

Chapter Twelve

Federalism in 2010

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Premier of Western Australia

Sir Samuel Griffith, drafter of the Constitution of Australia and the first Chief Justice of the High Court of Australia, defended the rights of the States. The Samuel Griffith Society continues to defend our Constitution and the principles of the Federal system, and of the separation and balancing of powers.

It is important that this nation continues an intellectual and public discussion of all these issues. There is no doubt that any system of government, any constitutional arrangement, goes through an inevitable evolution. We need to ensure that the evolution is in the spirit of what Australians past and, I would say, present, wish.

I will not go back into history. I will just give some observations of how our Federal system is operating. These observations are simply from the last two years, the two years that I have been fortunate enough to be the Premier of Western Australia.

The Council of Australian Governments

COAG – the Council of Australian Governments – has become almost a new tier of government within Australia. Lobby groups now actively go out and try to influence decisions of COAG. That is perhaps one symptom of the change that has taken place.

During the Howard Government, COAG met once, possibly twice, a year, a similar mode of operation to the preceding Premiers' conferences. Under Kevin Rudd, COAG met far more frequently. In my first 20 months as premier, I attended seven COAG meetings; they were incredibly frequent.

Kevin Rudd made some good attempts initially to reform and to simplify the COAG process. Indeed, one of his first acts was to reduce the number of specific purpose payments to States and territories from 95 to six. That seemed, on the surface, a good move. Since then, that momentum for reform and simplification has been all but lost. There are now 53 national partnership agreements and there are 43 Ministerial councils.

Now Ministerial councils, meetings of Federal and State ministers, you would think, would be structured primarily on broad portfolio areas – Ministerial councils of Attorneys-General, of Health ministers, of Education ministers and the like, but 43 and growing? The structure of Ministerial councils has become topic-specific. So we have a Ministerial council of gene technology; we have a Ministerial council on food regulation; we have a Ministerial council on the status of women; we have one on northern development; and so it goes on. There are too many; they duplicate; they overlap; and they confuse.

For Western Australia, in a more practical sense, they are a nightmare. We have had cases of ministers flying across Australia to attend a Ministerial council in Sydney that has gone for 40 minutes, then getting back on the plane and flying back. Some of the worst features simply reflect the duplication that has happened. There are some moves at least to try and reduce that.

COAG is dealing with a very wide breadth of policy and programs, so wide as to cover almost every aspect of government, certainly any aspect that affects the States. There is, in my view, an

increasing lack of transparency. Agreements are circulated; ministers and premiers sign them; off they go.

In Western Australia, we very jealously guard our right to legislate within our own State Parliament. We do not accept legislation passed in other parliaments as applying here as a general rule. If we agree on national consistency or consistency of policy, then we will have mirror legislation in our own Parliament, so at least that brings a public accountability.

In other States, where they simply accept a COAG agreement and accept what may have been implemented through, say, the Parliament of Queensland, and therefore apply in all States, there is no public accountability, there is no transparency, and there is often no awareness within those States of what is happening. That, I think, is not a desirable element of our democracy.

The rising status of COAG also means that the decisions are being made at COAG by premiers, including myself, that actually presume what will be passed by State and Federal parliaments.

COAG, meetings of prime ministers and premiers, a structure for Health ministers and the like, to meet, certainly needs to be part of our Federal system. But at some stage we need to look at this sort of arrangement more objectively as a nation – a good task for The Samuel Griffith Society – and really assess where COAG is leading us as a nation.

It is, in my view, now an extra tier of government.

The future of the GST

A second issue I would like to mention is the growth of Commonwealth powers themselves. This has been discussed over the years – High Court decisions, extensions of Commonwealth powers, Commonwealth control of taxation, duplication of agencies, international treaties, and so on. That trend, that force of gravity, drawing decisions and power and money into the centre has been in large part the history of our Federation.

In some areas there are particular fragilities emerging. One that is very important to Western Australia is obviously finance, as it is to every State, but, in particular, the goods and services tax arrangement.

We are all aware that during the Second World War the States handed over powers over direct taxation to the Commonwealth to finance the war; they did not come back. That is part of history. Out of that we have tax sharing arrangements between the Commonwealth and the States overseen by the Commonwealth Grants Commission.

Under the Howard Government, introduction of the GST was a good reform in terms of the overall structure of taxation, a move away from over-reliance on direct taxation to a more balanced tax regime with indirect tax in the form of a GST being all important. John Howard's inspiration was to make the GST a State tax revenue so it provided some separation, albeit different than what was envisaged at Federation, but it also gave the States their own source of growth tax.

The Grants Commission oversees the sharing of those GST revenues between the States and territories. The way it is going from a Western Australian perspective is not attractive. Most people would expect, as they pay GST when they go shopping, that maybe a hundred cents in the dollar or something thereabouts would come back to their State.

Western Australia currently gets 68 cents in the dollar back. We are penalised through our economic success and, in particular, the strengths of the mining and petroleum industries.

I accept, and I think most West Australians accept, that, for most of the years of Federation, Western Australia has been a net beneficial State. That is fine. We have been supported and we appreciate that. Western Australia is now a very strong economy, a very successful economy and most West Australians accept that we will now become net contributors to the Federation, having for so long been net beneficiaries. I do not dispute that and I have yet to find anyone who seriously does. There needs to be some limit, however.

On current forecasts of the State Treasury, in three years' time, Western Australia will be getting back 55 cents in the dollar. That is hard enough to take but it is particularly difficult to accept when you see that the State of Victoria gets 94 cents in the dollar back, New South Wales gets 95 cents in the dollar back, and Queensland, a comparable State, gets 91 cents in the dollar back. It is way out of whack.

In my view the Grants Commission has outlived its usefulness. It has been an important institution in Australia's history but it is basically a mysterious black box that no-one knows what goes in, what goes on, and what comes out. It has failed, and it is failing economically. It is basically now penalising success in this nation. I do not think that is a good formula for going forward.

What I would argue is that there should be a floor in the GST share and Western Australia would accept a position where our share does not fall below 75 cents in the dollar. There needs to be some limit. Otherwise there is a circumstance, which exists today, where there is little incentive in Western Australia expanding its economy although it is very much in the national interest that we do so. Basically it is a zero sum game. And a government that was less inclined to development may well simply choose not to develop because almost all the gains of development now are taken from this State. All I want is 75 cents in the dollar as a floor to the GST to provide some certainty for public finance in this State, an incentive to continue to expand this State and therefore expand this nation's economy.

It is getting very close to the point of view of the Boston tea party; when you get down to 55 cents in the dollar there is a wide understanding of that in this State through all levels of society, and there is a growing level of resentment even reflected in private television commercials about money going East. This has probably become the most significant Commonwealth/State issue for Western Australia.

And I do not accept, and I do not want, various infrastructure programs or special funding programs invented as a substitute for actually dealing with the issue.

The issue is one of a fair and equitable distribution of GST revenues.

The Rudd proposals on health

The health proposals of Kevin Rudd and, I assume, Julia Gillard, were for the Commonwealth to play an increased role in the public hospitals of this country, or some 800 of them. That is an area where there has been gross duplication. That is the space that we are in now. And I acknowledge that the Commonwealth does play an important role in health, particularly primary health care through the GPs and so on, Medicare and also plays a significant role in the public hospitals. But public hospitals around Australia, all 800 of them, have all been built, owned, operated and staffed by State governments. For this State and for other States, 65 per cent of the cost of running public hospitals is met from State revenues, not the Commonwealth. The State is the major player historically and continues to be in our public hospital system. It is the States that make the decisions.

In Western Australia we are building a major new tertiary hospital at something like two billion dollars and we are about to start building a new children's hospital at a billion dollars.

They are State-based decisions and State-funded projects.

I do accept there is an overlap and that the Commonwealth contributes about 35 per cent. At the COAG meeting in April 2010, Kevin Rudd put on the table his proposals for health reform which had been circulated to some extent in the media. The idea was that we need to improve the efficiency of public hospitals and that we should fund public hospitals on the basis of what they actually do – so much for a knee operation or a hip operation or whatever it might be, targeting the funding to the actual clinical services delivered in our hospitals, reforms in emergency departments, wait lists and so on.

All of that had a broad agreement amongst the Commonwealth and the various State premiers and State health ministers. When the proposal was revealed in its final form at the COAG meeting

in April 2010, it was presented that the Commonwealth would now account for 65 per cent of the funding of public hospitals and that the Commonwealth would achieve that by taking one-third of the total pool of GST collections.

The first error in that was actually pointed out by John Brumby, the (then) Premier of Victoria. He asked, “what do you mean by this 65 per cent” – it was 65 per cent of funding of procedures, in other words, what is called activity-based funding, so much for a knee, and so on.

Brumby pointed out that, even if there was a hundred per cent of activity-based funding, that would only fund about half the cost of a public hospital – a slight error that the Commonwealth had not picked up at stage one but it gave us a hint of where it might go from there.

The Commonwealth back-tracked, saying, “oh yes, we understand that, we recognise that” – and, in the last 30 seconds, they probably had. So it came down to 65 per cent, not of the cost of public hospitals but 65 per cent of activities in hospitals – we got over that point.

Then the point about taking one-third of the total GST. There was not a premier in the room who was happy at that prospect. The first day the COAG meeting had been very productive, a lot of discussion about health, very sensible discussion. The second day, this GST proposal was announced. For Western Australia, given that our share of the GST is already diminished, to have taken one-third of the total GST pool would have accounted, in Western Australia’s case, of taking 60 per cent of our GST revenues that remained. In a relative sense it had a far bigger impact.

I was willing to go half-way. I said to the Prime Minister (Rudd) and the other premiers that Western Australia would not hand over a share of GST; that would be simply the thin edge of the wedge, as the GST would basically become a Commonwealth revenue source inevitably over time. We had the powers to prevent that and I exercised them.

I said, however, we do agree there is sense in pooling funding and we do agree that we should have higher reliance on activity-based funding in our health system. So I agreed that we would pay the equivalent amount into a fund to be basically jointly administered between the Commonwealth and the State.

For Western Australia, that equated to \$1.5 billion out of a State health budget of \$6.5 billion, so it was still not even the lion’s share or anywhere near it. That is what all the other State premiers wanted to do. John Brumby, to his credit, stood with me on the second day at a press conference and said Victoria had the same view and we would not cave in. Unfortunately John did, but he was the last of the Labor premiers to cave in and all we saw on the second day was a Premiers’ Conference / COAG meeting degenerate into a political exercise.

I became suspicious at the beginning of the second day when I noticed the other premiers were not looking me in the eye and also when we went into conference sessions, these lasted about 10 minutes, then we broke for a cup of tea; the whole day was a farce. Finally, the pressure became too much for John Brumby. It was basically Labor Party political pressure that determined where they went.

I signed a piece of paper about six weeks ago that allows the other States to give up one-third of their GST, so I presume they have all done that, but Western Australia has not. And I do not know if they will get it back if Tony Abbott becomes prime minister – that will be interesting.

The proposed minerals tax

Another example is the mining tax proposal – very much an issue for Western Australia and Queensland and, perhaps, New South Wales, to a lesser extent.

The point about the whole debate was that the case for taxing the mining industry more was simply never made. I can accept that the case could be made. Maybe the mining industry should pay more tax, but the case was never made. And, indeed, that whole proposal was, in my view, an attempt by the Commonwealth not only to take over taxing powers in the mining industry but basically to take over the total regulation of the mining and petroleum industries in Australia.

For Western Australia, that would have taken away our economic future.

I would not have been let back into the State had I agreed. The voting in Western Australia, where the Labor Party holds only three of the 15 House of Representatives seats, reflects the widely held view and understanding of the public in this State.

The proposals were just amateurish. My background is in economics and I think I know a little bit about the mining industry, having worked around it for the last 20 years. The argument was put that the reason the Commonwealth needed to take over taxation in the mining industry was that State royalties were preventing marginal projects from going ahead and then, indeed, some projects closed because they could not afford to pay State royalties. This was explained to us by (then) Secretary to the Treasury, Dr Ken Henry.

I have known Ken Henry a little over the years. After his explanation I drew him aside and told him I had been around this industry for a long time. I could honestly say I have never seen a project not go ahead because of State royalties – not one. Sometimes they have had royalty relief in hard economic times, but they have never had to close. Since then I have asked people from various parts of the mining industry if they could think of an example. No one can. Yet that was the whole premise of this proposal.

The original version, the resource super profits tax, was based on 40 per cent taxation of mining, on the argument that a 40 per cent rate applied to the petroleum industry under the petroleum resource rent tax. Well, the international taxation of petroleum is about 40 per cent; the international taxation of mining is about 20 per cent. That is why people got upset.

The petroleum industry was only taxed in advance of projects and the comparison is that most projects or many of those emerging are in developing nations, where the tax actually takes the form of handing over production to a State-owned energy utility and some production-sharing arrangement.

We are unique in Western Australia in that industry in that we have a private sector, our petroleum industry. That is not the case in most parts of the world. It is largely government-controlled and governments sharing in production and revenues directly. No sensible parallel was made. That is why the mining industry are dubbed big time.

Hopefully that issue is now put to bed, but I suspect that it will stay around, or return in some form.

That was not about simply trying to bring about efficiencies in mining and taxation. It was, without doubt, in my mind, all about a Commonwealth attempt to take over the mining industry. Why? Because it is the most rapidly growing and the strongest industry in Australia. It accounts for 70 per cent of Australia's national exports. It is what makes Australia important and the Australian dollar is a commodity currency.

The Commonwealth, I think, resented the fact that Samuel Griffith and others made sure that mining and natural resource ownership stayed with the States.

All those forces, all those events, have been like a great gravitational force bringing money, power, legal responsibility, decision-making into the centre. That has been the history since Federation. There are, however, some countervailing forces, some positive and negative forces. One of them might be simply that in many areas the public is showing an increased tendency to wanting more local say, more local administration. People like to think locally, and they like decisions, where practical, to be made at a local level. That sentiment has been growing for some time.

It is also the case that political power usually follows economic power. Take the special case of Western Australia, because I think it is a special case, but maybe reflected to some extent by Queensland. Australia, whether the Commonwealth likes it or not, is going to have different rates of economic growth, the so-called two-speed economy. That is inevitable, and it is actually in our national interest. You do not achieve a consistency or uniformity across Australia by trying to slow down successful States or successful industry sectors. Western Australia is becoming increasingly attached and entwined in the great economies of Asia, and it is a force that perhaps we have not seen in our Federation before.

The much quoted figure is that Western Australia has 10 per cent of the population and produces now close to 40 per cent of Australia's exports. I have been offering a bottle of good wine for about 10 years to anyone who can come up with the original source of that observation. I still have my bottle of good wine.

I would say that by 2020 Western Australia will be supplying well over half of Australia's exports. Decisions that have already been made will make that an absolutely certain outcome. If you look at some of the individual relationships – China, now our biggest trading partner. 66 per cent of Australia's exports to China come from Western Australia. 35 per cent of Australia's exports to Japan come from Western Australia. 40 per cent of Australia's exports to India come from Western Australia.

Western Australia is forming, not a foreign policy, but international relationships. This State's future is increasingly tied to Asia in economic matters and in social matters as well – health, education, sport, in culture and the arts. That will be a force that will tend to oppose some of the centralisation.

If you go back and look at something like revenue-sharing, GST and the like, just a few years ago Western Australia depended on the Commonwealth for 50 per cent of its revenues. In less than a decade it is down to about 40 per cent. Probably within another 10 years it will be close to 30 per cent. In other words, the Commonwealth will no longer be the dominant economic force in Western Australia – Western Australia will be, with its new partnerships and arrangements developing in Asia.

My final comment is that the argument that everything has to be uniform has some merit. The States and the Commonwealth have worked quite well to get a consistency in taxation matters, in definitions, transport, energy – everywhere. Often that is done by setting up so-called independent regulators – they are the bane of my life. Independent regulators do not always get it right, and when they get it wrong, it becomes a problem for the politician. We have many examples in Western Australia. So there will be a bit of rethinking on that issue.

But in terms of national consistency and uniformity, how often do you hear politicians, federal bureaucrats and even national lobby groups and international companies call for a national approach? It does not matter what it is. We must have a “national” approach on this issue or that issue.

For some things we do want a national approach – in defence, for example. But on other things it does not make sense logically. For Western Australia, if we were to have a national approach, then this State would have poker machines in pubs, we would have toll roads where we do not have any, and we would even have daylight saving when most do not want it.

Support for ideas of a “national” approach is not necessarily pervasive.