my limited research about the development of the Constitution that actually looked at that link. It was there in a model as, with the Americans, we would have an upper house that would look at the states. But I could find no papers that said this is how the link would happen. So that is a really interesting process. The other process is in terms of the convention about replacing a senator when they have left, for whatever reason, and even allowing for the political process not to intrude on that. I will follow up that, but I think it was a really interesting thing that jumped off the page at me.

**Mrs Finlay**—I think even a simple start of putting in place a mechanism that gets everybody in the same room at some point in time would be quite useful, because there is a quite adversarial relationship oftentimes between the state governments and the federal parliament and the communication that does happen tends to be at the COAG level, which does not allow the senators and other parliamentarians in the state parliaments any role in that arrangement.

**Senator MOORE**—The previous Premier of Queensland felt it was better to actually have representing of the states in the Senate. I thought that was a really interesting proposal, which, of

course, he did not run past any of the senators. About the constitutional convention model, have you looked at that? Have you got any issues around that one?

**Mrs Finlay**—I do think there are two very important things to keep in mind. The first is that a constitutional convention cannot happen in a week; it is not just about getting 100 people to Canberra to have a chat about the Constitution. The original constitutional conventions took years and involved extensive consultation and were a huge project. I think we almost need to get away from the idea of having a single convention where we will solve the problems of the Constitution in seven days and look at something a little bit more substantial. I do think it is well overdue to sit down and look at how the Constitution works. That is not just to say that we should be taking power from the Commonwealth and giving it to the states or anything like that. It is simply saying that things change and develop over time and that the arrangements we had 100 years ago in terms of the areas that we gave to the Commonwealth under section 51 might not exactly replicate what our needs of today are. I think the second point that you mentioned, Senator, is that it needs to involve all levels of government, so it cannot just be a federally driven initiative and there needs to be something in which the states and the Commonwealth have a role to play because at the end of the day they were set up as equal governments with no one government being superior to another. Even with this committee, while it is a great step forward, it is a Commonwealth-driven initiative and what we actually do need, I believe, is the states and the Commonwealth governments looking at this together to try to come up with suggestions.

**Senator MOORE**—So would the convention model be a way of doing that to ensure that whatever comes up would have the equal participation of the states and the territories and the federal government? So that would have to be one of the models of getting it working?

**Mrs Finlay**—I think so.

**Senator MOORE**—We had evidence in Brisbane—and my mind has gone completely blank; I can see him but I have forgotten his name—from an academic from Griffith.

**CHAIR**—Dr Brown.

**Senator MOORE**—I do not know how I could have forgotten Dr Brown. One of the things that came out of that was the awareness of the Constitution in our community. The proposal that he put to us was that if you actually go to the people you will see they want to talk about it. The survey that he has been funded for a while to run indicates—to my surprise—that the people who were contacted did have views. I am just wondering, from your perspective of working in this field, about your view of the level of knowledge—how we could improve it if in fact it needs to be improved and whether this discussion is very much owned by an elite who are completely turned on by it and can talk about constitutional law forever without really engaging with the wider community. Is that a proposal that you would like to comment on?

**Dr Zimmermann**—I think it varies from state to state. In states such as Victoria and New South Wales, the federal issue is somehow less relevant than in Western Australia. That is because, as I will try to explain in a chapter that I am going to write for Nicholas Aroney's book on federalism, we have a tradition of secession here. It is a very bad idea but shows the level of dissatisfaction with the federal model. That is caused by the fact that you feel very isolated here. So federal issues and federalism are actually important for Western Australia. You can even see

discussions in this regard in pubs among friends having beer, which is quite interesting. We would never have this sort of thing discussed in an informal meeting in Victoria or New South Wales, but here federalism is actually quite important. We were the last state to join Federation. That is why in the preamble Western Australia is not mentioned—because the decision to join the Federation was made just after the Constitution had been drafted. So for us here in Western Australia I think this is an important issue. I am not so sure whether this is a correct impression, but I have noticed that people feel somehow they are not heard very well by the federal government. So this is an important issue here. It is not only the elite that discusses the subject, at least in Western Australia.

**Senator BACK**—I will just pick up on a comment that Senator Moore made in relation to changes to the Constitution. Senator Moore made the observation that, in Queensland, any time you do not want the Constitution to be changed you just refer to the proposed change as being something developed ‘down south’ or, from WA, in the east. You can almost guarantee that it is dead on the vine. But you are right—it is distance from the dean’s door, isn’t it? That is why federalism is so much a subject here. Reading the material that you kindly gave to us and the comments that you have made, am I right in the sense that it is not necessarily tension between the state and federal governments but tension from both towards the actions or possible actions of the High Court, or predicting what action the High Court may or may not take? Is that a reasonable summary?

**Dr Zimmermann**—I think so. On many issues, the Constitution does not determine exactly that a certain attribution should be the role of the federal government to provide. I think what happens is that the High Court has somehow paved the way for the centralisation process and it has, as a result, had the federal government as the main beneficiary. But if you think about the federal government concentrating power, is it interested in having more power or is it just receiving what it really expects to receive? But the point, I believe, is that, if you think about income tax, for instance, in relation to the Constitution, initially this was a state levy. The state would collect income tax. Later on we had the federal government taking over, and after the war income tax remained with the federal government. I am not discussing this in terms of whether or not it is a good thing that the federal government collects income tax; it is just a matter of whether or not that is what the Constitution originally expected to happen. Certainly that was not what the drafters expected to happen, and the same issue arises in the use of the corporations power.

Certainly the most dangerous head of power, in my opinion, is external affairs because the combination of external affairs together with inconsistency can destroy the Australian Federation. I say that to my students. I think this combination is very dangerous. Unless you can find a way to determine what the Commonwealth can do when it engages international relations, anything can go. Sir Harry Gibbs made this point in his decisions and also in an excellent article published in the Queensland *Law Journal*. I must say that I tend to very much agree with him. I think the combination of external affairs with inconsistency can render the whole Australian system otiose or ineffective, or perhaps even to destroy it.

**Senator BACK**—I ask my next question prefaced by the statement that 22 of the 76 of us in the Senate are lawyers.

**CHAIR**—And much the better for it, Senator!

**Senator BACK**—I just say to the Broadcasting officers: make sure that is recorded, for Hansard, as having been the chairman's comment! I asked Professor Brown in Brisbane what his view was on the prospect that not all of the High Court judges might or should necessarily be members of the legal profession—not wishing to detract in the least from their skills, but making the point that there are a range of skills that I would have thought ought be brought to bear in a body that actually stands above the democratic process and that there could be some excellent minds who would bring to the table a set of skills beyond that of legal discipline. Can I ask you that question in the context of whether the current structure of the High Court is the best way to serve Australia in its federalist democracy.

**Mrs Finlay**—Perhaps before answering that could I just add one thing to Dr Zimmermann's last answer, and that is that, although the High Court is a significant element in all of this, at the end of the day they can only interpret what is put before them. So unless a piece of Commonwealth legislation is originally enacted by the Commonwealth parliament, the High Court cannot interpret those powers. So I think—

**Senator BACK**—Can I interrupt you by referring to the comment Dr Zimmermann also made—at least I think he made—and that was that there is a level of concern within the parliament as to how the High Court might interpret whatever laws the parliament wants to introduce. It is not just second-guessing. The military court would be an example, where the parliament thought that it had created a military court only to find out what the High Court thought. I am obviously a non-lawyer. I just ask you to make your comments in that context that there is always this question mark.

**Mrs Finlay**—There is this interplay, but certainly unless the Commonwealth attempted to enhance its powers the High Court could never give it the tick of approval. So the actual starting point is the Commonwealth's attempt to enter into areas that it has not entered before and then the High Court gives that the legitimacy of judicial approval at the end of the day.

In relation to the current structure of the High Court, certainly one of the solutions that we see as being really important is that the states should have a more substantive role than they currently do in the appointment of High Court justices. It is exactly the same as if, in an AFL football match, one of the teams got to appoint the umpire: you could never have that work and still see a system fairly allowing the two teams to be effectively refereed and judged.

In terms of having non-lawyers on there, I do think it is really important when we are thinking about the structure of the High Court not to lose sight of the fact that it is our final court of legal appeal. In that sense I would hesitate to open the High Court to people without legal qualifications to sit as justices. But, having said that, I think there is a really important role for nonlawyers to play in the constitutional debate. It is incredibly important that when we are talking about the Constitution we do not just reserve that for the lawyers to argue about the interpretation of, for example, section 51 placitum (ii) but we actually bring the debate to all the Australian people to give input from different walks of life.

**Dr Zimmermann**—I would like to make a point. It has just come to my mind that in some countries the selection process is not restricted to lawyers; it also applies to members of the legal community in general, which means that you might not be practising law but you might be an

academic, such as, in Germany, constitutional lawyers. I am not saying that perhaps I want this job, though the salary might be better than mine!

I am basically saying that in some countries they have found that the solution is to get people from the legal community but perhaps broader than just practising lawyers, such as constitutional lawyers. That has been quite useful for Germany to the point where the jurisprudence of the Bundesverfassungsgericht is considered very rich. To give an example, the German constitution had to be changed after unification and, because the Bundesverfassungsgericht is regarded as a very good court and properly protecting the constitution, they decided that it would be better not to change what was working properly. So they preserved the jurisprudence of the Bundesverfassungsgericht, and, to go a bit further than that, they capped the constitution of West Germany. The constitution of West Germany dictated that it would have to be replaced by a new constitution, but they did not do that because they thought that it was working properly.

With regard to matters of interpretation, I think what Lorraine is saying is quite interesting. We cannot interpret what is nowhere found—if there is no provision, you cannot interpret. I think that is one of the reasons the Constitution has been distorted in favour of the Commonwealth—the drafters as of the Constitution did not know a postmodern interpretation. They did not know new methods of interpretation that could use the literal meaning of words and distort the literal meaning.

What happens in terms of the distribution of powers is that the powers of the states are not mentioned, and you cannot expand powers if they are not written down. That is because we decided to follow the American model, thinking that by enumerating the federal powers we would actually be protecting the states, so the states would remain with the rest. Federal powers are therefore restricted. So they did not realise that our model would be more centralising than the American one. Now what is happening is quite clear: in Canada, the states have more protection now than the federal government itself. That is because they have interpreted the state powers as generously and liberally as we do when we interpret the federal powers.

**Senator BACK**—I have only one other question. Fortunately, you answered an earlier one that I was going to ask. You make mention of the greater involvement by the states. Do you have the view that the confidence of the states—particularly the states with lower populations—would have a greater level of confidence in the High Court and its judges? There was a scenario in which a High Court judge was appointed from each of the states.

**Mrs Finlay**—Certainly I think it is really important that the states have a greater involvement in the appointment of High Court judges. I do not go down the track of saying there should be reserved seats for each state so that you would have a Western Australian seat on the High Court and a Queensland seat on High Court because, in the same way that the Senate does not divide along state lines, I do not think you would see the High Court judges always dividing on state lines if they were appointed by the states in that way. But certainly I think you could have a system in which the states have an entrenched mechanism where they got to have input equal to the Commonwealth in the appointment.

It is a matter of balancing the need to have state representation and state interests taken into account with making sure that the integrity of the High Court remains so that we get the best

possible people on the High Court regardless of which state they come from. Finding that balance is difficult in practice. I do not think that the system we have at the moment does that, because—for example—only three or four years ago we had five of the judges all coming from Sydney. That is an incredible concentration of power and necessarily means that they have different views about federalism when interpreting the Constitution simply because of where they are from and experiences that they have had.

**Senator BACK**—I ask that question in the context of one judgment of the High Court after Sir Ronald Wilson, one with whom we were very closely associated, had left the High Court. I said to him afterwards that, had he still been on the High Court, they would not have judged the way they did. He disagreed with me and came back to me a period of time later and said, ‘I’ve looked at it, and you are quite right, Chris.’ So I feel very strongly, as the chairman probably understands, but I do thank you very much, Mr Chairman.

**Dr Zimmermann**—Just to give an interesting example of how the state where you come from actually influences very much the decision made, you have the Adamson’s case. Those in Victoria thought that footy clubs were not for profitable intentions so they would not be regarded as constitutional corporations. But the others—for instance, New South Wales—decided that they were mainly for profit and so would qualify as a constitutional corporation. That explains the appreciation that you have for that particular sport activity. That is just a funny thing. Those who were from Victoria thought that a footy club would not qualify as a constitutional corporation.

**Mrs Finlay**—The Work Choices case gives us a really good example of the fact that what we need to look at with judges is what they think about the Constitution rather than where they are from. In that case a great defence of federalism was given by a Sydney judge in Justice Kirby. The two dissenting judges were from Queensland and New South Wales. The split was not necessarily along state lines, because there were, of course, judges in the majority who were from states other than New South Wales. That is an example where the really key issue is making sure we get people on the High Court who hold views that represent the full spectrum and who have a sympathetic view towards federalism rather than necessarily having one judge from WA, one judge from New South Wales and one from Tasmania.

**Senator MOORE**—Your submission and another one we were looking at today also made the point about having the states involved in the appointment of High Court judges on the basis of having that reflection of the whole nation involved. What it does not go into is how you do it. You did mention the COAG process. But, once again, there is a whole chunk of why that is not the best way. I am interested in how you would actually appoint the High Court judges. Would it be that a certain number of judges would come from the states getting together? You see the good sense of it as a principle of the whole federation being involved. But I am not sure how you would get the actual mechanism that would be operative and representative.

**Mrs Finlay**—It is a difficult question. There are a number of paths you could go down. You could go down the path of saying that each state gets to appoint one judge and the Commonwealth gets to appoint, say, the Chief Justice, for example. I think there are problems with that. You could then go down the path of saying, ‘We will reserve a certain number of seats for the Commonwealth and a certain number of seats for the states as a collective.’ Where the majority falls is problematic, which is why I think the better approach is the states make

recommendations to the Commonwealth and the Commonwealth prepares a list of candidates. The Commonwealth can suggest an appointment to the states but the states have to approve that appointment. Unless the appointment has the approval of three or more states, for example, it could not proceed.

**Senator MOORE**—Almost a veto?

**Mrs Finlay**—Almost a veto, yes.

**Senator MOORE**—The names could be there and any state could veto a name.

**Mrs Finlay**—Yes. That is outlined in the submission. The Queensland government originally put that forward in the 1980s and Professor Moens more recently has outlined how that would work in a little more detail. That seems to strike a balance giving them proper involvement without saying, ‘We have a Tasmanian seat.’

**Senator MOORE**—It is Tasmania’s turn—that kind of thing?

**Mrs Finlay**—Exactly.

**CHAIR**—Before we let you go, I wanted to raise with you this problem of the vertical fiscal imbalance. I cannot let you go without raising this. It is an important question. You have made the point that we have one of the highest levels VFI of any federation. That has been flagged to us by other witnesses. You have made some suggestions as to how this might be addressed in terms of greater share of overall taxation revenue or through a tax-sharing agreement. I would be grateful if you could say a little bit more about that. I wonder if you could just turn your mind as well to this more general question: do you think the federation is sustainable under the existing levels of funding at each level of government?

**Ms Finlay**—The short answer is no. Particularly when you look at the Commonwealth Grants Commission, the projections which have come out about the amount of money that comes back to each state are showing that in three years Western Australia will be receiving back about 57c in the dollar. That is a situation which provides stronger performing states with very little incentive to continue performing strongly and also fails to recognise the infrastructure pressure those states are under to continue pursuing high-growth strategies. There is certainly no doubt that in a federation it is accepted that, as being part of a federation, the stronger states will assist the economically weaker states. Western Australia has been a beneficiary of that at certain times in the federation’s history but there comes a point where each state really does need to be the master of its own destiny and certainly in Western Australia particularly that issue is hitting home at the moment to a lot of people in the wider community and not just to legal academics.

**CHAIR**—Is there virtue in any level of government raising the money it spends?

**Ms Finlay**—Absolutely because it imposes a discipline. If you have to raise the money you spend and you have to go through the political pain of imposing that tax on people, you are more likely to deal with that money responsibly; versus, if you get all the rewards of spending the money without having to take any of the pain of collecting the money, it makes the job of spending the money a whole lot easier.



**Dr Zimmerman**—Another point which I think is important to make is that in a true federation the states have to have financial autonomy. Financial autonomy is a very important thing in a federal system basically because we know that if you pay the bill—if you go to a restaurant you choose the meal. What is happening in section 96, for instance, when you have the grants power, is that the states very much object to the will of the Commonwealth. We talk very much when we discuss federalism of legislative autonomy, that would be political autonomy, but financial autonomy is also an essential aspect of a true federation. For us to develop a federal system that would be consistent with the general theory of federalism we have to find a way of making states less dependent financially on the Commonwealth.

**CHAIR**—So the solution to this problem is not to distribute a greater level of Commonwealth revenues to the states. You do not mention it here but one argument is that we have the GST revenue at 10 per cent of the moment. If we increased it to, say, 15 per cent and distributed that on the same grounds with some tinkering to take account of the Western Australian position et cetera, if we could find the right formula to distributed it across the country, then 15 per cent would create a lot of revenue and might actually solve some of the states' financial problems, but as a constitutional principle you do not think that is one to be encouraged?

**Ms Finlay**—It is one part of the solution in terms of giving the states a greater capacity to deal with their financial responsibilities, but it needs to be married with the idea of granting them independence in relation to that money. Simply having the Commonwealth give more handouts does not solve the underlying problem that we need the states and the Commonwealth to be equal partners and not have one—as described in the submission—placed in the position of an institutionalised beggar. You cannot just have the states put in a position where they have to beg for their money every year.

**CHAIR**—I am sympathetic to that proposition and I am sympathetic to the proposition that the funds states spend they should be responsible for raising, but it is very difficult to think of a source of revenue which provides enough funding to states for the responsibilities we want them to assume. You can do it on the basis of land taxes, car registrations, property transaction fees and all those sorts of things. They can get some that way but that is not enough money for any state to do what it needs to do, is it?

**Ms Finlay**—No.

**CHAIR**—It is difficult to think of a tax, or a source of revenue, which provides a stream of funding that is adequate for the needs of the state. If you have a solution to that problem, I think we would like to hear it.

**Ms Finlay**—I think there are two issues there. The first, which is used in the United States, is that the states and the national government both apply income tax. There is seen to be no difficulty having two levels of government applying the same tax, in effect, but at their own levels. The problem, of course, is that does create issues of duplication and administrative difficulties and complications. One way of dealing with that would be to have a formal tax sharing arrangement, so that the Australian public is aware that it is actually both the Commonwealth and the states that are responsible for imposing this tax and will know exactly how it will be distributed amongst them. So it gets collected at one point but all of the governments actually have an involvement in the collection of that tax.

**CHAIR**—That would have to be at the same rate, though, wouldn't it? I am not sure what section it is under, but you cannot charge states different levels of taxation.

**Ms Finlay**—That is right.

**Dr Zimmermann**—I would like to add one more thing. I think what Lorraine is saying is that you do not need to have a monopoly on a particular tax with one of the tiers of government; what you can have is a percentage of the tax. That would distribute the revenue according to the percentage defined. I think that would be good, because I do not want to be blamed for raising taxes or increasing the level of taxation in this country. So, rather than creating many taxes, and so each government would be happy with its own tax, perhaps we could have the taxes in such a way that, as Lorraine says, the distribution of the revenue would be clearly defined.

**Ms Finlay**—The other advantage of that is that it becomes a unifying focus for the federation, because each and every state has a direct interest in the economic success of each and every other state—the more taxation revenue that comes from each state, the more money flows to the others, in a way that does not happen with the taxation system at the moment.

**Dr Zimmermann**—Of course, the disadvantage of this is that there is less competition amongst the states. The libertarians in America actually like each state to have its own tax so that you can go to the state where there is less tax. I think we have to think of the advantages of federalism in terms of providing diversity. Some people say that one of the good things of federalism is that, if you are not happy with the place you live in, you do not need to move to another country; you can just migrate to another state but remain in the same country. The idea of plurality cannot be ignored.

**CHAIR**—I will finish on this point, because we have to move on. It is an interesting observation. One of our colleagues on the committee, who was not able to get here today, has made the point in previous hearings that there is rather too much cooperation in this federation and not enough competition, that in fact the key value has become cooperation amongst the state and federal governments—and COAG is the personification of that level of cooperation. We all agree that there has to be cooperation in relation to particular areas of federal activity, but we seem to have got to a position where the tension that exists between the states and the Commonwealth in relation to competition almost seems to be being bred out of the system. Do you have a comment on that?

**Ms Finlay**—And there is a real underlying perception that any disagreement, different policies or lack of unification between the states is a problem, when in actual fact it is one of the benefits of federalism. I think there is a movement to try to have national legislation covering all aspects of our lives, and unified codes et cetera, when there are clear benefits to allowing the states to do things a little bit differently, to reflect the fact that people in different parts of the country have different needs. It is complicated, and there are some disadvantages to it, but, in my view, on balance the benefits clearly outweigh the disadvantages. The idea of competitive federalism can really be a driver to achieving greater results rather than simply being a delaying or a destructive type of disunity.

**Dr Zimmermann**—Of course you would think in democratic terms that the statement by Hans Kelsen is quite important and that with democracy it is a good thing to get the view of the

majority. But if you think about the fact that each local level will be able to provide law that will satisfy the interests of the majority you have to take into account that at federal level you might have more people dissatisfied with a federal law because you are actually taking into account the view of the nation as a whole. Certainly, if you think about the local level you can actually satisfy the will of a group that is located in a certain area of the Territory far more than having their view counted in a territory such as a country as a whole. So an advantage of federalism is to make more people more content with the kind of laws they have. Also, the possibility of lobbying a politician who lives in your own city is much higher than having to travel to Canberra to complain. I think that the presupposition that you should never give to a higher level of power what a lower level can do should be taken into consideration.

**CHAIR**—Indeed. Thank you very much, Dr Zimmermann and Mrs Finlay, for coming this afternoon. It has been very helpful. We will have to liberate you because we have to move on. Your submission has been of very great assistance to the committee, and we are very grateful that you have taken the time to submit and come along today.

[2.57 pm]

**PHILLIPS, Dr Harry, Parliamentary Fellow (Education), Parliament of Western Australia; Honorary Professor, Edith Cowan University; and Adjunct Professor, Curtin University**

**CHAIR**—Thank you for coming this afternoon, Dr Phillips. We very much appreciate you giving your time to the committee. We do not have a submission from you, as I understand it. One of our committee members suggested that you might be able to provide assistance to us even though you had not made a submission. We are not absolutely sure about the compass of your knowledge, but we understand that it is considerable. Perhaps it would be of assistance to us if you would make an opening statement and we could then question you on that.

**Dr Phillips**—Thank you very much for the opportunity. I would have liked to have made a formal submission, but I have a writing schedule that is too demanding as it is. I do believe very much in the role of parliamentary committees in keeping in touch with the communities. In fact the constitutional centre just over the road was the consequence of about seven to nine years of submissions to parliamentary committees and constitutional committees. In the end we said ‘constitutional centre’ and it got the okay because it was really sought in this type of forum. This is really what I want to quickly say. I have put down three or four points because, while you probably think: ‘Oh, they’re all just passed by’, your committee reports are very widely read. They are generally excellently presented and they become very much part of public debate.

I do not know whether I am a federalist. Living in Western Australia I am probably more so. I did my PhD in Canada and I lived in Ontario, and I used to think: ‘All those people out west are always complaining.’ So it is a little bit about your geographic position. One thing, though, about our Federation, which was being discussed by the previous speakers, is that you have to have state and territory representation on all the major forums of the nation—the High Court, the AFL, the curriculum council. All of those big intergovernmental institutions need state representation or at least a state input into the appointment. I feel very strongly about the value of that so that Western Australians, Tasmanians and people from New South Wales feel that there is some consideration of their point of view. That is point No. 1.

Secondly, I have had my life as a promoter of political civic education. The most difficult concept in 40 years, with many years of examining, is the concept of teaching federalism. When we talk about federalism in the schools and in the community we have a little educational program and why we are federated. Yet there is so little understanding, even with well-educated people, about the intergovernmental and ministerial councils, COAG, the Grants Commission and even the High Court. Those institutions are not part of our educational schedule, not enough. I would like this committee to recommend the value of the educative process about Australian federalism but to go further than just the historical creation of the federation and give some emphasis to its institutions and operations of work. That is my second point.

Thirdly, hopefully, if reform does take place, the pamphlets, the resources that go out to the public amazingly sometimes not very carefully prepared and I just pieces of paper thrown together. They are very important documents. We get assistance from the Electoral Commission

and from the parliaments. There is a lot being done which never used to be done, so I am not complaining, but a constitutional amendment has to be preceded with a sophisticated and well thought out educative program.

I do think, unfortunately, that our Constitution is regarded as far too remote by the public. I was very greatly disappointed when the Constitutional Convention in 1998 came up with about 20 points to be placed in a preamble. We needed to write that preamble in an inspiring way, a little bit like the American preamble. What happened was that it got given to a poet and it did not have any reverence. The value in a preamble—and I do not want to bring up an old argument—is that when students are introduced to the document it is through the preamble. The principles on which Australia is based should be in the preamble. There they are in the preamble and now we go into the Constitution. We have to start this from nowhere. It is a very important document. Everybody should understand something about it. I think our preamble got lost in the quagmire of the referendum on the republic. I did not make a submission; I just jotted down these notes. It is interesting that previous speakers were speaking about many of the same things I was thinking about.

**CHAIR**—Can I begin by asking you whether or not you think we have spent enough time attending to the health of the federation, that is to say a couple of witnesses have put to us that maintaining a federation in good repair is a continuing activity. It is not something you do in every 10 or 15 years when you find there is a problem, that it ought to be a continuing activity by all constituent members of the federation. Do you have a view on that?

**Dr Phillips**—I probably have a more positive view of the parliament, governments and that process. I think members of parliament and government have a basic aim to produce a better Australia. I do not think we need to say that the reason we have some shortcomings is necessarily because we are not aware of the need to improve the process. Sometimes partisanship gets in the way of betterment, but I suspect that is going to happen if we retain ourselves as a democratic polity. I just feel that what we need to do is to have a creation that ensures representation in all the main bodies for the governance of Australia in which each state resident feels that they have a presence and an input. I think we need to do that on a continuous basis, rather than say, ‘We’ve got to polish up the Federation every five years.’

**Senator MOORE**—One of the things some of the submitters have talked to us about is the concept of an ongoing constitutional convention that is independently resourced, and they all talk about the need to have it well resourced so it has a role. Do you have any view on that?

**Dr Phillips**—The problem with what generally happens, and I think this happened with Kevin Rudd’s post-election convention—

**Senator MOORE**—The 2020 thing?

**Dr Phillips**—Yes. The trouble with the 2020 thing is that all the people who have a say were there—the people who do not have a say were not part of it—and they came up with a thousand suggestions, of which about two or three got a tick. I think it is wasted time, really, to have these regular conventions unless it can be demonstrated that there are some outcomes. I think there has to be a broader representation than there was at the 2020. For 2020, if you wanted to pay your own way there and you put your name down, a body would have a look at you and see if you

have enough ticks. I would have liked to have gone myself, being a political and civic educator. There were 25 pages of advocacy of what I was about, but I do not think it made much difference. In summary, perhaps there could be a special federation convention to witness the 125 or 150 years of the Federation. I would only make them once-off every now and then. I would not do it on a regular basis.

**Senator MOORE**—That was one suggestion of how to keep engaging around the issue of the Constitution and the Federation, because there does not seem to be much opportunity for people to engage unless they are academics who are studying the field. Do you have any suggestions about how we can keep in the minds of governments across the country the importance of the Constitution and keep a focus on the fact that we are a Federation?

**Dr Phillips**—Firstly, our constitutional centre—

**Senator MOORE**—That is peculiar to WA? I am sorry, I do not know it.

**Dr Phillips**—It is just over the road. It has two aims. The second aim is enhancement and understanding of the Federation. We have regular seminars each year. We have a schools convention each year. They are sent to Canberra. The schools come from all parts of Australia. Partly because of some influences perhaps from people like me who say there is not enough understanding about Federation, we have regularly had federalism as our theme for the young students. You cannot tap every person in the community, but that is something that is done regularly. I just think if the frequency of that throughout the nation was more regular it would be better.

**Senator MOORE**—We can get information on your constitutional centre?

**Dr Phillips**—Yes.

**Senator MOORE**—I do not think we have a similar being in Queensland. Thank you.

**Senator BACK**—Dr Phillips, one of the areas the committee is addressing is the recognition of local government in the Constitution. Do you have a view on whether that is desirable? If it is, how would it affect the balance, especially the relations between the states and local government?

**Dr Phillips**—That was one of the questions I was fearing! There is a case for it and a case against it, to be honest. That is not a very clear answer. There was an incredibly negative ‘no’ response when we had those two referenda. I suspect that in Western Australia I could predict a ‘no’ vote now. It is very hard to get a ‘yes’ on anything. I would have to see the wording. If it meant that constitutional recognition—I know you had a very good submission on it, and I will read that submission—was an opportunity for local governments to start to build up a power gain against the state government, I would not be interested. If I felt that the wording promoted and recognised the good work of local government, I would probably vote for it. So the wording and how it would be cast would be very important to me.

**Senator BACK**—Would you have any favour at all for the concept of removing one of the three tiers of government in Australia?

**Dr Phillips**—No, not really. I think the public misunderstand the way government works. The federal government makes these very important decisions about taxation and moneys, but your actual services, that go to the quality of your everyday life—schools, roads, hospitals—are basically administered by the state government. I think we need that level to administer those services. I know where the funding should come from is another question, but we need that level. I am a great tennis fan, and a great AFL fan. They split up the City of Perth. The City of Perth covered from Victoria Park to City Beach, and then we got the Town of Cambridge. The responsiveness to the tennis club—if things break down in the tennis club, contact the Town of Cambridge and things get fixed. We used to wait six or eight months when we were going through the City of Perth council, because they had so many other considerations. I know the flaw in that argument is that the Town of Cambridge is financially sound, so they could provide the services—but they do it because they are close to that level. I just think that, if we cut ourselves down to two levels of government, before long we would be creating local government type units to provide that micro-service level.

**Senator BACK**—And yet, as somebody said this morning in earlier evidence, federally the department of education has 6,000 employees and it does not front up to one classroom on one day of the week—so we have to get the balance better than that. That leads me to my second question. I think you also heard the earlier discussion. It goes to the tension between where revenue is captured—I think it is 83 per cent Commonwealth, 14 per cent state and three per cent local—and where it is actually spent. That leads us to the Grants Commission and to this equivalence across Australia. And it leads to the incentive or otherwise for some of the, shall I call them ‘recipient’ states and territories, to try and balance their ledger a little more accurately. Could you comment on how effective you think the Grants Commission is and how it might be changed to create a balance that would be fairer?

**Dr Phillips**—I do support horizontal balance. I think one of the great things about Australia is that we do make some special case for Tasmania, at a certain point in its history. I am a Western Australian, but I feel that Western Australia is not sufficiently conscious of the fact that it was 50 years on the receiving side of things. Now that things are going better I think we have to be prepared to give more.

Having said that, when the Grants Commission said just recently, ‘Western Australia gets 68 per cent’, it just blew up and the state responded electorally. I think they should have take Colin Barnett’s suggestion of 75 per cent. There has to be some lower point. I think it is reasonable enough to have a horizontal balance. If states have a sudden good spell in their economy the commission should not say, ‘Now you’re on 43 or 50 per cent just because you’re doing so well.’ The horizontal Grants Commission is the general enunciation of a principle whereby we ensure that no state has living standards that are too poor at any point in time and the states that are doing well for a while should benefit.

I would like the Grants Commission to be appointed on a basis where there is representation from each of the states and it is regularly reviewed. There is a formula where there are projections three years ahead and the actual allocation of the moneys is always behind the political reality of the time. That should be made more effective and closer to the operation of each state economy.

**CHAIR**—I have one final question. Unfortunately we are going to run up against time.

**Dr Phillips**—That is all right. I understand. It is very kind of you to give me a run at all.

**CHAIR**—Do you have a view on the fact that the regional development groups that have recently been established by the federal government are now interposing as another dimension to the management of the Federation? We have three tiers of government and now a regional tier of sorts. Do you have a view about that?

**Dr Phillips**—This is where I am a Western Australian. I would prefer that to go through state governments, to be honest. It absolutely increases the complexity of the model and leads to greater problems of accountability. I know the general objectives of these groups are quite good, and the states tend to agree with it because they see it as an opportunity to get more federal money. I would certainly like to see the vertical fiscal balance reduced. I would not even be opposed to increasing the GST—but I would not be wanting to have to worry about getting elected next time, either, if I came up with something like that.

**CHAIR**—We have to move on, Dr Phillips. Thank you very much for coming this afternoon. We very much appreciate you giving your time to the committee.



[3.18 pm]

**HASSELL, Mr Tony, Branch Delegate, Pearce Division, Liberal Party of Australia**

**HENDERSON, Mr Rodney Keith, Immediate Past President, Pearce Division, Liberal Party of Australia**

**CHAIR**—Gentlemen, thank you very much for coming along this afternoon. I gather Ms Howard is not going to join us; is that correct?

**Mr Henderson**—Unfortunately she has been delayed in Fremantle. She may arrive at any moment.

**CHAIR**—If she comes she is welcome to take part in the proceedings. You have made a submission to the committee, which has been published as submission No. 14. As a member of the party, may I say how delightful it is to see a member of the party actually defending federalism. I know I am not supposed to editorialise on this, Senator Moore, but it is an issue that touches my heart. Gentlemen, thank you very much for your submission. If you would like to make some opening remarks we will then ask you some questions.

**Mr Henderson**—Thank you, Chair. Whilst we recognise the broad terms of reference available for discussion, the Pearce division of the Liberal Party have concentrated on constitutional matters where we see state powers being eroded in favour of a growing and more powerful centralist government. In part 1 of our submission we propose that any two state governments, or the federal government, should be able to initiate changes to the Constitution rather than only the federal government. As it stands, it is unlikely that a federal government would seek a referendum for change to the Constitution to reduce its powers. The states are not subordinate to the federal government, so there should be equity for each to make proposals.

In part 2 we propose that the High Court justices be appointed by state governments in rotation, with only the chief justice being appointed by the federal government. With the High Court being the final arbiter, it can be expected that the federal government appointed justices will be carefully chosen and will have centralist views. The states should be able to control this arrangement, as past trends and decisions have favoured the federal government where the intention is for the states to be self-governing.

Under part 3 we propose that the states' funding arrangements be brought back into line with the original intent of the Federation—that is, the states should govern their own affairs without undue influence from the federal government. With the federal government now controlling the great majority of taxation, it has gained power over the states. The states will never have autonomy as long as the federal government controls the flow of money.

In part 4 we propose that international treaties be ratified by state parliaments before they can be agreed to by the Commonwealth. We see it as a travesty of justice that when the states introduce laws they then see them overturned by the High Court as a result of treaties signed by the federal government.

To conclude, it should be noted that we make this submission in the name of the Pearce division, not the Liberal Party, and advise that this submission has not been endorsed by the greater Liberal Party. I would like to thank the many people who have worked on these proposals over some years. Thank you for the opportunity to present our submission.

**CHAIR**—Mr Hassell, would you like to say anything at this stage?

**Mr Hassell**—Just briefly, I have been alarmed throughout my lifetime at the destruction of the Constitution by the central government without any authority from the electorate. That is the thing that worries me most: it is without the authority of the electorate. They take powers; they pass act of parliament. They are allowed to do that by the Senate, which was put there to protect the states, simply because senators can become members of the executive and they have a career path; therefore, the Prime Minister can say, ‘You will do this and this and this’ and they will do it. We need changes in that regard. The erosion of the powers of the states is detrimental to this nation.

**Senator BACK**—Mr Henderson and Mr Hassell, we appreciate your submission and your presence. You have possibly had a look at some of the other submissions and heard some of the discussion. Local government is not represented in the Constitution. Do you think it is appropriate for local government to be included in the Constitution? In the event that it was, what impact might that have on the relationship between local government and the state government in Western Australia?

**Mr Henderson**—Thank you for the question. It should probably be said that we are representing views that have been put together by the division. To go beyond our submission is perhaps unreasonable because those things might not have been considered. In respect of the question about local government, it is not represented now. I guess that is a matter that others would have to remark on.

**Senator BACK**—I would be interested in your view of what another witness has said that does go to this relationship between federal and state governments. I am paraphrasing what the other witness has said, but I think this is the sense of it: services should be delivered by the lowest level of government—and ‘lowest’ is used not in the sense of any capacity but in the sense of federal, state and local—appropriate to the service being offered to the community. I ask the question because there is a concern that that is being eroded or invaded—for example, with education services and health services. I would like your reaction to that comment and whether you think that that is the direction in which we are moving in Australia.

**Mr Henderson**—I think it is fair to say that that position is well considered out there now. I think you could also say that you can govern with just simply one body. How many tiers you put in it is I guess represented by what the community can afford. We outlined some percentages earlier. Perhaps that cost has been considered by many people today. In that respect, there may be some argument for changing how the arrangements are.

**Senator BACK**—I ask the question in the context of your statement:

... there is considerable merit in 100% of GST revenues being returned to the State from which they were generated and in ensuring that the GST becomes a constitutionally entrenched ...

In that context, where would the central government receive its revenues for the conduct of its affairs?

**Mr Hassell**—It is fairly obvious. The Commonwealth has access to income tax, company tax, excise and tariffs. The Commonwealth has unlimited access to revenue. The states are restricted repeatedly by decisions of the High Court.

**Senator BACK**—Is it your view then that the sole source of revenue to the states from the federal sphere would be the GST? The states would still have some local revenue-earning capacity but the states would rely on that share of GST revenue for the conduct of their affairs?

**Mr Hassell**—Personally I believe that the Commonwealth should be required under the Constitution to allocate a portion of all company tax and income tax to the states on a per capita basis. It is fairly obvious that Western Australia is getting a very poor deal out of the GST revenue—something I predicted just after it was introduced. It was obvious that it would go to the benefit of the populous states where the votes are. That is democracy but democracy has its failings.

**Senator BACK**—You would probably say in WA that it has not been governments of one political persuasion that have seen the value of centralism when it comes to he who holds the gold makes the rules, of course.

**Mr Hassell**—That is absolutely correct.

**Senator BACK**—You mentioned the High Court justices being appointed by state governments in rotation and the Chief Justice being appointed by the Commonwealth. Do you have a view that in that rotation it ought to be ensured that there is representation from the so-called smaller states as well as the so-called larger states? The point was made here earlier that not very long ago we had five High Court judges from the one state of New South Wales. Does your solution actually overcome that apparent imbalance?

**Mr Henderson**—I think that if you give each state an opportunity on a rotational basis they will all get a fair share over time and will feel like there is a balance. If you consider that the greater number of people might be in New South Wales and they might demand more of that, perhaps the other states might see that as an imbalance against them. We see this as perhaps one way of balancing it out, in many ways like the concept of the Senate is supposed to balance the parliament.

**Senator BACK**—Thank you. I will come back if there is more time.

**Senator MOORE**—A number of people have put forward the kinds of views that you have put forward, particularly with regard to the High Court and the Senate and their roles. I am one of the senators who is not a lawyer, so I am trying to work through in my own mind the process with the High Court. It is my understanding that at the moment High Court judges are appointed through the federal Attorney-General and then the Prime Minister but, once appointed, are completely independent. There is no way of removal unless there is gross dereliction of duty or something of that nature. It does not guarantee that every High Court judge would be a centralist, and I find that, with the process that you are putting forward—having the rotation system of

High Court judges coming from the states—once the appointment is made there is no guarantee that the High Court judge appointed through a state process would be any more likely to have state focus than anyone else. Is it purely the principle of appointment or is it somehow that in the process of appointment the legal history would indicate their particular state rights position?

**Mr Hassell**—The Commonwealth will obviously choose appointments to the High Court who will favour a centralist position. It is obvious that Commonwealth governments of both political persuasions; neither one is more guilty than the other. Both have worked incessantly—I have lived through most of the federation—to destroy the federation. They appoint justices who will philosophically support their centralist position. We need to change that. You have only to look at some of the past decisions of the High Court to show they are not made on the basis of law; they are made on the basis of philosophy.

**Senator MOORE**—But we do not know, because it is not a transparent process. The assessment is allegedly made on legal capability, but it is your view that it is a legal philosophy that determines the appointment.

**Mr Hassell**—Their political philosophy.

**Senator MOORE**—Okay. The other point is on the Senate. As you pointed out, it was originally determined as the states' house, but under the political process it works out that people tend to go into political parties. It seems to me that you could determine at the state level the preselection on the basis of whether a person would favour state rights or a centralist position. Is that something that does not come up in the preselection process?

**Mr Henderson**—Are you referring to the selection of the senators?

**Senator MOORE**—Yes. You said that senators, once they are there, do not protect state rights. That is your position in the current situation.

**Mr Henderson**—No, my suggestion was that judges would be selected in a similar way to how senators are selected to represent state rights: by having a selection process of Federal Court justices through each state in rotation, you start to have some say from those justices from those states.

**Senator MOORE**—The thought process that I am not getting relates to how, regardless of the process of appointment, once they are there there is no way of determining which way they are going to perform.

**Mr Henderson**—It is the same with the senators.

**Senator MOORE**—My point exactly. Once they are there there is no way.

**Mr Henderson**—But you have to have a starting point, and we believe this at least is a starting point.

**Mr Hassell**—I made the point previously that, while senators can become members of the executive, they have a career path which is controlled by the Prime Minister. He, therefore, becomes unduly powerful. It has destroyed the value of the Senate as the state's house.

**Senator MOORE**—By having executive potential.

**Mr Hassell**—Yes; that is the major problem with the Senate. Back in 1909, they passed the Surplus Revenue Act, and the Senate let it go through. Every state appealed to the High Court. The High Court let it go through too. That is a perfect example of the destruction of the Federation by the central government.

**Senator MOORE**—One of the previous witnesses laid the blame with Sir Isaac Isaacs, which was interesting. My one other question is to do with the treaties process. Until I had read the submissions for this inquiry, I had never given thought to the fact that the treaties process should engage with the states. You said in your general statement that a state could be disadvantaged; they could be passing laws at the state level which could then be completely undermined by a treaty that has been signed at the federal level. I would imagine that would be something to do with trade or that kind of thing. Can you give me an example because your submission talked about it as theory. I would like to know of a concrete example.

**Mr Hassell**—Yes, I can.

**Senator MOORE**—That would be wonderful, Mr Hassell.

**Mr Hassell**—The Tasmanian dams case. The Commonwealth used its powers under the overseas treaties powers to completely override the state of Tasmania on matters on which it had no written constitutional authority. We are faced with this all the time, and it is getting worse and worse. I hate to say this—I know it is hackneyed—but all power tends to corrupt and absolute power to corrupt absolutely. If the Commonwealth becomes absolutely powerful, it will become absolutely corrupt.

**Senator MOORE**—And no sense of any effective appeal because of your view about the High Court; that follows through.

**CHAIR**—Gentlemen, you have made an observation about the high levels of vertical fiscal imbalance in your submission, and I think that is a theme we have heard pretty consistently whilst we have been conducting this inquiry. You make what I think is a very good point about the fact that, as this continues, it erodes direct government authority and accountability. You have made the point that GST as a source of revenue to the states is substantial obviously. It does to some extent perhaps, if not fully, save the states from themselves because they have not had their own sources of revenue. Do you see the GST as undermining this principle of accountability that you say is important?

**Mr Hassell**—I do not really—

**CHAIR**—States do not have to do very much for GST. All they have to do is exist, and there is a formula that allows them to get a large amount of money. In Queensland's case it is about \$7 billion annually. I am not sure what the figure is here but I know there is a debate here about

whether or not the GST revenue is distributed equitably, and that is a fair debate to have. I am interested in the principle that you seem to be advocating here, which is that states—or any level of government—should only spend that which they can raise. By receiving money, in fact it encourages profligacy perhaps; it encourages irresponsibility.

**Mr Hassell**—If the GST became a constitutionally entrenched state tax, the states would be answerable to their electorate. There is no two ways about that. Governments will always be profligate. There is no disputing that fact. We have to live with it but we need to keep them answerable.

**CHAIR**—I see. I am struggling with the problem that I think is a common one in many federations that at the state or provincial level of government it is very difficult to identify a substantial source of revenue. What is clear in Australia, as I put to previous witnesses, is you cannot run state governments on the basis of land taxes, conveyancing fees, car registrations; the kinds of things that states now use as a basis of their revenue. They need a much more substantial stream of revenue.

**Mr Henderson**—A broader base.

**CHAIR**—A revenue basis. I am wondering whether or not you have an idea what that could possibly be.

**Mr Henderson**—In the first instance we believe in an equitable distribution of GST. That was the principal argument, I think, but it is very deep. When you are talking about taxation, you can talk about mining royalties and it could go on endlessly. Specific to GST, if it was supposed to be returned to the states, if it came back on a proper and balanced basis, at least from our perspective we would see that as fair and balanced, but we do not see that. In saying that, I think it is fair that we should go back 100 years and look at the federation and how the funding arrangements have worked. Certainly it is fair to say that Western Australia struggled through much of the past century and the federation has been of great assistance to WA. So it is fair to put that argument on the table. Of course, we are now seeing very good times. If you want to bring in another aspect though, it would, in our view, be deplorable if we saw the loss of our mining royalties. That is something we can use to better our state. The GST, as I see it, is the revenue base. From a political perspective, any more than 10 per cent would be very hard to sell.

**CHAIR**—So you mean a GST at a higher rate.

**Mr Hassell**—I believe the Commonwealth should be required to share income tax and company tax with the states, a percentage. The Commonwealth could then get its sticky fingers out of lots of things where it does not belong. It does not belong in primary education; it does not belong in secondary education. It probably does not really belong in health care. There is no reason why health care has to be standardised or operated right across the nation. The Commonwealth should get on with looking after the economy and defence. They are the basic things for which a central government is appointed it has just simply gone on with nibble, nibble, nibble until there will be nothing left, at the rate they are going.

**CHAIR**—Mr Hassell, is your preference for the Commonwealth to return a percentage of income tax or for states to have their own capacity to raise income tax?

**Mr Hassell**—Yes, that is correct.

**CHAIR**—Is the one or the other?

**Mr Hassell**—No. I think the Commonwealth should return a portion of them. It is only duplicating bureaucracies to say the states have to collect their own.

**Senator BACK**—Constitutionally, the states can go back to taxing tomorrow but there would have to be agreement centrally—

**Mr Hassell**—I understand they can only do it if all the states do it. I may be wrong about that.

**Senator BACK**—I think you are. My understanding is that, although it was ceded to the federal government during or preceding the war, it is still on the statute books. We know very well that if in fact the states were to pick up taxing again there would have to be a commenced direct reduction—we are all in agreement. My understanding is that there is not a will to create yet another bureaucracy to collect taxes.

**CHAIR**—Is it your view that the percentage of returned income tax should be on a per capita basis or do you need a formula of a kind that—

**Mr Hassell**—I would like to leave civil servants out of deciding how much Western Australia gets as a share. A per capita basis would be fair. A wealthy state like Western Australia should be wealthy. We should not be heavily subsidising New South Wales, which is so appallingly government. Mineral royalties should be going into our infrastructure to provide for those things. We are battling to get things done because we are having so much ripped off us. About two thirds of GST revenue is returned to us.

**CHAIR**—And the point you make is that there ought to be a ceiling or a floor on the amount of revenue that is returned under GST and 75c is about right for the floor.

**Mr Henderson**—We would argue for full share.

**CHAIR**—Fair enough.

**Mr Henderson**—I think that is what the states felt was the concept of the GST.

**CHAIR**—Gentlemen, thank you very much for coming along this afternoon. We are very much appreciate your submission and you are giving up time to speak to the committee. It has been very helpful to us. We wish you all the best.

**Mr Hassell**—Would you permit me to give you two sheets of paper which have some additional proposals, which are my own and do not represent the views of the Pearce Division?

**CHAIR**—Would you like to make those as a submission, Mr Hassell?

**Mr Hassell**—I would like to very much.

**CHAIR**—We can receive them as an additional submission to the committee. Are you happy for that submission to be published?

**Mr Hassell**—Yes.

**CHAIR**—We will take that as a formal submission to the committee and put it on our website. Thank you again.

**Committee adjourned at 3.46 pm**