Dinner Address

Western Australia and the Federal Compact

The Hon. Richard Court, MLA

Premier of Western Australia

Mr Chairman, distinguished guests and members of the Society:
I very much appreciated the Society's invitation to give the opening address to this conference. The conference is timely and the topic you asked me to speak about could not be more apt.
The Federal Compact has come under severe strain at several points in our history, but never more than it is now. This strain embraces a very wide spectrum of issues and inter–governmental relationships which are hard for those close to events to grasp, let alone the people of Australia. I will attempt to show the breadth and depth of the forces threatening the Compact by using concrete examples familiar to most of you.
While my topic may allow, or even suggest, that I should include the republic issue in my remarks, I will in fact not do so. How the Commonwealth and State Governments deal with the republic matter is certainly related to the Federal Compact. But the republic idea is a major topic in itself and better left for another day.
Last month, I announced that the Government had appointed a Western Australian Constitutional Committee. It comprises prominent Western Australians from diverse walks of life. Each has made important contributions to the State. Collectively I am sure they will offer the Government sound advice on important constitutional issues. The Committee will operate for twelve months.
The republic issue is a major part of the Committee's terms of reference, but its brief extends much wider than this. They will be looking at how the Constitution and the Federal Compact operate from Western Australia's point of view, and how the State's own Constitution could be made more effective in the face of unrelenting Commonwealth efforts to diminish the State.
Copies of the Committee's terms of reference and membership are available to participants at this conference.
The Samuel Griffith Society is concerned with Australia's Constitution. The Constitution sets out the terms and conditions on which the self–governing colonies agreed to enter the Federal Compact. By agreeing to the Compact, the colonial Governments created Australia as a nation. This meant a national Government able to represent Australia on the world stage. The men and women framing the Constitution understood this very well. But they never anticipated successive national Governments, presided over by leaders of various political persuasions, which would relentlessly and systematically subvert, undermine or ignore the Compact they had just made.
The colonial leaders who agreed to the Compact showed a profound faith and trust in both their counterparts in other States and in the future leaders who would govern the Commonwealth. Their faith and trust were all the more remarkable given the tyranny of distance then applying, and the long communication delays. It is difficult enough in modern times to make sure that parties communicate accurately with one another. Imagine the task then of discussing and reaching agreement on the many complex matters which needed to be considered.
How has this faith and trust been rewarded? I am sure the founding fathers would accept that they did not get everything just right in the Constitution. They would not claim to have second

sight or an ability to foretell the future. Indeed they made sensible provision in the Constitution to change it if all parties to the Compact agreed. Like any other agreement, it can be changed if the parties wish it.

But few if any of the Founders would have anticipated the consistent will on the part of successive Commonwealth Governments to erode the very basis of the Federal Compact. In the light of this unabated Canberra power grab, the Constitution can now be seen as seriously weakened from the States' viewpoint. The parties to the agreement have proved not to be equal.

This inequality stems from four key elements in the Constitution which have been used and mis-used to entrench ever greater power in Canberra. The key elements are:

1. The external affairs power of section 51(xxix) of the Constitution, which if deployed by a wilful and hungry Commonwealth Government, can be used to encroach on almost every aspect of State Government policy and administration. The Racial Discrimination Act, the Environment (Impact of Proposals) Act, the World Heritage legislation, the Tasmanian Dams Case and the emerging biodiversity, species preservation and climate protection conventions are prominent examples. A Universal Declaration on the Rights of Indigenous Peoples is being negotiated. Stand by for further developments.

2. The power of the purse, whereby under section 96 of the Constitution, the Commonwealth can make grants to States and impose conditions on those grants. In more recent times, the fiscal imbalance, whereby the Commonwealth collects more revenue than it needs and the States collect less than they need, has led to a wholesale Commonwealth push to control State Government policies through tied grants and other agreements. Too often these so–called agreements are made at the point of a fiscal gun held by the Commonwealth.

There are 87 special purpose payment agreements, of which 75 involve Western Australia. These strongly influence the policies and administration of many aspects of what should be the clear province of the State. They lead to bureaucratic duplication and extra costs.

Just recently, the Commonwealth has begun to insist that such agreements, when renewed, must now include statements in the recitals which recognise or acknowledge the joint aspirations of the parties concerning ecologically sustainable development and native title. Again, the Commonwealth is using its financial strength to impose its policy prescriptions on the States.

3. Section 109 of the Constitution makes invalid any State laws which are inconsistent with valid Commonwealth laws. I stress the words "valid Commonwealth laws". Not enough Commonwealth laws have been tested to verify their validity. But that too is an issue for another day.

Doubtless, the original intention of this was to avoid creating a legal limbo in cases where the Commonwealth had to make laws for its constitutional purposes which turned out to be inconsistent with State laws. But the Commonwealth too often has made laws which extend its involvement well beyond the intention of the original Compact. These laws can then be used to invalidate State laws dealing with the same subject. Combined with the external affairs power, section 109 has become a weapon in Commonwealth hands.

4. The High Court has consistently ruled in favour of extending the Commonwealth's powers at the expense of the States. Rather than being a protector and upholder of legal rights for all, it has become a de facto partner with successive Commonwealth Governments to increase Canberra's power and centralist Government authority. Too often the High Court has taken an expansive view in reaching its judgments, rather than asking itself what was the original intention of the parties to the Federal Compact. The High Court, a creature of the Compact, has become one of the chief threats to it.

I could add a fifth element – that is, the attitudes of the States themselves. All States, on too many occasions, have accepted Commonwealth offers of money in return for short term gains. They have failed to consider the long term implications of handing more authority to Canberra.

I have been discussing the four major threats to the Compact's continued existence, but what of the Compact itself? Should it continue? Is it outdated? Will our Constitution look quaint and dated in a 21st Century world? What has really changed in the past 100 years to justify such a wholesale attack on the original Compact?

Rapid transport and instant communications are blurring the distinctions between countries and generating a commonality of interest among diverse nations. Issues which could once have been confined comfortably within national borders, now cannot be.

But does this mean our Constitution is no longer adequate? Certainly not. Well designed constitutions are meant to last, without the need for frequent amendment. Given genuine good will by all parties, the sound principles on which our Constitution is based can readily accommodate scientific and social change. We should be very wary of change for change's sake, especially if such change is purported to "modernise" the Constitution.

SEK Hulme, in his amusing and penetrating address to the inaugural conference of your Society last year, put paid to the "modernisation" argument once and for all. He also set out the three simple criteria for justifying a change to the Constitution. The shrinking globe is not one of them. In deference to SEK, I will not mention "horse and buggy".

One of my principal concerns associated with the shrinking globe involves the environment. The Founding Fathers understood the land, the sea, the rivers, the air, the plants and the animals but they failed to actually mention the environment when conceiving and drafting the Constitution.

There is a perceived need for more international co–operation in environmental protection. I have no quarrel with this.

Unfortunately, the desire for international co–operation soon becomes translated into a call for an international convention or treaty. Why cannot nations simply agree to co-operate, based on a set of rules and criteria? Why go the next step to a formal treaty? What happens if a country fails to abide by the treaty? There may be a hollow referral to the International Court of Justice or to United Nations headquarters. There may be punitive trade sanctions imposed, which harm all parties.

Dr Colin Howard, in his paper to the last conference in Melbourne, pointed out clearly how Australia's sovereignty and independence are weakened each time the Commonwealth Government enters into such conventions and treaties.

Back home in Australia, such conventions and treaties take on sinister proportions for the hapless States. Here, the Commonwealth can argue that it has exercised its external affairs power legitimately, and not distorted the original intentions of the Constitution. The Commonwealth consults with the States about how the new convention or treaty is to be implemented. Indeed, to give it its due, the Commonwealth may even consult the States before signing. The end result is the same – an imposed regime of policy and administration concerning the environment, or species preservation, or air quality or whatever.

Another prominent example at the moment is the fallout from the High Court's decisions in the Mabo case. An international convention signed by the Whitlam Government led to the Racial Discrimination Act. This Act has been relied upon in a small number of cases since it was enacted in October, 1975. But for the most part, it did not assume a prominent position in Australia's legal framework. It lay dormant. Then we had the High Court's decision in the Mabo No 1 case. Combined with the Court's decision in Mabo No 2 concerning native title, we suddenly have a full scale national problem which, among other things, threatens the Federal

Compact by opening the door to a Commonwealth take-over of land management over a large part of our State.

Most significantly, the High Court's Mabo decision, and the Commonwealth Government's proposed legislative response to it, will affect mainly Western Australia. Under the Commonwealth's proposals, most native title would occur in this State.

So instead of leaving it to each State to address the implications of the High Court in its own way and offering to give appropriate legislative support where, and only to the extent required, the Commonwealth has used native title as a weapon against the States. As has happened so often since the Federal Compact was made, this response is very far indeed from the intentions and spirit of those who conceived it.

This week, my Government took decisive action to roll back this latest Canberra intrusion into State affairs. We introduced our Land (Titles and Traditional Usage) Bill into our Parliament. We believe it provides the only workable solution for Western Australia. It is a fair solution for all Western Australians. Copies of the Bill are available here tonight for those who are interested.

The most consistent and implacable departure from the Compact over many decades has been in financial affairs. If we look at other successful federations – Germany, the United States, Canada – we see that States, or provinces, and the national Government both collect revenues which are broadly in line with their expenditure commitments. All levels of Government are responsible for all the revenue collection and all the expenditure in their respective jurisdictions.

Australia stands alone as an important, modern and advanced federation where Governments at State level are forced to go cap in hand to the Federal Government each year for major funding support. The process is demeaning and engenders bitterness and rancour. More importantly, it is not good government. Political responsibilities are blurred. State voters are disenfranchised to a significant degree. They have voted for State Governments on the basis of their declared policies. These policies can be greatly eroded or even overturned by a Commonwealth Government which imposes other policy prescriptions and gets its way through financial coercion.

Why have successive national Governments refused to negotiate a sensible, fair taxation arrangement with States to correct this fiscal imbalance? The answer is simple. Having seen and used the loopholes in the Constitution, all Commonwealth Governments have revelled in the extra powers thus afforded them. Instead of negotiating in good faith with the States and thus strengthening the Compact in the process, most Federal Governments have exploited this fiscal imbalance rather than acting to correct it.

They have used many and varied reasons to justify this blatant misuse of the Constitution. But they all boil down to two main headings: first, that the States cannot be trusted to behave in a financially responsible way and need a caring, paternalistic and wise Commonwealth Government to look after them; and second, that a country the size of Australia (in population terms) cannot afford three levels of Government. Let us look at these propositions.

If State Governments had access to revenue sources which could be predicted with reasonable certainty and which grew in step with population and living standards, there would be fewer attempts to engage in the dubious financial dealings which have so characterised most State Governments in recent years. State Governments will always come under political pressure to deliver more services and meet new needs, both real and perceived.

But if they are fully responsible for raising all their revenue, they will be better able to equate the political, as well as economic and social, costs of new initiatives. Moreover, the people themselves will be better placed to understand how their demands for improvements relate directly to taxation or other revenue–raising measures needed to meet those demands. At present the picture is blurred. Few voters really understand the complex interplay of Commonwealth – State financial arrangements. I don't blame them.

The ill–judged excursions into entrepreneurship by some State Governments during the '80s were explained in some quarters as symptoms of frustration. I think greed is a more convincing explanation. But if it existed, this frustration would stem directly from the imbalance all State Governments face between the demands placed on them for services and the ever–tightening financial squeeze they are subjected to by successive Commonwealth Governments. It is easy for the Commonwealth to appear more financially responsible than the States – it merely has to go on saying No. The Commonwealth does not have to face directly the frustrated demands for service delivery at the coal face. Nor does it face directly the political odium from saying No.

I turn now to the second proposition. The Labor Party has long held that Australia should be governed by a unicameral Commonwealth Parliament, supported by appropriately re-configured local governments, without any State Governments at all. This is, of course, a prescription for centralism. Indeed, a strong centralist theme pervades most of Labor's policies.

But we have seen what happens to excessively centralist government in the USSR and Eastern Europe. These were the ultimate centrally planned economies. Few Australians, if they stop and think about it, really believe that Australia would prosper better under a central Government in Canberra, dispensing money and policy guidelines to hundreds of local governments around the nation. I reject any such notion. It is not the right way or the best way for Australia.

Canberra is a remote place. It is not responsive to people at a local level. It must treat everyone uniformly, despite important regional factors in each State. There are second and third generation bureaucrats in the Commonwealth public service, many of whom have never visited a State in the course of their work.

To most Western Australians, the Eastern States consist of images on their television screens. It is hardly surprising that people in this State get angry when the Eastern States dominate the political and economic agenda to Western Australia's detriment.

In Government, small is beautiful. People must not feel alienated from their Government. They should feel they can participate directly in the political process. Government must be responsive to the reasonable needs of reasonable people.

The sharp economic, social and historical lessons learned from the centrally planned socialist economies are clear and unmistakable. Economic management works best when there is competition, authority and autonomy at a local level.

Enlightened Governments and major corporations are decentralising, not the reverse. We can achieve this local focus better through renewed attention on the Federal Compact in this country. We should be asking ourselves this question: "Would a revitalised Federal Compact, restored to its original noble intention, serve Australia better than the centralist model as we enter the 21st Century?"

I believe the answer is unreservedly "Yes". State Governments, given the political freedom and clear responsibility which goes with fiscal independence, and re–empowered by a return to the spirit of the Federal Compact, will deliver better government in this country. All that is required is a genuine spirit of co–operation on the part of Commonwealth Governments, realising at long last that grasping power by flouting the spirit and intention of the Federal Compact will only lead to centralism. This is a doctrine, like Marx himself, which is consigned to the graveyard of history. It is time to return to the Compact, not to change its foundations; much less destroy them.

It is the consistent refusal on the part of most Commonwealth Governments to honour the spirit of the Federal Compact which has fuelled the simmering threat of secession in Western Australia. This State was a doubtful starter in the Compact from the beginning. Since entering the Compact, Western Australia has harboured a lingering doubt that it made the right choice. There have been periodic upwellings of frustration and anger, triggered by repeated breaches of

the Compact and an apparent implacable resolve on the part of successive Commonwealth Governments to diminish the States in general and Western Australia in particular.

I often think that we need an embassy in Canberra more than many overseas countries do.

I can assure you that the secession sentiment is alive and well in Western Australia today. I have no doubt that an even better case could be put forward today than was advanced for the 1933 referendum for improving living standards of Western Australians by seceding. We have 9 per cent of Australia's population but produce a quarter of our nation's exports. We are self–sufficient in all essentials of life and major net exporters of agricultural products, minerals and petroleum. Our manufacturing and service industries are much stronger now than then.

I am not advocating the secession route, as popular as it no doubt would be. Instead, I have a responsibility as the Premier of Western Australia to ensure our Federation works more effectively and that is what I will continue to strive for.

But the voice of reason can be swamped if popular sentiment, fuelled by the frustration and anger I have mentioned, erupts in response to Canberra's continued flouting of the Federal Compact. In such circumstances, people tend to say to hell with the balance sheet, let's go our own way! People identify with their States. This sentimental attachment to State origins is here to stay, whether Canberra likes it or not. The latent potential for this up-welling of pro–secession feeling should sober any Commonwealth Government bent on further power grabs.

I would now like to mention what I see as the most sinister aspect of the Commonwealth's systematic undermining of the Federal Compact. By continuing to behave as they have done for decades, Commonwealth Governments are denying the people the very voice the Founding Fathers sought to entrench. The Constitution provides clear means of changing it.

It is only the people themselves who can alter the Constitution. By its consistent use of financial muscle and cynical exploitation of its powers beyond anything the Founding Fathers ever intended, the Commonwealth has changed the Compact in a de facto way, without giving the people their right to decide.

In a democracy, the ultimate authority rests with the people, who bestow that authority on elected parliaments to govern within the limits of the Constitution. Governments which stray outside the Constitution lose the moral and legal authority to govern.

The Commonwealth has no moral authority to subvert the Constitution in the way it has. Of the many referenda held in Australia to change the Constitution, only a very few have succeeded. Those that did had bipartisan support and, significantly, support from State Governments. The Australian people have made their intentions unmistakably clear. They will not allow their Constitution to be changed without this bipartisan and State support.

Successive Commonwealth Governments, demonstrating a uniform desire for more power and a high– handed disregard for the people's decision, have exploited the loopholes I have mentioned. There is no moral basis for their behaviour and no basis in good government either.

In conclusion, I salute The Samuel Griffith Society. Its efforts to inform people about the Constitution and the dangers of departing from it are already being felt. The Society will grow in both numbers and influence in the years ahead. Not only will it be a bulwark against further erosion of the Compact, but it will also become an increasingly effective voice to persuade people, by force of sound argument, to restore the intended roles of Commonwealth and State Governments in Australia.

I support the Society's objectives. I encourage you to continue your important work. Make your voice heard in every State. Build your membership. Inform the youth of this country about the vital importance of the Compact. The intellectual quality of the Society's efforts is a strong force for good. In the end I am sure it will prevail.

I commend the Society to everyone here who is not already a member. I am sure you will have a stimulating and enjoyable conference. I wish you well and have much pleasure in declaring your conference open.