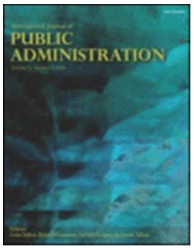

THE AUSTRALIAN FEDERAL GOVERNMENT'S 'WHITE PAPER ON REFORM OF THE FEDERATION' AND THE FUTURE OF AUSTRALIAN LOCAL GOVERNMENT

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THE AUSTRALIAN FEDERAL GOVERNMENT'S 'WHITE PAPER ON REFORM OF THE FEDERATION' AND THE FUTURE OF AUSTRALIAN LOCAL GOVERNMENT

Abstract: The Abbott Government announced its 'White Paper on the Reform of the Australian Federation' on 28 June 2014. Set against this backdrop, discussions of the future of Australian local government may provoke a general~~the~~ assumption of what ~~A. J.~~ Brown (2008, p. 422), commenting upon the 1974 attempt at Constitutional recognition of local government, termed a 'set piece party battle'. However, reflection suggests that such a generalisation is misplaced, that the debate ought not to be that predictable and the position of the local government sector ought not to be that passive: If we consider the complexities of regionalism, the potential role of local government is thrown open to broader considerations. We argue that local government ought to adopt a 'maximalist' position (Allan 2006) particularly with respect to financial reform.

Keywords: Australian Constitution, future of local government; intergovernmental relations; White Paper on Reform of the Federation; White Paper on Reform of Australia's Tax System.

Running head: Australia: Local Government and the White Paper on Federalism

1. INTRODUCTION

On 28 June 2014 the Office of the Prime Minister announced the 'White Paper on the Reform of the Federation' (PM 2014). The White Paper had originally been conceived in the Office of Prime Minister and Cabinet following the swearing in of the Abbott Government on 18 September ~~18~~ 2013. The development of the Terms of Reference (ToRs) was subsequently handed to the Council of Australian Governments (COAG) and ~~is being~~was 'overseen by a Steering Committee comprising the Secretaries and Chief Executives of the Commonwealth Department of Prime Minister and Cabinet, State/Territory First Ministers' departments and the Australian Local Government Association' (PM 2014). The schedule for the White Paper has continued apace, with the ToRs being released on the day of the announcement, an 'Issue Paper~~s~~' (-in essence reiterating of the ToRs) ~~scheduled to be~~ released in September~~in the second half of~~ 2014 (DPM&C 2014)~~,~~ a Green Paper scheduled for the first half of 2015 and the White Paper itself due to be delivered to Government by 'the end of 2015' (PM 2014)[1].

Ostensibly exercises of this type are pursued in a spirit of a-political inquiry. However, as pointed out with respect to the findings of the Abbott Government's 'Commission of Audit' released in June of 2014, the overwhelming assumption is that they are engaged to produce recommendations that ~~have a grounding~~are grounded in a particular political economy (Giddens 2014). *Prima facie* this would appear to be a reasonable assumption about the White Paper on Reform of the Federation. As such,

[1] The Abbott Government also announced a 'White Paper on Reform of Australia's Tax System' on the 28 June 2014. At the time of writing the ToRs for this White Paper had not been released. The Abbott Government had previously announced the 'Northern Australia White Paper' on 28 February 2014. The 'Green Paper on Developing Northern Australia' was released 10 June 2014 (Australian Government 2014).

from the perspective of local government the announcement of the White Paper could be viewed as cause for concern, as well as being an opportunity for reform.

Historically, the replacement of Labor governments with their conservative counterparts has been followed by a ~~diminution of funds flowing to~~decline in the rhetorical support for local government (~~Dollery, Kortt and Grant 2013, pp. 156-184~~Kelly, Dollery and Grant 2009). Further, attempts at achieving constitutional recognition for local government in 1974 and 1988 have been characterised by party-political disagreement ~~and framed around flows of direct funds from the Commonwealth to local government~~ (Brown 2008). With this track record in mind and with the ToRs *prima facie* strong support of the sovereignty of the states set against that of the Commonwealth, representatives of local government might be expected to be concerned about the sector's future ~~financial robustness and its~~ role as the third sphere in Australia's democratic fabric. However, a more nuanced analysis of Australian political history, one which takes into account the engagement of all sides of politics with the contested nature of regionalism, understood in a variety of spatial, ideational and party-political ways (Brown and Bellamy 2006, pp. 14-16; Head 2006, pp. 158) suggests that the White Paper process ought not to be presaged as a party-political conflict.

Traditionally support for local government has been situationally contingent and framed around a variety of issues, rather than being consistently party-political in nature. Kelly et al. (2009) emphasised that equity of essential service provision was the emphasis of Labor policy under the Whitlam administrations in 1972-75, rather than support for local government *per se*. Further, under successive Hawke and Keating administrations from 1982-83 to 1994-95 total local government outlays as a proportion of GDP declined from 2.4 per cent to 1.8 per cent (Dollery et al 2013, p.

176). Moreover, both the 1974 attempt at constitutional recognition of local government under Prime Minister Whitlam and the (failed) attempt at securing a referendum to coincide with the 2013 Federal election under Prime Minister Gillard can be interpreted as acts of political expediency, the former due to the state's rejection of the proposal to seat local government on the Loans Council (see, for example, Roth 2013) the latter as a means to secure votes of independent MPs of in a hung parliament (see for example, Miragliotta, 2013)[2]. As such, the issue of local government has a more complex relationship with party politics than the party-political division suggests. Nevertheless, in~~In~~ the discussion below we argue that the local government sector ought to play a crucial role in defining its own future in the context of the White Paper.

The paper is divided into four main parts. Section two examines the ToRs of the White Paper, arguing that there is cause for concern that the local government sector will be diminished, but that the White Paper also presents the sector with an important opportunity to pursue reforms. Section three ~~examines the historical record to support this assumption,~~ provides~~ing~~ a brief account of the party-political ~~history~~ narrative of the Commonwealth's relationship with local government in the post WWII era. Section four then counters this narrative by examining the contested nature of regionalism in Australia's political history and the relationship of this history with local government. In so doing we draw on the work of ~~A. J.~~ Brown (2006; 2008). In section five, following Allan (2006a) we identify three ideal-type responses available to Australian local government over the next 18 months, a 'minimalist', a 'maximalist' and an 'optimalist' response. We argue that the sector ought to realise the imminently political nature of the 'White Paper' process, reject a 'third way' or

[2] The authors acknowledge their thanks to an anonymous reviewer of the original paper for suggesting that we emphasise the situationally contingent nature of party-political support for Australian local government in the paper.

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so-called 'optimalist' approach (Allan 2006a) and embrace the possibilities for reform and revitalisation presented by the White Paper.

2. TERMS OF REFERENCE (ToRs) FOR THE WHITE PAPER

Examining the ToRs, for the most part they adopt a tone of administrative neutrality and economy. For example, the objectives of 'efficiency', 'effectiveness' and 'accountability' are initially identified with *inter alia* several aims: 'to reduce and end, as far as possible, the waste duplication and second-guessing between different levels of government'; 'to achieve a more efficient and effective federation, and in so doing, improve national productivity; and to 'ensure our federal system … is better understood and valued by Australians', 'has clearer allocation of roles and responsibilities'; 'enhances governments' autonomy, flexibility and efficiency and political accountability and supports Australia's economic growth and international competitiveness' (PM 2014).

However, these goals are combined with statements that, arguably, exemplify a conservative political economy. For example:

> The White Paper will seek to clarify roles and responsibilities to ensure that, *as far as possible, the States and Territories are sovereign in their own sphere* (emphasis added).

Further, under 'Issues to be considered', the ToRs state: 'Within the constitutional framework, consideration will be given to:

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- *the practicalities of limiting Commonwealth policies and funding to core national interest matters, as typified by the matters in section 51 of the Constitution*;
- reducing or, if appropriate, eliminating overlap between Local, State and Commonwealth responsibility…;
- achieving agreement between State and Commonwealth governments about their distinct and mutually exclusive responsibilities *and subsequent funding sources for associated programmes*; and
- achieving equity and sustainability in the funding of any programmes that are deemed to be the responsibility of more than one level of government (emphasis added).

Moreover, the ToRs state: 'Consistent with this, the White Paper will present the Commonwealth Government's position in relation to:

- the *values* and goals that should underpin the Federation so it becomes more efficient and drives national productivity;
- principles and criteria to be applied when allocating roles and responsibilities between different levels of government, such as:
  1. *subsidiarity*, whereby responsibility lies with the lowest level of government possible, allowing flexible approaches to improving outcomes;
  2. *equity, efficiency and effectiveness of service delivery*, including a specific focus on service delivery in the regions,

3. 'national interest' considerations, so that where it is appropriate, a national approach is adopted in preference to diversity across jurisdictions,
4. *accountability for performance in delivering outcomes*, but without imposing unnecessary reporting burdens and overly prescriptive controls,
5. durability (that is, the allocation of roles and responsibilities should be appropriate for the long-term), and
6. *fiscal sustainability* at both Commonwealth and State levels;

Additionally, the ToRs state that consideration must be given to:

- the most appropriate approach for ensuring that horizontal fiscal equalisation does not result in individual jurisdictions being disadvantaged in terms of the quality of services they can deliver to their citizens, *noting that this principle needs to be implemented in a way that avoids creating disincentives for them to improve their own revenue generation or to make the reforms necessary to improve the operation of their economies* (emphasis added).

Several elements of ToRs are notable. First, the overarching goal of administrative competence, exemplified in the words 'efficiency', 'effectiveness' and 'accountability', ought not to be taken as signalling that particular federal institutional arrangements, of any type, are politically neutral. For example, Maddox (1996, p. 193) asserted: '[W]e should recognise that debate about federalism is an ideological

matter in itself, and that arguments *for* federalism are every bit as "ideological and argumentative" as the case against'. As such, the ToRs express a clear endorsement of anti-centrist politics.

Second, the sovereignty of the states and territories is plainly asserted ('[t]he White Paper will seek to clarify roles and responsibilities to ensure that, as far as possible, the States and Territories are sovereign in their own sphere'). While a thorough discussion of the cogency of this idea lies outside the scope of the present paper, expressed as it is in the ToRs the assertion clearly begs the question of the sovereignty of the Commonwealth set against that of the states (see, for example, Moore 2011). The assertion also stands in contrast to the history of administrative and fiscal centralism in the Australian federation and the way that this has been used to drive reforms to encourage economic reform (see, for example, Walsh 2012).

Third, the White Paper is directed to consider the contemporary relevance of Section 51 of the Australian Constitution ('Legislative powers of the [Federal] Parliament'). Again, this is a clear questioning of the trend of administrative and fiscal centralism ~~and can be set against~~ the erosion of the authority of the States since the time of Federation~~,~~. This is due to the extension of Federal activities~~,~~; see, for example, under Section 61 ('Executive power'), ~~and~~ Section 81 ('Consolidated revenue fund') and Section 119 ('Protection of the states from invasion and violence' or so-called 'Emergency powers') exercised by the High Court (Commonwealth of Australia 2010; see, for example, Dollery 2002).

Fourth, 'subsidiarity' – 'whereby responsibility lies with the lowest level of government possible, allowing *flexible* approaches to improving outcomes' (emphasis added) is listed as a 'value' or 'goal' which 'should to underpin the Federation'. However, defined as such, subsidiarity is by no means uncontroversial. For example,

Shah and Shah (2006, p. 4) presented the principle of subsidiarity as one of '[s]everal accepted theories' providing 'a strong rationale for decentralised decision-making … on the grounds of efficiency, accountability, manageability, and autonomy':

> According to this principle, taxing, spending and regulatory functions should be exercised by lower levels of government unless a convincing case can be made for assigning them to higher levels of government. ... This principle is the polar opposite of the *residuality principle* typically applied in a unitary country, where local governments are assigned functions that the central government is unwilling or thinks it is unable to perform.

On this interpretation, subsidiarity is a 'principle' in the form of an 'axiom' or 'rule', rather than a value (i.e.: as one value amongst a plurality of values) and as such enjoys a different status, applicable to '*taxing*, spending and regulatory functions' (emphasis added). At least potentially it is a concept supportive of a reinstatement of the states' fiscal sovereignty as argued for in the preamble to the ToRs (see, for example, Head 2006, p. 160) but also of the authority – fiscal and more generally – of Australian local governments (Dollery et al 2013, pp. 9-10).

Fifth, noteworthy is the caveat concerning the extent of horizontal fiscal equalisation (HFI): ~~While~~ while the ToRs clearly recognise the importance of HFI in supporting interjurisdictional equity, also included is the direction that these considerations ought to 'avoid creating disincentives for [states and territories] to improve their own revenue generation or to make the reforms necessary to improve the operation of their economies'. Arguably, this is recognition that the principle of

fiscal self-reliance is a good one (see, for example Dollery et al. 2013, pp. 23-25; Dollery and Robotti 2009).

Understood as such, the White Paper does present at least the possibility of radical reform, if not the probability of this eventuating – although the extent to which this is militated against by the fact that a separate White Paper on Australia's Tax System is an interesting question. Nevertheless, the endorsement of the 'value' of subsidiarity in the ToRs can be described as 'unfriendly' to extended power of the Commonwealth, but 'not unfriendly' to possibilities for increased responsibilities *and* authority of both state governments and potentially local governments[3]. As we demonstrate below, there are good reasons for local governments to face off against these ToRs with some trepidation~~;~~. B~~b~~ut there is also some optimism, dependent upon how strongly the sector itself puts its case and how aligned strengthening local government is with the currently pervasive political economy.

3. TO BOLDLY GO… WHERE WE HAVE THRICE GONE BEFORE?

Despite the prospect of a substantial reform agenda discussed for so long (see, for example, Ellis 1933; Brown and Bellamy 2006; Murray 2012) and the fact that, as we noted above, the situationally contingent and at times (arguably) expedient support for local government at the federal level, there are ~~good~~ reasons to adopt a poise of concern in the face of these ToRs~~, particularly~~ from the perspective of Australian local government. The first reason resides in the way that, in sum, local government has been placed ~~firmly~~ on one side of the party-political divide in the post-WWII era.

[3] The principle of subsidiarity is not an absolute one with respect to the 'pushing down' of authority; rather it is a 'movable feast' hinging upon the idea of feasibility. Young (1986, p. 18) stated:

> But fiscal federalism is often misunderstood as an argument for keeping local government local. All it actually offers is a means of identifying what is, on efficiency grounds, the *smallest feasible* scale of provision. It is entirely compatible with centralised responsibility and decentralised administration.

During this time, Labor governments have found a series of reasons to award to local and regional governance structures more significant roles. According to Kelly, Dollery and Grant (2009) the reasoning for this support differed across various post-WWII Labor administrations, from the 'nation-building' rhetoric of the 1940s and 1950s under Prime Minister Chifley, to the 'paternalism' of the Whitlam Governments in the early 1970s, then the 'self-sufficiency' in the name of economic development of the Hawke and Keating Governments in the 1980s and 1990s (see, for example, Keating 1992).

Yet the subsequent diminution of these funding streams and in instances the accompanying regional structures under ensuing Conservative federal administrations (Kelly et al 2009; see also Beer 2006) is perhaps cause for most concern. Kelly et al (2009) noted that the dire financial situation that Australian local government found itself in following the elections of, first, the Fraser Government in 1975 and, second, the Howard Government in 1996, was to be alleviated with the introduction of Roads to Recovery (R2R) funding four years after Howard's initial election (see, for example, ~~Appendix A;~~ Dollery et al~~.~~ 2013). Nevertheless, the ~~present~~ contemporary situation, wherein successive Rudd and Gillard Labor administrations championed Australian local government under strong ministerial leadership (by initiating the Australian Council of Local Governments (ACLG) and the Australian Centre for Excellence in Local Government (ACELG) ~~-~~ see, for example, Grant and Dollery 2011) followed by Labor's ousting, then a White Paper on Federalism with the ToRs described above~~,~~ ~~is cause for concern~~might seem to be a replication of historical patterns. Indeed, the first budget of the Abbott Government abolished the indexation of Financial Assistance Grants – a *prima facie* reason for concern for the future of the sector (ALGA 2014a).

If t~~T~~his partisan ~~political economy~~ narrative in the post-WWII era is complicated by examples to the contrary at specific points in time, it has nevertheless~~has~~ been echoed by the history of attempts at constitutional recognition of local government during this time. Brown (2008) identified three phases of the Commonwealth's engagement with the issue of constitutional recognition, the first culminating in a failed attempt at 'financial' recognition in 1974, engendered by the Whitlam Government; the second culminating in a failed attempt at 'symbolic' or at least ~~(i.e.:~~ 'token'~~)~~ recognition in 1988 overseen by the Hawke Government, and the third culminating in successful bi-partisan recognition of the contribution of local government by both houses of federal Parliament during the Prime-ministership of John Howard; a debate that was nevertheless tinged with partisan tension (see Grant and Dollery 2011, p. 13).

To this history must now be added a fourth chapter. Commensurate with the Rudd and Gillard Government support of local government from 2007, on 9 May 2013 Prime Minister Julia Gillard announced that a referendum would be held aimed at establishing 'financial recognition' of local government in the Constitution. This decision followed the deliberations of an Expert Panel on Constitutional Recognition of Local Government (Final Report 2011 pp. 1-10). This process, completed in December 2011, followed a 'Senate Select Committee on the Reform of the Australian Federation', which had delivered its Report, *Australia's Federation: An Agenda for Reform*, in June of the same year, but avoided making an explicit recommendation on constitutional recognition (see SSC 2011, p. 100).

Nevertheless, the referendum on financial recognition proposed for 14th September 2013 could not be held after the rescheduling of the Federal election to 4th August by Prime Minister Rudd following his reinstatement by the Parliamentary

Labor Party. Subsequently, commentators have argued that local government was lucky to avoid a popular decision on its fate at this time (Martin 2014; see Bell (2006, p. 181) presaging this point).

4. REFERENCE POINTS FOR THE DEBATE

The travails sketched above might not bode well for Australian local government. However, an alternative narrative can be constructed around the corpus of work that stretches back as far as the constitutional conventions prior to Federation concerning the proper place of local government, particularly its sphere of authority set against state governments, the Commonwealth and regional authority, defined as both geographic regions *within* extant states (see, for example, Federalism Project 2006) and geographic regions in the absence of the constituent sovereign states and territories (see, for example, Ellis 1933; Murray 2012). Drawing on this work, Brown, (2006) provided 'five crucial facts' and 'five lessons for contemporary institutional design' when considering ~~reconfiguring~~ reconfiguration of the Federation. These provide a sounding board from which to consider the issue of local government in the context of the White Paper.

4.1. Brown (2006): 'Five Key Facts'

First, Brown (2006, p. 16) asserted that 'Australian federalism is probably more centralised in its politics, finances and operations than many unitary, non-federal systems of government'. According to Brown, this is important because the benefits assumed to flow from federalism need not necessarily be present in the Australian case. Further, a high degree of centralisation can also exist at the level of the individual states. Brown (2006, p. 17) pointed to the 'historical weakness of local government, the size of most states in either population, geography (or both) and the

history of large-scale intervention at a state level' as 'distinctive features of the Australian state experience'.

Second, Brown (2006, p. 18) suggested that the Australian federation is characterised by 'weak *political* legitimacy' (emphasis added). Explaining this, Brown (2006, p. 18) stated: 'We have always relied heavily on experts, officials and participating interest groups' in 'generating policy options' and that Australia has a tradition of 'large bureaucracies, commissions and statutory authorities' …, ~~'~~at the expense of local government'. ~~[where is the end of the quote here?]~~ These observations were matched with Brown's (2008, p. 438) later assertion that: 'In Anglo-Australia, centralised colonial structures provided the key machinery of public control and services from the outset, with local institutions arriving in the 1830s and 1840s either second in time or directly in their shadow'.

Third, according to Brown (2006, p. 19)~~.~~ 'political devolution' in the Australian context is 'not a newly identified problem'. ~~[note – three inverted commas in previous line]~~ On the contrary: 'While we have had many decades to become used to a system of governance based on the first two facts … Australian federalism would look quite different institutionally if many of our own federal founders' beliefs about the structure of the federation had come to pass'. Brown (2006, 19) pointed to the 'express provisions' to allow for further decentralisation in Chapter VI of the Constitution, and that the founders anticipated a 'great and growing' Commonwealth. Further, Brown (2006, p. 19) noted that the provisions in Chapter VI were vital in fostering support for the federation, 'particularly in Queensland and Western Australia'.

Fourth, Brown (2006, p. 21) was critical of the lack of *contemporary* 'deliberative culture' surrounding constitutional issues, in particular the lack of bi-

partisanship ~~in this regard~~that was needed, reminding us that two major reviews of Australian federalism in the twentieth century, the Peden Royal Commission on the Constitution (1927-29) and the Federal Parliamentary Review Committee of 1958, 'achieved bi-partisan consensus that the provisions [for new states] should be adjusted so as to make it easier for new regions to be recognised and admitted to the federation', despite the fact that at the time of the 1958 Committee, the Labor members of that body 'subscribed to a party platform that advocated total abolition of the states'.

Fifth, Brown (2006, p. 23) noted that Australian federalism has thus far been a 'dynamic and changing system', with this dynamism evident across evolving intergovernmental relations (the increased power of COAG, for example) the expansion in local government activities and in regional policy-making. ~~Further~~In ~~addition~~addition, Brown (2006, p. 23) stated:

> The idea that state governments are autonomous or sovereign within their own sphere, and therefore intractably resistant to pressures for change from above or below, has largely gone away. State governments are now actively dealing themselves out or reducing their role in particular areas of public policy. This is a very dynamic situation.

This observation is diametrically opposed to the statement in the ToRs for the White Paper, i.e.: 'We need to clarify roles and responsibilities for States and Territories so that they are, as far as possible, sovereign in their own sphere'. Brown (2006) is suggesting that the latter ~~really~~ is simply not possible (see also Head 2006, p. 167).

4.2: Brown (2006): 'Five lessons for contemporary institutional design'

Brown (2006) was concise in drawing five lessons for future reform. First, 'we must recognise that we have undervalued the idea of general-purpose government at local and regional levels, as an element of our national governance strategies' (Brown, 2006. P. 24). ~~[ref needed here?]~~ Notably, Brown (2006, p. 24) did not exercise a preference as to how the construction of these authorities is achieved; on the contrary: 'Whether we approach the quest for improved on-ground outcomes through the prism of collaborative federalism, or capacity building in local government, or improved regional governance, we have to make active choices about whether – or how – we intend to strengthen local and/or regional governance'.

Second, Brown (2006, pp. 24-25) cautioned that 'we do not live in times where it is fashionable to see an expansive role for bureaucracies' and, as such, we ought not to expect reform to take this shape. The present ideological milieu has rendered this observation more prescient. For Brown (2006, p. 25) the point is that 'these trends raise important challenges for strengthening local and regional capacity'.

Third, Brown (2006, p. 25) argued that 'we need a more productive debate about the problems and solutions inherent in the current federal system, both among experts and at a community level'. Fourth, Brown (2006, p. 26) asserted that 'the key to a more productive debate may lie in the better alignment of thinking about short, medium and long term approaches to reform'. As o~~O~~therwise stated, a rescaling not of space, but of what might tentatively be called 'public policy time', is advocated.

Finally, Brown (2006, p. 27) was up-beat about prospects for a robust discussion concerning reform, stating that: 'There is little complacency about current arrangements, at any level of government' … 'we tend to have an environment in which all political parties tend to have equally minimalist commitments to any kind of

constitutionalist development, and the focus is a pragmatic one, on simply making the existing system of government work better'. ~~[long quote – indented? Elsewhere?]~~

Reflecting upon the relationship between Brown's (2006) observations and the ToRs of the White Paper, we have noted that at one point they are diametrically opposed. We have also ~~suggested~~ indicated that the ToRs are framing questions ~~and~~ while suggesting that they ought to be answered in a specific way. However, arguably the most important contribution Brown (2006; see also Brown 2008) makes in this context is to warn us off what might be termed the tendency for 'party-political reductionism' in the debate. Historically, this is inaccurate. Nevertheless, the weight of Brown's (2006, p. 26) observations suggests that any reform to Australian federalism ought to take into account what he termed 'regional regionalism' to a significant extent. It is to the contested place of local government within this that we now turn.

5. POSITIONING LOCAL GOVERNMENT

With the above discussion in mind, it is possible to sketch three alternative, 'ideal-type' positions for local government following the work of Percy Allan (2006a) namely: [i] a minimalist approach, [ii] a maximalist approach and [iii] an optimalist approach. We sketch these out in turn using the familiar five-part typology developed by Garcea and Le Sage (2005), namely the 'jurisdictional', 'structural', 'functional' 'financial' and 'organisational' elements of reform.

According to Allan (2006a, p. 96), the 'minimalist' approach to Australian local government is grounded in an acceptance that councils should understand their role as merely 'the body corporate for the local community, and as such should look after the common property and regulate the usage of private properties'. Further, this role 'ensures that councils live within their meagre resources dictated by a single tax base

(land rates) resting on the belief 'that councils are more prone to "government failure" than higher tiers of government, not least because of weaker accountability and insufficient technical capacity' (Allan 2006a, p. 98).

As counterintuitive as the 'minimalist' ~~his type of~~ approach might be to ~~those in~~members of the Australian local government sector itself, the logic of the position is understandable if only from the vantage point of other players in the White Paper process. For example, while *de jure* there is some variability to the status of local governments on the various state constitutions across Australia (see, for example, Final Report 2011, pp. 93-94), local government is nonetheless a creature of statute and is likely to remain so (not discounting that the Northern Territory is again considering the issue of statehood and the broader implications of this – see Harwood, Phillimore and Fenna 2010).

According to the 'minimalist' ideal-type, in ~~In~~ terms of structural reform~~, while it has been true that~~ the ~~history~~ background ~~[note: term 'history' used nearby]~~ of ~~reform to~~ Australian local government ~~has, until quite recently,~~can still be~~en~~ able to be told as the history of forced or at least heavily encouraged consolidation, ~~thereby~~ implying that state and territory governments now, as they have always, hold the whip hand in their relationship with local governments. ~~are more or less constantly in a position of increasing 'capacity' (see, for example Aulich et al. 2014)~~While recent examples of several Queensland local governments ~~there is some current evidence to suggest that this may no longer be the case~~'pushing back' in the form of d~~. D~~e-amalgamation can be pointed to ~~is now a feature of the local government landscape in Queensland~~ (see, for example, Drew and Dollery 2014a) recent events ~~and while amalgamation threatens extant councils~~ in Perth, Western Australia (see, for example, DLG&C 2014) and The Baird Government's embracing of the option of radical

consolidation in NSW following ~~strenuous efforts at 'encouraged' consolidation by way of~~ the 'Final Report' of the NSW Independent Local Government Review Panel (ILGRP 2013) ~~have met resistance by both government and the opposition in that jurisdiction (Drew and Dollery 2014b). Otherwise stated, the idea that local governments ought to assume~~suggest that local governments are impelled to obey their state and territory masters. Otherwise stated, while they might be growing in size, they are still subservient and eviscerated of any pretences of 'autonomy', however defined.

~~more responsibility – fiscal, strategic, service delivery, etc. – supported by the inevitable march of amalgamation is not as robust as it once was.~~

In terms of functional reform, as much as the principle of subsidiarity has been used in the past as an argument to attract both responsibilities and funds – indeed legitimacy – to local government sectors globally, equally it can be used to 'push back' responsibilities. ~~:~~ If local government does not have the capacity to deliver services due to fiscal constraints, this is just as valid an argument under the principle of subsidiarity as local government assuming more responsibility if accompanied by capacity (Young 1986). The 'minimalist' positioning of local government is also theoretically defensible (at least) from the extant position of the financial capacity of local government. For example, the Australian Local Government Association (ALGA) (2014b) decried the jettisoning of indexation to Financial Assistance Grants (FAGs) following the 2013 Federal budget. Yet the decision by Federal Government to desist indexation can be interpreted as a legitimate public policy decision of a conservative federal government, and one that might be supported by the states.

In terms of organisational reform, the 'minimalist' position does not proscribe local governments' assuming a range of new internal procedures, set against radical

reform. For example, local governments could still pursue 'public value creation' (Grant et al 2014) or other types of innovation. ~~Otherwise stated~~Put simply, local government can still be busy and innovative. ~~In short, t~~The 'minimalist' position sees local government accept its role as 'poor cousin' (Aulich 2005) albeit in a dignified way.

At the other extreme in the typology, Allan's (2006) 'maximalist' councils behave very differently. On this scenario, while their *de jure* status is upheld, 'local councils are the *governments* of their areas and, as such, should foster the welfare of the whole community even if this means duplicating work of other tiers of government' (emphasis added). Further: 'they should undertake such services that local communities want and are prepared to pay for' (Allan 2006a, p. 98). Allan invoked several key tenants of the traditional political-economic theoretical defence of local government (Robotti and Dollery 2009), arguing that 'councils possess several comparative advantages over other organisational arrangements, including strong democratic legitimacy, capacity to foster "social capital" and develop "trust" and co-operation with their manifold communities [and] superior knowledge of local needs' (Allan 2006a, p. 100).

If local governments were to adopt this 'front-foot' positioning, a very different future for ~~local government~~the sector will be envisioned and advocated ~~for~~ in the face of the ToR's for the White Paper. In terms of structural reform, adjacent local governments might actively seek amalgamation and 'ideational politics' for these expanded areas~~, in the sense~~ as captured by the 'place-shaping' model developed by the Lyons Inquiry into Local Government in England (Lyons 2007). Yet this option for consolidation is by no means inevitable under the 'maximalist' approach. For example, local governments, through their emboldened peak organisations, could

reject either encouraged or enforced consolidation (as has recently been the case). It and could instead choose to promote functional communities of interest (around, for example, service delivery units such as Regional Organisations of Councils (ROCs), Strategic Alliances (SAs) and 'Vertical Shared Services' models – see, for example, Dollery, Kortt and Grant 2012)). In terms of functional reform, adopting this model might involve an active embracing of expanded responsibilities for service delivery, expunging the rhetoric of 'cost-shifting' to actively assume a *primus inter pares* role for all types of services and actively seeking to take on responsibilities traditionally assumed by state governments, such as health care and aged care, if not policing. although Vvariants of this could be pursued through the expansion of traditional functions of councils around the activities of municipal rangers, for example.

Arguably, some amalgamated councils in the regional areas of NSW and Queensland have already assumed some of these roles, particularly with respect to economic development and regional agricultural development and vertically-integrated industries (Bell, 2006, p. 175). In this sense, their role is roughly equivalent to that advocated in the cluster approach advocated by Porter (see, for example, Mounter et al. 2011). Further, in terms of organisational reform, this mode could well seek to promote municipal leadership (both elected and appointed) exhibiting a far greater level of visibility (Lyons 2007) with directly elected mayors, as is currently being advocated by some (but not all) in the Australian local government context (Sansom 2012; 2014; Grant, Dollery and Kortt 2014).

Yet it is in the area of financial reform that this 'maximalist' approach would engender the highest level of change. A heightened role for political lobbying under what is commonly labelled 'network democracy' arrangements (see Grant and Dollery (2014) would see the sector actively engaged in securing hypothecated and

non- hypothecated grants, both through and 'around' the individual states. For example, a 'fair share' of GST revenues commensurate with the responsibilities of local governments would be advocated. Yet it is in the area of own-source revenue that the most reform would need to take place under the 'maximalist' model. Initially, this would entail an increase in property tax (as in fact has been witnessed in many local government areas recently in NSW – see DLG 2014). It would also entail the implementation of other types of 'charges' and 'special rates' (see, for example, Allan 2006b, p. 112). However, the main change would be in local government borrowing. As noted by the NSW LGI (Allan 2006b, p. 112):

> … Councils are under-utilising debt as an option for infrastructure funding. During 2004-05, it was found that, on average, councils undertook minimal net borrowing, externally funding just 2 per cent of their annual net additions to non-financial (infrastructure) assets. Consequently, about half of NSW council[s] were net lenders to the other sectors of the economy in the 2004-2005 year.

This analysis has been confirmed by recent work conducted for ACELG by Comrie (2013), who has argued that councils in Australia are *generally* in a favourable position to use debt instruments more broadly. Further, Comrie's (2013) associated finding that Australian local governments keep comparatively high levels of cash on hand opens up the possibility that they can borrow from each other, or alternatively underwrite issuances of bonds either to a 'closed market' or on the open market. Arrangements of this type are currently in place in South Australia and elsewhere globally (Dollery et al. 2013, pp. 226-255).

Nor does the above scenario necessarily represent the 'edge of the curve' for the maximalist scenario. Conceived of as such, local governments would 'square-off' with their siblings at the sub-national level, namely regional consortia of varying types, many of which are indeed comprised partially by representatives of local government, both historically (see Kelly et al 2009) and contemporaneously (see Dollery, Grant and Kortt 2012, pp. 160-245). Examining this alternative, the 2011 Senate Select Committee on the Reform of the Federation (SSC 2011, p. 109) perceived 'regional government' (defined, in this instance, as an increase in the number of regional government structures in the absence of the states) as 'the radical alternative'. In this regard, the Committee noted that New England in Northwest NSW had pursued state-status, culminating in an unsuccessful referendum in 1967. It also surveyed contemporary arguments for state status in North Queensland and the work of the Northern Territory Statehood Steering Committee before, during and following the referendum in 1989 (see also Harwood et al. 2010).

Further, the Senate Select Committee (SSC 2011, p. 110) cited ~~Anne~~ Twomey and ~~Glen~~ Withers' (2007) argument against such a scenario, i.e.: 'a two-tiered system of central and regional governments' … 'would be a shift in power and control further away from the people [where] the people of Tamworth and Narrabri could find that [local] decisions … would be made by a regional body in Armidale rather than by people that are part of their local community'. The Committee (SSC 2011, p. 111) found the view of Podger and Brown (2011) in this regard is 'more measured', ~~i.e.:~~putting forward that '[w]hile the idea of new state governments was supported by a number of participants, there was widespread support for early action to rationalise and strengthen the current, ad hoc and messy approach to regionalism'~~)~~.

Nevertheless, under the 'maximalist' scenario, local government might pursue the

status of regional governments[4]. That state and territory governments would seek to proscribe this insubordination by their statutory creations by various means would have to be an anticipated element to the political strategy of seeking such a heightened role.~~:~~ Y~~y~~et to embark on such an exercise, ~~would~~ exploration of~~e~~ the issues of local government, regional governance and intergovernmental relations with a robustness that would be in-step with the White Paper process, is critical.

This brings us to the third type in Allan's (2006a) analysis, i.e. so-called 'optimalist' councils. For Allan (2006a, p. 98), ~~under this approach~~ councils are 'champions of their areas and, as such, should take a leadership role in harnessing public, NGO and private resources to promote particular outcomes rather than attempt to fund and operate local initiatives on their own'. Further: 'because of funding constraints an "optimalist" approach may allow a minimalist council to exercise maximum leverage'. Commenting on this ~~type~~category~~isation~~, Dollery, Wallis and Allan (2006, p. 561) argued than the optimalist approach 'builds on the solid twin foundations of contemporary public administration by combining a "steering not rowing" perspective on local government', envisaging municipalities 'leading and coordinating coalitions of stakeholders to secure particular outcomes, such as local economic development, using appropriate partnership instruments, like public-private partnerships'. Thus stated, the 'optimalist' approach may appear to be a reasonable 'third way' (Dollery, Wallis and Allan (2006, p. 561) that not only matches the fiscally constrained nature of Australian local government~~,~~ but, at the same time, explicitly endorses local councils 'beating the drum' for their local areas.

[4] Arguably there is a more profound tension here, namely between an overtly simplistic federal model on the one hand and what Podger and Brown's (2011) described as 'ad hoc and messy regionalism' on the other hand. This equates with the distinction between what Marks and Hooghe (2010) referred to as 'Type I' and 'Type II' governance structures – and structures of government.

It may be tempting to conclude that the 'optimalist' approach is the appropriate approach for the Australian local government sector to adopt in the context of the White Paper on Reform of the Federation. However, any endorsement of this approach denies that the ToRs for the White Paper set the parameters of the discussion more broadly, as we have discussed above. It would also not fully recognise the rhetorical nature of the debate surrounding potential reform processes. The argument put forward here is that in the thrust and parry of political rhetoric the 'optimalist' approach would be in danger of looking very much like the 'minimalist' approach. This is particularly so in the case of municipal finance: There would be a stark contrast between local government again taking its 'begging bowl' to the Commonwealth on the one hand, or alternatively adopting a pro-active approach with respect to own source revenues *alongside* aggressive lobbying for securing more funds from both the Commonwealth and the states. While finance is perhaps the most crucial area of reform, following from a consideration and development of these kinds of policy options, a more expansive public policy agenda could be developed for local government. This would include an investigation of the cogency of the principle of subsidiarity as it is iterated in the context of the ToRs. However, it would not be limited to this. In effect, the 'maximalist' position recognises what Brown (2006, p. 23) stated with respect to the future of Australian local: 'Questions of how best to develop the capacity of local government …have ceased to be purely state-level questions: they are also clearly national ones'.

In conclusion, it has not been the role of this particular discussion to describe the minutia of policies for representatives of the local government sector to. Rather, the point has been to lay out a suite of positions with respect to the White Paper on Reform of the Federation and to suggest that Australian local government recognise

the potential opportunity that this process represents, to engage fully with it and garner the 'positive externalities' of the engagement – lest its fate be wholly determined by those in other tiers of the Australian federation.

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1 December 2014.

'Report on revisions' for Manuscript ID is LPAD-2014-1192 'THE AUSTRALIAN FEDERAL GOVERNMENT'S 'WHITE PAPER ON REFORM OF THE FEDERATION' AND THE FUTURE OF AUSTRALIAN LOCAL GOVERNMENT'.

This paper was submitted to *IJPA* 24 August 2014. It was returned to the corresponding author 13 November 2014. The authors would like to express their profound thanks – yet again – to the editorial team at *IJPA* for their speedy processing of the initial cut of this paper.

The paper was denoted as requiring 'minor revisions' before being suitable for consideration for publication in the journal. The EIC stated: 'The comments from the second reviewer are very positive recommending publication with some suggestions (two points). Please consider these comments and try to incorporate them in a slightly revised (minor) version and clean up the paper one more time'.

This short 'Report on Revisions' briefly describes how we have addressed the concerns of the second reviewer.

Reviewer 2 stated: 'I have two minor reservations about the paper: [First], I do not share Browns (or the authors') view that attitudes to the wider recognition of local government are simply party-political. I think that these attitudes are SITUATIONALLY CONTINGENT (emphasis added). E.g.: Labor sometimes (as with the recent Labor government's idea of a referendum) forwards the notion of constitutional recognition of local government if it faces political unpopularity (Gillard) or gridlock with the States (Whitlam)'.

The authors thank Reviewer 2 for this observation. It was not our intention to convey the impression that it was accurate to assign support for local government to the Labor Party on the one hand and opposition to it from the liberal-conservative side of Australian politics on the other. Indeed (and more to the point of Referee 2's comment) we concur that these attitudes are situationally contingent more than they are an element of political ideology.

In fact, in the 'Introduction' to the original paper we stated (p. 3): 'With this track record in mind representatives of local government might be expected to be concerned about the sector's future financial robustness and its role as the third tier in Australia's democratic fabric. HOWEVER, a more nuanced analysis of Australian political history … suggests that the White Paper process OUGHT NOT TO BE PRESAGED AS A PARTY-POLITICAL CONFLICT (emphasis added).

Further, there are sound reasons for suggesting that A.J. Brown thinks this also. For example, in his 2008 article 'In search of a "genuine partnership": Local government and federal constitutional reform in Australia', while Brown provided a history of the attempts at constitutional recognition of local government as organised by the Whitlam and Hawke Labor administrations of 1974 and 1988, his analysis is far more nuanced that merely suggesting a party-political split.

Nevertheless, with hindsight we can see that the paper gives that impression and we are deeply grateful for Reviewer 2 for pointing this out. As such we have made several adjustments to the original manuscript:

- We have altered the 'Abstract' to denote that Brown's (2008) comment referred to the 1974 attempt at constitutional recognition, not more generally, and have stated that: '…Such a generalisation [i.e.: of a set piece party-political battle] is misplaced';

- We have inserted a new paragraph in the 'Introduction' (pp. 3-4 of the revised manuscript) to emphasise the situationally contingent nature of support for local government using the examples that Reviewer 1 has pointed to (i.e.: the Loans Council under Whitlam; political expediency under Gillard) as well as others.

- We have qualified our claims in sections three of the paper 'To boldly go… where we have thrice gone before' by talking of a NARRATIVE of partisan support for local government on behalf of the Labor Party, rather than a HISTORY thereof.

- We have also inserted a footnote thanking Reviewer 2 for suggesting we emphasise this point. We trust that these changes meet Reviewer 2's critique – and incidentally, our original intention.

Reviewer 2 also expressed a second reservation with respect to the paper:

'[Second], the constraints on the maximalists' position are under-stated. E.g.: Local governments may find embracing new roles and increasing their own-source funding a possibility but state governments have a history of opposing any increases in local government rates and charges (e.g.: rate-capping in NSW and statutory fiat in WA and Victoria in recent years). So the maximalist position, while theoretically attractive, may not be politically possible.

This point is well made. We have now incorporated the observations in the paper on what is now p. 23.

Referee 2 also stated that 'These points are incidental to the paper's purpose'. The authors deduce that this is a recognition on behalf of Reviewer 2 that the paper canvasses public policy options for the Australian local government sector within what is a complex, multi-jurisdictional public administration environment, arguing that the advocacy of the so-called 'maximalist' position is politically (i.e.: rhetorically) optimal rather than being one that is the most administratively feasible or that which represents the most likely outcome.

On another point, we have also taken the opportunity that the revision has afforded us to significantly alter our account of how structural reform would fit in the 'minimalist' position (see p. 18 of the revised manuscript). Our former argument with respect to anti-amalgamation was (with hindsight) quite misplaced. Nevertheless, we have changed the argument such that it still matches the requirements of our 'minimalist' scenario.

We have also taken the opportunity afforded by the minor revisions deleted Appendix A. This is principally because, as thankfully pointed out by Reviewer 1, the financial largesse demonstrated by varying federal administrations has historically been far less 'party-political' than indicated in the original manuscript. For example, in the revised manuscript we note (p. 3) that 'under successive Hawke and Keating administrations from 1982-83 to 1994-95 total local government outlays as a proportion of GDP declined from 2.4 per cent to 1.8 per cent'.

As such, including Appendix A may well be perceived as the authors exercising party-political bias of their own. This would never do for IJPA.

We trust that the changes we have made to the paper see it suitable for publication in the opinion of Reviewer 2 and the EIC. We thank them both for their work on the paper. If the paper requires revisiting we will be happy to revisit the discussion with a view completing any further amendments by 12 January.