

## Beyond Symbolism: Finding a Place for Local Government in Australia's Constitution

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*The question how Australia should be governed has often revolved around the role of federalism. Yet the same arguments made in favour of federalism (greater choice and diversity, and government that is closer to the people) could also be applied to local government. But whether recognition of local government in the Australian Constitution would actually be a step towards achieving these goals is dubious. While there are advantages of giving local government recognition in the Constitution, there are great dangers as well—it could also strengthen the Commonwealth government and weaken federalism.*

### The non-local state

To a foreigner studying Australian politics few things could be more surprising than learning about the structure of government. Looking at Australia from afar, one might think that its sheer size, at least in the eyes of a European, and the enormous distances between its capital cities would have demanded a more decentralised form of government. Indeed at first sight, the subdivision of Australia into states and territories suggests a kind of federalism that is also practised in other countries of comparable geographical size, say in the United States or Canada. In these countries, there is a clear delineation between the spheres of state and national politics, with some (tax) powers and competences retained by the federated states.

But in Australia first impressions are deceptive. The deficiencies of Australia's federal model have for a long time been the subject of CIS publications. In *Restoring the True Republic* (1993), Wolfgang Kasper argued forcefully that Australia had become a far too centralised country, and that it needed to reinvent a new form of competitive federalism.<sup>1</sup> This argument was further elaborated in Geoffrey de Q. Walker's pamphlet *Ten Advantages of a Federal Constitution*, published by the CIS in 2001.<sup>2</sup>

Both Kasper and Walker called for more competition between Australia's states, for bringing government closer to the people, and for making sub-national governments more accountable and independent of the Commonwealth government. In doing so, they could draw on substantial economic and legal literature demonstrating the advantages of federalism. The theoretical case for devolved government had already been made for several decades, going back to seminal work by Tiebout in the late 1950s.<sup>3</sup>

Yet, reviving Australian federalism remains unfinished business until today, and the CIS is still hosting events and publishing papers on the same subject.<sup>4</sup> Perhaps the most striking feature of Australian federalism as it presents itself today is its vertical fiscal imbalance. In 2005–06 more than 82 percent of all taxation revenue was collected by the Australian government, but only 14.7 percent

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by the states.<sup>5</sup> But as state governments' expenditure accounts for approximately a third of all government expenditure in Australia,<sup>6</sup> it is easy to see how dependent the states and territories have become on the Commonwealth government. Under such circumstances, a strong drive towards centralism is indeed unsurprising.

While the problems of Australian federalism are now at least, in principle, understood and widely debated, we should not forget that poor federalism has an even poorer cousin—local government. Once again, thinking about Australia's size this is even more astonishing to a foreign observer. There are federal systems in other parts of the world in which the centre has over time come to play a dominant role. Austria is such a case, and Germany may be another example. But even in such weak systems of federalism, the lowest tier of government—local government—is partly compensating for that weakness and plays an important role within the organisation of the state. Neither Germany nor Austria may have ideal kinds of federalism by any standards, but their systems of local government are well established and comparatively strong, albeit with some problems of their own.

The case of local government in Australia is very different from that of Europe. Here we have observed for a long time the sorry state of Australian federalism, but there is very little interest, let alone enthusiasm, concerning localism. Furthermore, while Australian federalism has been in decline since the enactment of the Constitution in 1901, at least there was a time before World War II when federalism was much stronger than it is today.<sup>7</sup> For local government, on the other hand, there has never been a 'Golden Age.' Local government in Australia is and has always been weak. Its share of total taxation revenue is just under three percent,<sup>8</sup> and for about a third of its expenditure it now depends on grants from higher tiers of government.<sup>9</sup> With the ongoing practice of cost shifting whereby local government is instructed by a higher tier of government to take on new functions, this fiscal dependence may increase over time.

Australian local government is not only weak but also remarkably unpopular. For a long time, its image had been reduced to the famous three R's: rates, roads and rubbish. This conceals the fact that councils have moved on from their traditional tasks to new responsibilities, including managing local water, sewerage, recreation, and cultural infrastructure. But when local government makes the news, it is mainly about the delays in getting development applications approved by local planning officers or about cases of corruption. Local government as such hardly ever gets good press. It is no wonder that there has been a concerted effort over a long period of time to take away the decision-making powers of local government and transfer them to the states or new state authorities (such as the Regional Planning Panels in NSW<sup>10</sup>). Another consequence of the weakness of local government has been the drive towards amalgamations of smaller local government units into supposedly more viable larger ones. In any case, the result of both policies is a move of political decision making away from the local people towards a higher, or at least a more remote, level of government.

That local government is in such a weak position is deplorable because the principal arguments in favour of federalism can also be made for localism.<sup>11</sup> Just as federalism can deliver greater policy diversity, and with it more choice of public services and taxation, localism can lead to greater competition between public service providers. Local government in Australia is already quite diverse in terms of the functions that they have acquired over time. Virtually no local council area in the country is the same. There are great variations in the composition and structure of local councils between the states but also within the states. This could be a source of competition where local governments around the country experiment with policies in search of better solutions for the provision of public services. But as long as local governments remain in a clearly subordinate position to their respective state governments, such an experiment is unlikely to happen. For example, there are not enough incentives to be more efficient in the budget if the setting of rates is limited by the state government (rate pegging), as is the case in NSW.

Furthermore, local government with more decision-making powers can generate more competition and diversity. It is conceivable, for example, that a political system could assign primary and secondary education to the local level. In other countries there are local school boards administering the school, thus giving parents a greater role. This would leave considerable scope for tailoring schooling solutions to the needs of local communities—which is far better than providing them with a one-size-fits-all solution for the whole state. The scope of other tasks that can be managed and provided locally is enormous. In countries such as the United States, Germany and Switzerland, we can find locally run police forces, fire-fighters, sports facilities, and even locally administered cemeteries. While some of these services may (and perhaps should) be left to the private sector, it is nevertheless better to provide them at the lowest possible tier of government than by a remote state bureaucracy—if they must be provided by the state at all.

The weakness of local government in Australia is odd for a number of reasons. It means that, in some respects, state governments are increasingly fulfilling the roles of local governments for their capital cities. Sydney's transport policy, for example, whether it is road or rail, is effectively decided by the NSW government. Yet it is not immediately clear why a voter in a state election who may be living in Broken Hill, Coffs Harbour or Wagga Wagga should pay any attention to questions about the North West Metro in Sydney or the introduction of a Sydney-wide congestion charge. But the elected representatives of these places are involved in making decisions about schemes that will not affect their electorate.

Another unfortunate consequence of weak local government is the discrepancy between competences and incentives. Despite the apparent weaknesses of Australian local governments in terms of their fiscal position, they do operate in a number of areas in which they have important powers. The most obvious one concerns the planning and development of the built environment in their jurisdiction. Yet the results of a council's planning decisions do not have a strong, direct impact on a council's fiscal position because it cannot reap the benefits of the development for itself. The extra tax revenue generated by development will mainly occur at a higher level of government, which diminishes the incentives for local government to enable and speed up development.

It is against this background that we have to study initiatives for greater recognition of local government in Australia. That there ought to be a more important role for local government, or at least greater recognition, is however not a new idea. It was occasionally debated but ultimately always rejected, for example in referenda in 1974 and 1988. However, the Australian Local Government Association has recently launched another campaign to have local government mentioned in the Commonwealth Constitution, and the Rudd government had promised to at least hold consultations on this issue. What form this recognition will eventually take, if it is passed at all, and whether it will have any meaning beyond the symbolic is however not clear.

What is clear, though, is that in other parts of the world there is a greater drive towards localism. After decades of centralisation in the United Kingdom, for example, politicians of all parties have started to change their rhetoric to praising 'local solutions,' 'independent communities,' and the like. Whether this will eventually translate into political action remains to be seen, but even such rhetoric is hardly ever heard in Australia.

The purpose of this Issue Analysis paper is to discuss whether a formal recognition of local government in the Commonwealth Constitution is warranted or needed and what form it should take.

### **Australian local government in the historical context**

To understand why Australia lacks a tradition of strong, independent or semi-autonomous local government, it is necessary to look at its historical development. Australia's modern history of course began as a penal colony, and we can hardly imagine a worse precondition for the idea of self-governing local communities. For the first few decades

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after the arrival of the First Fleet, Australia remained a penal colony administered as a quasi-dictatorship by its governors. It took about half a century for the first Australian cities to be incorporated, during which time there could not have been any meaningful talk about local (self-) government.

The beginnings of something that resembled local government can be found in the 1840s. At the time, some form of self-governance was to be introduced in NSW. However, the origins of this development were in London, not in Australia. The Imperial Government tried to introduce local government by diktat, thus ensuring that it was much resented by the early Australians. As M. A. Jones summed it up:

Initial British insensitivity prevented local government from ever gaining its justified role in Australia ... It was highly unlikely that a centralised and elitist Act made by the British upper class would be successful at producing grass roots interest in local government in Australia.<sup>12</sup>

It should be noted, however, that a stronger local government tradition was established in the nineteenth century in Victoria. Unlike in NSW, Victoria's local government began out of local democratic initiatives, not by central diktat. Because it developed from the bottom up, local government in Victoria was from the beginning a much more popular concept than in NSW, although in Victoria too, it did not grow far beyond some narrow, local tasks mainly related to road building.

So the difficulties of early local government in Australia were arising from a combination of unique historical factors, but in any case it meant there was only a weak, rudimentary system of local government at the time of Federation. The modern structures of local government still had to be built after 1901 because the Commonwealth Constitution did not make any reference to them. So local government remained an area for which the states had responsibility. In NSW, for example, the institutional setting for local government was only properly laid with the *Local Government Act* in 1906. Before that, the only way local government authorities could be established was on a voluntary basis under the *Municipalities Act (NSW) 1858*.

The story varies between the Australian states to some degree, but the general principle is shared between them. The beginnings of local government were difficult and slow, and around the time of Federation the states were effectively in charge of organising most aspects of public life. It is worth contrasting this situation with the historical development of cities and local government authorities in Europe. Local government in Europe developed over the centuries with the inhabitants of most big, and many smaller, cities getting together to organise their own affairs. The best examples are the 'Free Imperial' cities of the Holy Roman Empire. These were 'market' cities free of feudal obligations where people could own property and engage in trade—something that would not have been possible under feudal law. These cities also enjoyed autonomy in a number of affairs, including their own law courts. The city states of northern Italy in the Middle Ages and during the Renaissance are another historical example of local government. Cities in England, too, gained some degree of local autonomy over time. Manchester, for example, grew from a small village to a town and was granted the right to self-rule in 1301. The magnificent town hall of Manchester, built in 1877, still reminds us what an important role local government played in nineteenth-century England.

As diverse as the histories of European cities are, there is one thing that unites them: It took time for the cities to establish themselves as self-ruling entities, and sometimes it took more than just time but also a struggle with dukes and kings to assert their rights.

In comparison, the history of Australia's cities has been very different. Far from evolving over a long time and developing into some kind of self-organising institutions, they were effectively incorporated by the British governors and remained in a subordinate position to their respective colonies. Australian cities simply did not get a chance to develop the kind of local government traditions that had gradually come into existence in large parts of Europe. There was neither the time nor the legal possibility nor the political will in nineteenth-century Australia to lay the foundations of strong and independent local

government authorities. The colonies were running the show, not local councils. This was the political structure at the beginning of Federation.

Subsequent developments over the course of the twentieth and early twenty-first centuries have not strengthened local government much, either. However, state parliaments did start legislating to set the foundations of a more formalised structure of local government. This also reconfirmed the view that local government authorities are very much creatures of the states—a view that was laid out quite early in the twentieth century in *Sydney Municipal Council v Commonwealth* (1904):

The State, being the repository of the whole executive and legislative powers of the community, may create subordinate bodies, such as municipalities, hand over to them the care of local interests, and give them such powers ... as may be necessary for the proper care of these interests. But in all such cases these powers are exercised by the subordinate body as agent of the power that created it.<sup>13</sup>

This view left little doubt as to who was ultimately in charge of local affairs. It was for the state governments to decide how local government affairs should be conducted, and even whether there should be any local authorities at all. In constitutional terms, the relationship between state and local governments in Australia could best be described as that of master and servant.

### The constitutional basis of local government

Today the legal basis of local government in Australia is still regulated by the states. As the Australian Constitution does not make any reference to local government whatsoever, the structure of local government is decided at the state level. As a consequence, the legal situation varies slightly from state to state. Following from a recommendation by the Australian Constitutional Convention, all states have now given constitutional recognition to their respective local government systems.<sup>14</sup> But the situation in the territories is slightly more complicated. However, the recognition in state constitutions is weak because they are flexible constructions that can be changed easily by a majority in the states' parliaments. For example, although local government is recognised in section 51 of the NSW Constitution, this section is not entrenched and, therefore, it does not provide a real guarantee of the continuing role of local government.<sup>15</sup>

The following enumeration shall give a brief overview of the provisions for local government in the constitutions of the states and territories:

- **New South Wales:** The *NSW Constitution Act* provides for local government in section 51. It states that 'a system of local government for the State' should continue to exist. However, it does not specify more clearly how that system should be designed, and it even leaves open the question whether local government representatives should be appointed or elected. It is thus quite a weak guarantee of local government, and not a far-reaching protection of local government against boundary changes, dismissal or amalgamations. Besides, it does not allocate any specific tasks to local government, nor does it give any clues about revenue sources or taxation.
- **Victoria:** The *Constitution Act* of Victoria states in section 74A that 'Local government is a distinct and essential tier of government consisting of democratically elected Councils.' In doing so, Victoria's constitution is the only one in Australia that underlines *expressis verbis* the democratic nature of local government. But even in this case, one should not read too much into it because the dominant role of the state remains in Victoria. In fact, section 74A says that councils should have 'the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.' In other words, the dominant role of Parliament coexists with a strong local government in Victoria. The details of Parliamentary power are laid out in section 74B. In section 74A(2), the Constitution even makes it possible to establish public statutory bodies for areas that are not 'not significantly and permanently populated.' In such cases, the principle of

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democratically elected councils does not apply. Victoria's Constitution also provides some protection for councils against being dismissed by requiring a specific Act of Parliament for such a dismissal (section 74B(2)). As in NSW, Victoria's Constitution does not have any details about tasks and taxes of local government.

- **South Australia:** Section 64A of the Constitution of South Australia is similar to the local government regulations in the NSW Constitution. The major difference is that South Australia's Constitution does not refer to duly appointed representatives, so it assumes a democratic process without specifically referring to it. The dominant role of the Parliament in setting a framework for local government is confirmed in subsection (2), while subsection (3) guarantees the system of local government as a third tier of government unless it was to be abolished by both Houses of Parliament. Once again, details about the tasks and revenue sources of local government are missing, as are protections against dismissals of councils.
- **Queensland:** Section 70 of the Constitution of Queensland guarantees the existence of a system of local government consisting of a number of local governments. Section 71(1) states that such local government bodies are elected bodies, but subsection (3) makes it possible for Parliament to appoint administrators in the case of the dismissal of a councillor. The functions and powers of local government cannot be found in the Constitution but are dealt with in a separate Act of the state Parliament.
- **Western Australia:** The *Constitution Act* of Western Australia is different from other state and territory constitutions because it states in section 52 that a system of elected local governing bodies shall be maintained, but it does not qualify this statement further. As such it is a guarantee against the state government taking direct control of local government. Like in the other states, the functions and powers of local government are not mentioned in the Constitution but left to further legislation.
- **Tasmania:** The *Constitution Act* of Tasmania is very similar to the Western Australian Constitution. Section 45A guarantees a system of local government. The only minor difference to Western Australia is that reference is made to 'municipal councils' (instead of 'local governing bodies'), but that is mainly a semantic and not a substantial difference.
- **Northern Territory:** The Northern Territory does not have a formal constitution. De facto, however, this void is filled by the *Northern Territory (Self-Government) Act 1978*. But this Act does not refer to local government. The only reference to local government is made in Regulation 4(1) of the *Northern Territory (Self-Government) Regulations 1978*, but only in passing as an area over which the ministers of the Northern Territory shall have executive power. The constitutional protection of local government in the Northern Territory is therefore weak or rather non-existent. However, the Northern Territory itself does not enjoy much greater constitutional certainty either—its 'constituting Act' being a simple Commonwealth Act. Nevertheless, the practice of local government in the Northern Territory predates the formation of the Northern Territory, so it could be argued that local government has over time become a constitutional reality regardless of its formal status.<sup>16</sup>
- **Australian Capital Territory:** The ACT also lacks a formal constitution, and its *Self-Government Act* does not mention local government, either. This is understandable because the functions of local government are fulfilled by the Territory directly.

As we can see, all Australian states now recognise a system of local government in their constitutions, although these recognitions do not effectively guarantee local government because they are not entrenched in the Constitution. The situation in the territories is somewhat different, though. But these recognitions are relatively weak in themselves, and they differ in a number of respects. Crucially, only in Western Australia and Tasmania do we find explicit guarantees for elected local government bodies, whereas in the other states there are provisions for state-led administration of local government authorities under certain circumstances.

But more crucially, no state constitution actually spells out clearly the functions and the fiscal structure of local government. This has been left to ordinary Acts of (state) parliaments. And by phrasing the constitutions in a way that underlines the fact that the operation, indeed the very existence, of local governments is dependent on the states, we can hardly conclude that the mere mentioning of local government has effectively strengthened the institution. If anything, the state constitutions have merely confirmed the status quo of a master–servant relationship between state and local governments.

Seen from the perspective of the states, the lack of details on local governments in their constitutions is entirely justified. Not only that, local governments have historically been creatures of the state, but their fiscal positions are ultimately the states' responsibility. While local governments may have some democratic legitimacy in their own right simply by virtue of being elected, they are in a fiscal sense not as accountable to their electorate as they are to their state government. This discrepancy between democratic and fiscal accountability is unfortunate, but it is a fact that cannot be solved through a different or further reaching recognition of local government in the states' constitutions.

Given this background, recognition of local government in the Australian Constitution would not be without difficulty. Even if the national Constitution made mention of local government, this would not on its own change the fact that local governments remain heavily dependent on the states. Historically, and also in practical terms, local and state governments have much stronger connections than the Commonwealth government has with the local level. In this sense, adding a bare recognition of local government to the Constitution would be symbolic at best and entirely meaningless at worst. The balance of power would not change, and local governments across Australia would remain in the hands of their respective state governments and parliaments.

As a matter of fact, this would have been the situation had the proposed amendment to the Constitution been accepted in 1988. It read:

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

It is obvious that at the time, such wording probably would not have prevented at least the temporary dismissal of councillors by a state. Today such a new clause in the Constitution, when all states have similar provisions in their respective state constitutions anyway, would have no effect whatsoever.

The only direct consequence of such a recognition would, in all likelihood, be that it would become easier for the Commonwealth government to deal with a single or a group of local government authorities. At the moment, if the Commonwealth wants to engage in affairs that fall under the purview of local government, it can only do so indirectly, i.e. through the states. The states would in such circumstances act as 'conduits' for Commonwealth grants. This has been the practice since the introduction of Local Government Financial Assistance Grants in 1975.

Such a procedure could become unnecessary if constitutional recognition of local government opened the road for direct interaction and, indeed, negotiations between Canberra and local authorities. We could well assume that some local authorities have such dealings in mind when they argue for recognition of local government in the Constitution. Whether such arrangements between the national and the local level, which we might well expect to occur on a case-by-case basis, make constitutional or fiscal sense is a matter for debate. There is at least a danger that such dealings could make intergovernmental relations more complicated than they needed to be. A further danger could be that recognising local government in the Constitution eventually becomes a vehicle for central intervention and subordination if interpreted widely by the High Court.

But even on non-fiscal matters, recognition of local government in the Australian Constitution could lead to anomalies. As outlined above, the fiscal reliance of local

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government on the states would probably justify some degree of control of local government affairs through the state's parliament and government. Such control could be made more difficult if the constitutional mention of local government went beyond mere recognition but extended to a protection of local government against dismissal or administrative oversight. Again, constitutional recognition of local government would alter the balance of power between local authorities and the states, and the consequences of this change could well turn out to be problematic.

### **More than just symbolic recognition**

It should have become clear by now that the question of formal recognition of local government in the Australian constitution is at least as much a problem as it is the symptom of a problem.

Recognition of local government may be desirable simply for the reason of supporting the very idea of local government as the level of government closest to the people. It could mean more than recognition if the wording also pointed in the direction of subsidiarity as a governing principle within the federation. Local government is the place where citizens can very directly see and feel what government does. The local community could well be the place where democracy is 'learnt,' and for this reason alone recognition would be a positive step.

But recognition under Australia's current constitutional circumstances would create almost as many problems as it would solve. This does not mean that it should not be done, though. Quite to the contrary, the recognition debate then has to be conducted in a much wider context.

Constitutional recognition would be a futile exercise if in the end nothing changed in the relationship between the Commonwealth, the states and local government. If the historic relationship of local authorities as creatures of the state remained as it exists now, then not much would have been gained by mentioning local government in the Constitution. On the other hand, the constitutional debate could well go beyond the formal question of recognition and try to find a new place for local government in Australia's system of government.

What such a wider recognition of local government within a federal constitution would look like can, for example, be seen in Germany. Article 28(2) of the *Basic Law*, Germany's constitution, states:

Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws ... The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed.<sup>17</sup>

The right to regulate their own affairs is not clarified further in the German constitution, but in practice, it means that towns and cities fulfil numerous functions such as cultural matters (e.g. museums, theatres, sports facilities, and schools), public services (e.g. the provision of water and power, waste disposal, abattoirs, cemeteries, and hospitals), as well as the maintenance of public roads and streets within the municipality.<sup>18</sup> That these functions are not enumerated in the *Basic Law* is probably due to the fact that there is a rich tradition and history of local government and, consequently, 'all local affairs' tend to be interpreted in a broad sense.

What exactly does the guarantee of financial autonomy mean in a constitutional reality is up for debate, though. German municipalities have for a long time complained about the lack of funding for tasks delegated to them by the federal states or the federal government.<sup>19</sup> On the other hand, the Federal Constitutional Court has taken the view that while Article 28 does not give municipalities the right to claim specific assistance from other tiers of government, it nevertheless guarantees an adequate revenue base.<sup>20</sup>



The result has been a distribution of taxes between the different tiers of government sanctioned in the Basic Law itself. Under Article 106 of the German constitution, German municipalities receive a fixed share of the total revenue of income tax, VAT, and some property and business taxes. Subsection (5), for example, states:

A share of the revenue from the income tax shall accrue to the municipalities, to be passed on by the federal states to their municipalities on the basis of the income taxes paid by their inhabitants. Details shall be regulated by a federal law requiring the consent of the Bundesrat [second chamber of Parliament]. This law may provide that municipalities may establish supplementary or reduced rates with respect to their share of the tax.

Under the German constitution it would, therefore, be possible even to have different income tax rates at the local level, although this has not yet happened in practice. But in any case, it is clear that such provisions give much greater substance to the principle of self-government enshrined in Article 28 than a simple recognition of local government would do.

In the context of discussing the constitutional recognition of local government in Australia, it is not necessary to evaluate the German experience in greater detail than this. But it demonstrates that there is an alternative to a purely symbolic recognition of local government within a federal system.

### **Conclusion: Why and how local government should be recognised in the Constitution**

The question whether local government should be recognised in the Australian Constitution is not one that can be answered with a simple yes or no. Amendments to the Constitution only make sense if they amount to more than just cosmetic facelifts. But the institutional and fiscal deficiencies of local government in Australia would only be glossed over if, for example, an amendment only replicated what all the states' constitutions now contain with regard to local government.

Furthermore, if in practice the recognition of local government only meant that the Commonwealth government could interact directly with the local level, be it under general schemes or on a case-by-case basis, then this would only confuse the nature of local government. Either local government is a creature of the states—in which case the states should be the Commonwealth's sole point of contact. Or local government is independent of the states, but in such a case all the states' constitutions would need to be changed to reflect this. At a time when local government is still in a clearly subordinate position to state governments both politically and financially, local councils should not be able to bypass their state governments and engage directly with the Commonwealth. This would only result in blurred powers and responsibilities. Ultimately, it would make accountability impossible in any reasonable sense. A council would then be simultaneously accountable to both its state and the Commonwealth, while democratic accountability would remain with the local electorate. There is a danger that this kind of recognition would in the end strengthen the Commonwealth government and weaken federalism—a perverse result if the real intention of recognising local government was to promote subsidiarity.

A better way to recognise local government and give it an effective and meaningful guarantee would be to entrench it in the states' constitutions. For example, the constitutions could require a referendum or a parliamentary two thirds majority for any changes to the sections dealing with local government in the constitutions. This would guarantee local government without leading it into a new kind of dependence on the Commonwealth.

For the reasons outlined above, constitutional recognition of a mere symbolic kind would be an unnecessary complication of Australia's constitutional reality. It is unlikely that the Australian electorate could be convinced of the merits of such a proposed

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amendment. It would probably face the fate of the two previous attempts to include a reference to local government in the Constitution.

But in a federation that has clearly developed three tiers of government, there is nevertheless a case for recognition of the fact in the Constitution. It would require a much wider debate about the role of local government, though. The weakness of local government can only be explained as a relic of Australia's unique history of colonisation. Today, more than two centuries after the beginnings of colonisation and more than a century after Federation, it is the time to correct it.

Local government can play a vital role in a federal democracy. The same reasons that economists have used to argue the case for federalism also apply to localism. Local government, if given greater autonomy and better revenue sources, can well lead to more diversity in the provision of public services. It can also help to keep a check on public expenditure. And it brings government closer to the people directly affected by its decisions.

In order to achieve these aims, it would be necessary to have a clear definition of the role of local government in the Constitution. This would include guaranteeing it greater autonomy, assigning it certain tasks—crucially giving it sufficient sources of revenue of its own to fulfil these tasks. Such a constitutional change would probably need to be even more prescriptive than, say, Article 28 of Germany's *Basic Law* because Australia does not have a comparable history of local government.

In this sense, the recognition of local government in the Australian Constitution should be part of a greater constitutional reform of Australian federalism—a reform that is overdue, as the CIS has long argued. But if a constitutional recognition does not go beyond the symbolic and the rhetoric of paying lip-service to local communities, then it is likely to be a waste of time—time that would be better spent debating a thorough readjustment of Australia's structure of government.

## Endnotes

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