

RECOGNITION, STATUS, GOVERNANCE

The Challenge for Local Government in Victoria

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Thankyou for the honour of inviting me to give this address. Whether you will thank me after hearing what I have to say is another matter.

I should also note that for some of you who may have attended a recent ALGA conference, what I have to say may be nothing new. I make no apology for the repetition – the issues I discuss deserve it, because they are issues of your future.

Speaking to such a gathering of people centrally involved in Local Government, speaking on a theme which asks questions about your present and future, and delivering a speech which is provocative and presumptuous, requires me to establish just what criteria I have to be here, and to offer constructive criticisms.

I have spent more than thirty-five years studying, analysing and criticising the systems and processes of democracy in Australia. I have spent almost twenty years focussing on the realm of Local Government in all of its facets, and equally analysing and criticising.

I do not have the detailed knowledge of the minutae of Local Government which is so clearly evident in this room. But my foci in this address is not on minutae – it is on the bigger picture of your present and your potential future.

I make no secret of the fact that I consider Local Government to have the best potential to become a leader in the field of democratic government in Australia.

Nor any secret that I believe that Australia is seriously over-governed, bedevilled with triplication, cost-shifting, buck-passing, inefficiency, ineffectiveness, and undemocratic practices. I do not absolve some elements of Local Government completely from these faults. But they are endemic elsewhere.

The key problem is a federal structure which has lost touch with the realities of the modern Australian society. The 1897 compact which established a federal Australia is anachronistic, and must be replaced. (I could spend the rest of this address on that issue, but will resist the temptation).

Replaced by what? Edward Gough Whitlam designed and proposed a two-tier, national-regional system. I claim to have designed a two-sphere system.

I emphasise the phrase “two-sphere”. What we have at the moment is a two-sphere and two-tier system. Under the 1897 agreement which established the nation, the Commonwealth and the States constitute separate spheres, protected by the Constitution and the High Court. But the third component of government, Local Government, is not a sphere. It has no mention in the Constitution, let alone protection. It is a subordinate tier.

This has to be reformed. Local Government should be a sphere. Its roles and functions fully justify this status. But to achieve it will require more than an element of hard work..

My address has three key themes

- The status of Local Government – what it is, what it should be, and what is a practical expectation of what it could be;
- An analysis of whether the “condition” of Local Government justifies a better status;
- If you do, then how could and should you go about it.

I should offer a warning – I have no doubt that some of the matters I raise, and some of the conclusions to which I come, will be provocative, and some of you may well disagree strongly with some of my analysis, conclusions and proposals.

I hope some of you do. It does not progress Local Government if you are told what you want to hear rather than what you might need to hear.

The former produces a warm complacency; the latter produces the possibility of change, reform and progress. I make no apologies for being on the side of the latter.

My three themes – recognition, status, and governance – are actually subsumed under a phrase which should describe the entire political processes in Australia, but which must be evident in Local Government – the concept of community.

What are its defining characteristics? What is it in the sense of Local Government? And why is it fundamental to reform?

In essence, a community is recognisable by a culture which is shared by its members, and a high degree of shared activity of the members.

Local Government is a *political* as well as a social community, and that adds on the essential component that its members share a *common political* culture.

Your community is multi-level. It includes the individual communities of each local council, it includes the VLGA, and it includes the ALGA.

Are your levels acting as communities, with a common political culture, common aims, and a common purpose?

Ask yourself about the health of your own Local Government community. Is there a “commonness” of culture and purpose within the combination of elected members, corporate sector, and the electors?

I will return to these issues a little later, but it is obvious that I consider them fundamental to your potential future.

Second, what do you want to achieve? What is your vision?

At the individual Council level there is plenty of vision. Council decisions are based on visions for the local community and local area. But these are sometimes competing, even contradictory. The visions of the elected Council may not accord with those of the corporate sector; they may not agree with the views of the citizens, or groups of citizens. The ways that such differences are resolved defines the nature and quality of the community.

But the bigger scene? A vision for the sector, and a vision for its role in the Victorian democratic structure and processes? Is there a vision? That, in fact, is one key component of my address.

Third – is there an opportunity to achieve reform? There is no doubt that your opportunities for reform and development in the past have been severely limited. But I argue that too often Local Government has been slow to recognise and exploit opportunities. Too often there has been an unwillingness to take up the cudgels for reform. That attitude must change.

Recognition, Protection, Status and Authority.

These words all come out of a general heading of constitutional reform.

I will start with your present situation – your societal, political and constitutional position.

The bleeding obvious: you are a transformed sector of democratic government in Australia. You have expanded roles and functions which are still increasing, and are fundamental to the lives of citizens.

You relate to, and affect the public, more closely than State and Commonwealth governments; you have made yourself into an efficient and effective and professional sector, with a fully-professional corporate structure. You are ahead of the State parliaments in terms of many of your processes.

And you have the potential to become an even stronger player in representative and responsible government.

That is, you are a viable, professional, important, effective and wide-ranging component of the political, economic and social life of the citizens.

But, more of the bleeding obvious, you have only minimal recognition and protection in the structure of Victorian democracy, let alone Australian democracy; you have little political status; and you have very limited authority. You are a subordinate tier, dominated by State parliament and government. In essence, you are, in a practical sense, servile. This situation is historical, not logical.

The four terms – recognition, protection, status, authority – imply very different things. I will unpack them separately.

In fact, there is a gradation of development: recognition, protection, then status, then authority and, at a final, fifth level beyond the limits of my address - sovereignty.

Recognition

Local Government has long sought recognition in the Australian Constitution. After two defeats in referendums, there seems to be a general pessimism – forget trying again.

I would argue strongly against this view, on the grounds that you need to analyse *why* you were defeated. In brief, in 1988, you were defeated by a ridiculous decision by the Hawke Labor government to include four questions and, in one question, sub-questions, in one referendum, and by a party-political and an even more ridiculous, even insulting, decision by the Liberal Opposition to recommend a “no” vote to all questions, as the voters could otherwise be confused. It was an insult to the voters and to Local Government.

My comment? A plague on both their houses. But your development depends, to some degree, on both. So I will withdraw the plague – but only for tactical reasons. I’ll replace it with an accusation that State and Federal governments and parties have acted on the lines of opportunism, pragmatism and cynicism. Of course you try again, and next time you may well win. To summarise the policy positions of the political parties: Labor supports recognition and protection, and the redress of cost-shifting; the Australian Democrats (although their party may be over) seek a two-tier, national/regional structure of federalism; the Greens support recognition and a secure and guaranteed financial base.

The vibes are positive. But the Liberal party will support recognition only if the States agree. Less positive.

On the other hand, the process of seeking constitutional recognition actually by-passes the States. Any decision on a referendum is in the hands of the Australian voters, not the State governments. There is a message – convince the voters of the merits of your case, and you may well win.

A short-cut to this, of course, is to convince the political parties, especially Labor and Liberal. It is the case, despite a growth in the proportion of floating voters, that a majority of electors still remain relatively “rusty on” to a major party, and will vote the “party line” regardless of the issue.

But what will you have achieved with recognition in the Australian Constitution? It is not a political holy grail. You will have achieved nothing beyond simply being recognised as existing, and having a protection of the *existence of your sector* in the sovereign law of the nation.

But it is worth achieving. In fact, it is a *necessary* first step. To use a Mark Latham analogy, it is the first rung on the ladder of opportunity, and you will find that proceeding up the ladder to further reform will be difficult without the first rung.

Status

Your next and more important target should be *status* – a *positive* component, not just the first rung – which is the removal of a *negative* component in the lack of recognition.

In the broad community, the term “status” usually refers to the “honour” granted to a person by the society. This has a number of bases – personal, occupation, wealth, sporting excellence, etc.

My use of the term refers to a different meaning – in the context of your political status in the Australian political system.

Status implies a recognised standing in the structures and processes of democratic government – recognised by the people and, more important, by the State and Federal parliaments and governments.

Political status implies and involves *formal* power relationships, especially in relation to roles and obligations. It goes beyond a simple constitutional recognition.

It is a recognition not only of existence, but a recognition that Local Government *must be considered* by the other spheres of government, *must be considered* as important, *must be considered* as fulfilling a real and substantive role in the structures and processes of democratic government, and *must have this recognised*. Currently it isn't

Let me quote from the South African Constitution to clarify what I mean by political status.

The national or a provincial government may not compromise or impede a municipality's right to exercise its powers or perform its functions.

The national government and provincial governments, by legislative and other measures, must support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers, and to perform their functions.

When words such as “may not compromise or impede” and “must support and strengthen” appear in a constitution, that is status, not merely recognition. That must be your intermediate aim.

How does Victorian Local Government stack up in terms of status? I seem to read more and more documents issued from State governments which use the term “partnership” in regard to State – Local relationships. I will propose, later, that the key element of a good and democratic Local Government is *internal* partnership. But, for the moment, I will focus on the so-called State – Local Government partnership.

In the first place, it needs to be stressed that a partnership implies an equality of the partners. Do you have that? An equality with the State government and parliament?

Without such status, even with recognition at the national Constitutional level, you remain as the “slaves” of the State governments – in law, and in practice.

Of course, constitutional statements, such as those from South Africa - do not guarantee that political practice will follow. Such statements are, in essence, a form of moral suasion – setting moral guidelines. But when have you noticed federal and state politics and politicians following moral political guidelines?

On the other hand, a constitutional statement of such guidelines, coupled with recognition in the Australian Constitution, does at least leave you with constitutional recourse – even to the High Court – when they are not followed.

Hence, aim not just for constitutional recognition, but for constitutional status.

Stage three is authority. This takes status to a different level, to the next rung. Authority takes such terms in the South African constitution as “may not compromise” and “must support and strengthen” from the level of “moral suasion” to a legal requirement.

That is, a process of moving towards a *legislated* status – changing a “may” (a moral statement) to “must” – a constitutional requirement. This should be your next aim.

But legislated status where? In the Australian Constitution – in the general, recognition sense - and in the Victorian constitution and in the Local Government Act, in the detailed, legislative sense.

I will comment only briefly on the final stage of constitutional development. The “light on the hill”, to borrow from the Labor tradition, is sovereignty – a division of powers written into S. 51 of the Australian Constitution which allocates “powers” not just to the Australian government, with the residue in the hands of the States (and you

are part of that residue), but to three spheres (not tiers, which implies superior and inferior) of government : National, State and Local.

You will note that I have omitted the ultimate aim - a two-sphere, national/regional structure. Given the primary political identification of most Australians is with their State, and the most common response to a two-tier proposal is “what about state of origin football”, that is not merely a light on the hill, it is a faint glimmer on a distant planet.

A proposal for a three-sphere, each with federal-type powers and authorities, has been proposed. In 1987, the ACLGA (as it was named then) put a submission to the Constitutional Commission for (i) recognition (ii) a statement of certain powers, and (iii) a redistribution of powers between three rather than two spheres.

This was rejected by the Labor government, the Liberal opposition, and by one of the key committees advising the Commission.

This was far too optimistic an aim at the time. In essence, it by-passed all of the lower rungs on the ladder of opportunity and went for the “full monte”.

As I have suggested, work for, and achieve the intermediate reforms – recognition, protection, status and authority.

But while you are waiting for real constitutional change, take every opportunity to run with what is available.

I will expand briefly on two very important opportunities.

The Fair Share report (2003), the Hawker report, was a real breakthrough, but one which I fear will be allowed to dissipate.

The Report focussed on a problem which increasingly faces Local Government – cost shifting. State government, despite being loaded to the gunwales with GST money, continues to use Local Government as a dumping ground of roles and functions,

without the finance to carry these out. This is no evidence that State government considers Local Government as a partner.

The proposals in the Report are under discussion. They have been so for over two years. With what result? More discussions! It reminds me of Sir Humphrey Appleby who advised his Minister that to stonewall any proposal for ever, give it to an inter-departmental committee!

My view is that the Hawker Report is the greatest opportunity offered to Local Government since the 1850s. You must run with it, and run hard.

The second opportunity is the result of the federal election.

It was an historic win for John Howard and the Liberal party. Fourth term – second only to Menzies, and eclipsing R.J.L. Hawke. That would please Mr Howard.

The first preference vote for the Labor party was an historic low. 37.6% is the lowest figure since 1906!

This is a key component for you. The Senate is in the hands of a single party (coalition) for the first time since the 1970s, and it will remain so for the next six years. What an opportunity for Local Government!

This means that Local Government has only to convince the Howard government that Constitutional recognition should again be put to referendum, and it would be achieved. No need to convince Labor, the minor parties and independents. Just convince one party.

Consideration of such proposals for recognition, protection, status and authority is challenge enough. It does not provide instant success. It promises a lot of determination and hard work, a lot of time and money, and, then, still only a hope for success.

But I have now to pose a challenge to you. Is your Local Government deserving of recognition, status and authority?

This question is possibly provocative, but overwhelmingly important – do you *deserve* a status in the Australian political system?

I noted at the beginning that Local Government has transformed itself to be a major player in the economic and social life of the people. In that sense alone, Local Government deserves its place in the political sun.

But is this transformation carried through to your system of *governance*, and to a development of *community*, which would justify the grant of status and authority?

It is possible to argue that demanding that you show the best quality of democratic governance before achieving status is to demand what is not required of the State and national systems. This is a fair comment, as the principles of representative democracy and responsible government have become so eroded and tarnished at these two levels that it is hard to apply either principle to their practices of politics.

I need to explain that statement. Take responsible government. The theory is simple – there is a chain of accountability. The public service is accountable to the ministers who are accountable to the cabinet which is accountable to the parliament which is accountable to the voters.

Makes you feel warm inside? Democracy working well? No! Far from it. The chain of accountability is broken at almost every link. The parliamentary practice of responsible government at both State and Commonwealth levels is deeply flawed.

So, why will you have to be pristine?

The reality is that Local Government will need to prove itself worthy of constitutional reform, and that may require that your practices will have to accord with principles. State and Federal governments already have full status, authority and sovereignty

already – but you have to argue for it. You will have to prove your fitness, and hence be more “pure” to the principles than they are.

What is the quality of your governance? Let me suggest a brief and very truncated check-list.

Is your electoral basis of representation fully democratic?

What is the quality of your representation?

Is there a programme of induction and mentoring?

Is responsible government working at its optimum?

Is there a community in your Local Council?

This description of a fully democratic election system can most accurately be applied where elections are based on voluntary voting, proportional representation, optional preferential voting, and elections at large.

Some Local Governments apply compulsory voting, or have come under pressure to apply it. This should be resisted, and the electors given the right to vote. First, there is no such thing as compulsory voting (despite Electoral Acts using the term). There is compulsory attendance, compulsory accepting as ballot paper, and compulsory placing that paper into a ballot box. But no-one can be compelled to vote.

Why does Australia have it? Because political parties realise that there is benefit to them in it. This is nothing to do with democracy. Why do some local Governments have it? Same reason.

Second, is your electoral basis providing the best opportunity for good representation of your citizens? Each Council area contains different interests – some more than others - whether geographical, sectional, socio-economic or whatever. These all merit representation.

But under two limitations. Not one mini- or micro- interest should have exclusive or even dominant representation. Second, and more important, there is also a “national”

interest – by that I mean the interest of the whole Council area and the whole population.

To what extent does your Council’s electoral system recognise, and provide representation to, not only the sub-communities, but to the whole community? That is, to what extent does it provide a balance of sectional, geographical, socio-economic and the “national” interests?

The best way to achieve this? Election at large for all elected members, with proportional representation, no nineteenth-century division between “senior” alderman and “junior” councillor, and a mayor elected at large, to be the symbol of the “national” interest.

What is the nature and quality of functional representation in your Council? How do your members represent?

Is the functional representation by your elected members – the way they practice their roles - always seeking a balance between Council-wide and local-sectional representation, between a delegate and trustee mode of behaviour, and between the personal and the community?

A delegate functions as a conduit – putting aside personal views, even conscience, seeking to achieve what the majority of the citizens want.

A trustee decides for the citizens – listening to people and groups, but seeking at all times to achieve what he or she thinks is in the best interests of the citizens.

Or are the members acting as partisans – putting aside the views of the citizens, putting aside his or her own views or conscience, and voting at all times on the party line.

What sort of balance between these modes of behaviour is achieved in your Council?
What sort of balance is best for democratic governance?

Are elected members representing all of their constituents, or only a section, a microcosm, or a party membership?

Is the mode of legislative behaviour self-centred and micro-focussed, perhaps to the detriment of the interests and needs of the whole community?

To what extent are newly-elected members provided with an induction to their roles and functions, and with a continuing mentoring role?

Just as important, where these mentoring and induction processes are available, are they utilised fully by the elected members? There is a heavy responsibility for the elected members to understand their profession so they can carry it out professionally.

Turning now to the second keystone component of democratic governance: are the relationships of responsible government within your Council working at their optimum?

It needs to be recognised that the theory of responsible government in your sector is different from State and Federal models, where the chain of accountability involves public service, Minister, Cabinet, Parliament and people in separate but linked processes.

The corporate sector can be considered as the managerial component – the public service of Local Government. Hence is there a recognition and a practice that, except for specific mentions in relation to the CEO in the Local Government Act, the relations between the corporate sector and the elected membership should be applied in the same form as the *principles* of parliamentary responsibility demands – that the corporate sector, in the final analysis, is responsible to the elected membership?

Is the corporate sector in a partnership with the elected Council? Is there open government, full information made available by the corporate sector, and opportunities for discussion with the corporate sector? Is there a full and open flow of information to the elected membership?

The elected Council composes the cabinet, the ministers and the parliament. Do the elected members carry out their side of the system? Do they read, think, ask, consider, do their homework, especially that provided by the corporate sector, balance local/sectional/council-wide responsibilities? Are they in a meaningful two-way communication with both the corporate sector and the citizens?

On the other hand, any logical analysis must recognise the reality of elected membership of Councils. For many members, it is a matter of essentially voluntary service. The responsibilities of membership are wide, intrusive and constant. There is never enough time; never enough resources. Politicians have public-funded electoral offices and public-funded staff. Local government members do not.

Hence there is an even stronger argument for the corporate sector to offer and provide services, assistance and mentoring, to the elected members. New members should have a meaningful induction course – training, workshops, mentors, assistance.

Overall, is there a *partnership* between all three levels of governance in Local Government – corporate, elected membership and citizens? Is there sound internal communication, and well-developed and open two-way communication with the citizens? I would argue that partnership defines both community and good governance. Does your Council achieve it?

I have raised the question of political parties. Always controversial. So will I be. In the sense of political community – which is the heart of any system of Local Government – there should be shared values and shared cultures.

I have no problem with the involvement of people in Local Government who are members of political parties. To oppose that involvement would be a denial of the principles of democracy.

But I argue that the existence and, in some areas, the dominance of *disciplined* political parties, has a serious negative effect on both. The erosion of parliamentary democracy and responsible government in the State and National arenas is directly the result of *disciplined* political parties.

It is a loss to local community government if that happens.

When *disciplined* political parties emerge in Local Government, the consequent polarisation and confrontation on party lines is seriously damaging to any prospect of the development of a unified local community, and such unity is a fundamental pre-requisite to constitutional reform.

I'll go further. Good governance at any level of representative and responsible government – federal, state and Local - cannot emerge from a situation of dominance by disciplined political parties. And that I am also happy to defend.

To the means and requirements of reform.

If your Local Council has already attained the optimum level of quality of governance, the optimum level of partnership, and the optimum level of community, then congratulations. Now assist those which have not to do so, and then turn your collective minds to methods and means of achieving reform.

Recognition and status will remain as a dream unless you achieve three things: a real community of Local Government; a cohesive community lobby; and a clear and convincing case which is unable to be refuted. None of these is impossible; none of them is easy. But they are pre-requisites.

The framework of a cohesive and convincing community starts at the level of each Local Council. It starts from a recognition of the reality of politics: that unity matters.

Each Local Council needs to focus on internal cohesion and unity of purpose, a partnership which is based, first, on sound principles of representative democracy and responsible government, and second, but equally if not more important, on convincing your citizens that they should support and bolster their Council, and be a real and active part of the political community.

This will not be easy, as Australians are notoriously apathetic about politics, and notoriously cynical. But citizen support in a partnership is crucial. Full communication with the citizens, efforts to bring them into the Local Government community, and to turn them into activists for reform: daunting it may sound, but essential it is.

I have been observing Local Government for some time, and have been impressed with the increasing quality of communication from the Council to the citizens: newsletters, brochures, information, etc. These are widely used and disseminated.

But with what success? Turnout is still low; citizen participation usually occurs only when there is a complaint.

The communication from Council to citizens needs to be matched by a concentration on the *involvement* of citizens – as a partnership. It is true that such participation is not evident in State and Federal politics – Australian voters are beset with apathy, disinterest, and cynicism. That is, worryingly, strongest among the younger voters.

But State and federal governments are not seeking reform – you are. And that will need a real partnership with your citizens. It is a challenge.

You will need to convince the State parliament and government to accept reform. One method – perhaps the only one - is to force acceptance of Local Governments' demands through weight of voter opinion.

But developing a real and legitimate partnership with the State level is a parallel means. This will require not only local communities working as partnerships with a single aim, but a community leadership through the Local Government Association. Support for the VLGA must be delivered, and justified to the citizens.

In the process, the media must be brought on side. At present, most media are interested only when there is a “headline” story – usually on the basis of “what has gone wrong”. [e.g. rates?] That approach needs to be changed.

State parliament and government are unlikely to provide an ear, let alone a sympathetic ear, to a lobby based on any single Local Council. It may listen to a State-wide lobby which can carry with it evidence of unity of support from its constituent members, and from a substantive proportion of the electorate.

Once the separate Councils have come to agreement, then the VLGA must be given the authority to “carry the can” to the State government. But it must have the total support of all elements of the Local Government sector.

Conclusion

Changing what is, and what has been for over a century, will not be simple, nor quick. It can be achieved, but only by excellent communication at all levels, seeking and achieving consensus among all components, and by bringing your electors into the Councils and into the process of reform.

Above all, you will need to convince the broad population – who will have the final say on any constitutional changes - that they will actually benefit from the reforms.

Above all, and preceding all, is the necessity for the whole Local Government sector to be united, and to be united about aims which are crystal-clear in terms of roles and responsibilities, and about what form and level of status and authority you are seeking.

A divided Council is no asset in this process; a divided sector would write the death warrant for reform.

I am convinced that grass-roots local community action, and the democratic structures and processes which are built upon it, will produce for Australians a system of local community democracy and responsible government which will convince the State and federal parliaments to support reform – even if reluctantly.

Whether that happens is up to you in your Local Government sector. I wish you the best.

VIC LGA KEYNOTE