

## A SUBMISSION

TO The Secretary  
Inquiry Into Local Government  
And Cost Shifting  
House of Representatives  
Standing Committee on Economics, Finance and Public Administration  
CANBERRA ACT 2600

DATE 26 June 2003

### EXECUTIVE SUMMARY

This submission addresses broadly, all of the Terms of reference and argues that it is time to call a halt to the existing arrangements for Commonwealth and State funding to Local Government.

The clear implication of the terms of reference and of the discussion paper, February 2003 "At the Crossroads" if followed to a logical conclusion would be to achieve a further weakening of the Federation contrary to the letter and spirit of the Australian Constitution, without reference to the people, and to centralise more power in Canberra.

The further implication and, ultimately the logical outcome of such a course, is the eventual replacement of State Government by Local (regional) Government directly funded by the Commonwealth.

This is not in the national interest. If however, a case can be made out that it is in the national interest, then that case should be put to the people in the form of a referendum, as required by the Australian Constitution, rather than in the form of this Inquiry.

### BACKGROUND

In the lead up to and at the time of Federation, our founding fathers recognised, very clearly, that a national government was best placed to determine national priorities, but recognised, equally clearly, that the State governments were far better placed to determine local priorities, and far better placed to determine the most effective way to deliver services to their citizens.

Unfortunately, in our view, the wisdom of these timeless principles, understood clearly by our founding fathers, has been ignored. For example the Constitution left sole responsibility to the States for many among other things, law and order, the regulation of commerce and industry, transport services, natural resources including land, essential services such as water supply, sewerage, drainage, electricity and gas, local government, education, housing, health and the environment. Centralisation of tax powers, combined with the Commonwealth's ability to make tied grants to the States, has seen Commonwealth intrude into all of these areas of State responsibility, in some cases to the extent that the Commonwealth has usurped the States' role for all practical purposes. This creeping process of centralisation of power has been aided and abetted by the Commonwealth

appointed High Court's interpretation of the Constitution.

At the time of Federation it was intended that it would be the responsibility of the High Court to interpret the Australian Constitution to ensure that the letter and spirit of the Constitution were upheld, enabling the Constitution to provide a consistent framework for the operation of the Australia Federation. Contrary to this intention the High Court has acted as a force for the centralisation of power in Canberra. The following Appendices clearly demonstrate how High Court decisions have aided a relentless Commonwealth Financial squeeze of the States, which has severely eroded the States' financial independence and has encouraged the Commonwealth to usurp the responsibilities of the States quite contrary to the spirit and intention of the Constitution:

Appendix one - High Court decisions of general Application

Appendix two - High Court decisions particularly affecting State taxing powers

Appendix three - State - Commonwealth Finances

## FEDERALISM - PROTECTOR OF THE PEOPLE

A true federal system automatically provides checks on the power of central governments, introduces healthy competition in government decision making, caters for diverse local wishes and is responsive to people's needs.

The Australian Constitution includes specific constraints on Commonwealth power namely the Senate, which is the House of review, Section 51 (ii), which sets out the procedure for changing the constitution by referendum. Under the two party political system, where conscience votes are rarely allowed and Senators must "toe the party line" the Senate has proved ineffective in constraining central power whereas, notwithstanding Section 51(II), The Commonwealth, principally through the use of tied grants, has blatantly discriminated between the States. Fortunately, although not perfect, Section 128, the referendum power, has given citizens at least a modest degree control.

Having regard to the record of the Commonwealth in relation to discriminating between States, the thought of the Commonwealth dealing directly with more than 700 local governments throughout the length and breadth of Australia as well as such bodies as Indigenous community councils is nothing short of alarming.

## CURRENT SITUATION

The situation has now been reached where the revenue raising powers of the States have been severely curtailed; the Commonwealth has progressively reduced grants to the States and has applied specific conditions to other grants (tied grants). The Commonwealth has used its financial muscle to dictate terms and put State Government operations into a straight jacket.

The tied grants for specific purposes have led to the setting up of major bureaucracies to administer, monitor or supervise the tied grant programmes. Thus there has been a duplication of costs and increased complexity in service delivery. The GST solution has not yet provided States with the revenue streams they need to provide the ordinary services which is their Constitution responsibility.

One consequence is the States are seen as cutting assistance to Local Government. Since the mid 1970s Commonwealth has in turn made untied Financial Assistance Grants (FAGs) to local Government, now administered under the Local Government (Financial Assistance) Act 1995 along with some special purpose funding. This somehow seen as cost shifting by the States. It might more appropriately be termed cost shifting engineered by the Commonwealth with the objective of enhancing central power and control.

The position is further complicated by what might be termed “mission creep” by Local Government, seeking to expand its services and its stature and blaming lack of State Government funding as the reason for doing so. The FAGs have also encouraged Local Government “mission creep”.

The discussion paper “At the Crossroads” provides evidence that in many cases these FAGs are distributed inequitably whereas in Western Australia there is considerable doubt over the ability and capacity of some Local Government entities to properly manage and account for their expenditures. The Crossroads paper (2.13) states that initiatives, required to be taken under the Local Government (Financial Assistance) Act 1995, to raise level of efficiency, effectiveness and capacity to deliver essential services “have been met with a mixed response and enjoyed only limited success.” This puts in question the presumption (2.8) ‘Local Government now seems to be considerably more professional, efficient and attuned to local community needs.’

Clearly the current arrangements for Commonwealth/State funding and State/Local government funding are not working and need to be overhauled. Rather than this Inquiry, in a situation where it is clearly acknowledged that Local Government has no place in the Constitution and Local Government exists at the prerogative of the States who have the sole power to discipline or disband Local Government, a comprehensive Inquiry into the whole area of Commonwealth/State financial arrangements is needed.

In regard, Prime Minister Hawke’s 1990 initiative was regrettably abandoned by jim in 1991 and the GST solution has not yet proven to be adequate.

## THE FUTURE

Now is the time for the States to take back control of their Constitutional responsibilities and for the Commonwealth to pull back from centralisation of power contrary to the letter and spirit of the Australian Constitution. The result would be less ill fitting national solutions, an increase in competition and enhanced striving for excellence rather than regression toward national mediocrity. The huge saving of billions of dollars annually in the cost of the Federal bureaucracy would go a long way to solving the problems of the health system for example.

## RECOMMENDATIONS

The following recommendations encompass Terms of Reference 1 - 6 inclusive.

It is recommended:

- I. That a “standstill” approach be adopted in regard to direct Commonwealth/Local

Government financing arrangements;

- II. That any recommendations, which flow from this current Inquiry and which promote the expansion of Commonwealth involvement in Local government funding, be deferred;
- III. That a Commonwealth/State task force be established to undertake the total overhaul of Commonwealth/State financial arrangements. This task force would be charged with:
  - (i) devising a fair tax sharing system between Commonwealth and State Territories;
  - (ii) freeing up of the ‘tied grants’ system to allow State to deploy funds to the best advantage of each State having regard to the nature and diversity of each individual State;
  - (iii) devising a plan for the withdrawal of the Commonwealth’s intrusion into areas of State responsibility;
  - (iv) winding up of the various “bodies” specifically established to manage, control, administer, supervise or monitor the performance of tied grants;
  - (v) phasing down the layers of Commonwealth bureaucracy involved in the areas of responsibility to be now taken back by the States;
  - (vi) reviewing all Commonwealth/State complementary legislation with the objective of preserving only that which, it is clearly in the national interest to do so. Where States agree to co-operate to achieve a united approach to an issue, the States should be left to get on with it as there is no legitimate need for the Commonwealth to become involved;
  - (vii) enhancing competition between the States with the objective of promoting excellence in the delivery of services.

Reference: Appendices One, Two and Three and much of the argument in this submission have been sourced from “Rebuilding the Federation - An audit and history of State powers and responsibilities usurped by the Commonwealth in years since Federation,” Richard Court, February, 1994. A number of the statements made have been taken verbatim or nearly so.

Denis Whitely

Executive Director

CNI - WA having regard to the nature and diversity of each individual State;