

## Dinner Address

### Challenges, Chances and Choices : The Future of the Federation

*Hon. Dean Brown, MLA*

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A couple of weeks ago I sat in the State Cabinet room and spoke to a South Australian astronaut as he flew overhead in a space shuttle, at 70,000 kilometres per hour.

We truly live in exceptional times -- and I hope I never lose my sense of wonder, excitement and privilege at being where I am at this point in history.

We also live in a time of exceptional opportunities to link with the world, at home, at work, in cafes, libraries and community centres -- opportunities and lifestyles far removed from those of the people who framed the Federation and watched its implementation in 1901.

This time of exceptional opportunity also brings with it opportunities which could fundamentally affect the future of Federalism.

Overwhelmingly, the challenge for governments anywhere today is to create environments that allow people to make choices about their own lives -- which give maximum freedom -- while at the same time responding to their alienation from governments and governments' institutional arrangements.

Fundamentally, people want freedom to be individuals but they also want a sense of belonging and security.

One of the biggest drivers of change today is technology, which will continue to push us towards what have been described as 'virtual governments'.

The increasing capacity of information technology and telecommunications, matched with lowering of costs and the enthusiastic uptake of the Internet, means that the world is now 60 milliseconds wide.

The impact on governments, as people operate as citizens of the world, has yet to be fully realised.

The impact on Australia as a nation creates quite natural tensions between us in identifying ourselves within a national boundary -- and as a nation operating in competition with other regions -- and in the global marketplace.

So it becomes more critical that we define now how we want to progress our institutional arrangements -- the choice between accepting regional diversity, freedom and difference in the way government is run -- as opposed to centralism.

In other words -- diversity versus uniformity.

This means resisting the creeping centralism of power in Canberra.

What I want to argue tonight, as part of the challenges, chances and choices of the next few years, is not an anti-Canberra stance -- but more a call for an appraisal of where we are as a nation and where we want to be in the next century.

Modern media and community expectations will require government as *close* as possible to the people it represents.

It will require also government which is specific in its promises and outcomes.

That, I believe, remains the strongest argument for States to hold their own reins - with national uniformity where appropriate.

That means guarding against further erosion of the States' control over their own destinies -- and arresting some of the decline in the power of the States.

To this audience, I don't have to chart the decline -- you're all very familiar with the inroads and the forces behind them.

For State politicians this presents a three-pronged challenge of acting as agents of change, coming to grips with new power blocs which are not necessarily aligned to countries or regions, and resisting any further erosion of the States' ability to manage their own affairs.

How do you ensure that the democratic process is not subsumed by the economic process? As governments increasingly move out of service delivery, how do they ensure they fulfil their moral responsibility for the well being of the people they serve?

One big chance which is emerging from the change of emphasis from service deliverer to facilitator is, that when not totally focused on service delivery, governments can spend more time thinking about how the links across society work - and do something about strengthening them.

One of the challenges is how State Parliaments maintain their role with the increasing use of uniform legislation.

Recent examples are the Competition Policy, Trans-Tasman

Recognition, Gun Control and the National Electricity Market, where the policy generally is not an issue but the legislation is developed with no real opportunity for scrutiny by the State Parliaments.

The Parliaments have no effective means of amending legislation which has been drafted by bureaucrats, often in another State, and which requires national uniformity.

From the outset I want to emphasise that South Australia welcomes the policy direction of these reforms.

- Sorting out the processes is equally important in other areas affecting the responsibilities of the States, such as native title and gun law reform.

The important role of the State Parliament in putting into place complementary laws of national application has been illustrated in the native title process.

The problems which some States have had with this federal legislation are well known. After all, control over land titling and ownership has been a traditional State Government responsibility.

This is one piece of legislation which has much greater impact in some parts of Australia, including South Australia, than elsewhere.

That is why the federal Government should hand responsibility for native title on pastoral leases to the State Governments.

In South Australia we have enacted State legislation which has sought to give practical application to the federal laws and to make them more workable within the constraints of the federal Act.

There is still a long way to go with native title.

But South Australia has been prepared to take the lead to unravel some of the complexities and uncertainties inherent in the federal legislation.

It is an example of where Canberra needs to be much more aware of the potential for varying regional impacts when it makes decisions and enacts legislation.

In this State we have supported the application of the restrictive business practice rules in the *Trade Practices Act* to State government business enterprises.

We are committed to developing a more competitive business environment.

The process of microeconomic reform is one that we commenced in this State well before the Council of Australian Governments (COAG) Agreement on Implementing the National Competition Policy, and it goes well beyond the requirements of that Agreement.

However, there is a marked difference between the Commonwealth and the States agreeing on broad policy outcomes, and the Commonwealth using its leverage under the various COAG agreements to obtain constitutional outcomes.

It can only achieve this, of course, by use of its purse-strings power and by threatening to use its existing heads of constitutional power if the other jurisdictions do not agree to its desired outcomes.

In many situations the use of the Commonwealth's constitutional power may be insufficient to apply the policy outcomes to all market participants, for example, to unincorporated persons and partnerships. In those situations, the Commonwealth needs the assistance of the States.

There are a number of constitutional outcomes that can be identified. First, those that restrict the broad policy-making role of the State and so affect its room to manoeuvre in areas traditionally within the State's competence, such as economic development incentives. Secondly, those that affect the State's parliamentary sovereignty. And thirdly, those that interfere in a detailed way in an area traditionally regulated and controlled by the States, such as petroleum exploration and production licensing, exploration acreage decisions and so on.

State sovereignty and parliamentary sovereignty are in jeopardy when we are required, upon threat of financial penalty, to adopt a particular form of legislation by the Commonwealth. This has occurred with competition policy.

Of course, the starkness of the threat is usually hidden in some intergovernmental agreement, or maybe the implicit threat, "The Commonwealth will legislate or withdraw funds if you don't".

The standard example of being forced into a legal straightjacket is through Applications of Laws schemes, where one jurisdiction is the Lead Legislator and other jurisdictions pass a law that simply picks up and applies the Lead Legislator's law as it is from time to time. Thus, the Lead Legislation can be amended by the Parliament of the Lead Legislator, and it then applies in South Australia without reference to the South Australian Parliament.

Papers published by The Samuel Griffith Society have, over the years, highlighted the seemingly inexorable expansion of federal power over aspects of Australian life.

The drafters of the Constitution - and perhaps more important, the people who adopted it - could never have envisioned this expansion.

The steady erosion of responsibilities of the States has resulted from a number of factors, not the least of which has been the role of the High Court and the use - or, I should say, misuse - of the foreign affairs power.

But, as we look to the future, we should realise that undermining the Constitution can take many forms.

The Constitutions of the Commonwealth and of the States all embody *parliamentary* democracy. The principle of the supremacy of Parliaments is central to our system of government.

The implementation of national legislative schemes does reduce parliamentary sovereignty because the very process usually reduces the opportunities for parliamentary scrutiny of legislation.

Thus, State Cabinet is presented with the *fait accompli* of a draft intergovernmental agreement and accompanying legislation with little scope to seek changes.

- Parliaments are forced to become little more than rubber stamps and, in many instances, find they have no say in amendments to their laws which occur through Ministerial agreement.

This is a real intrusion upon State sovereignty, and certainly not one anticipated by the founding fathers of the Australian Constitution.

To date, only one Australian Parliament has sought to address the challenge to parliamentary sovereignty posed by intergovernmental agreements and other national legislation schemes.

The Western Australian Parliament has established a Standing Committee on Uniform Legislation and Intergovernmental Agreements.

Representatives of all Australian Parliaments are presently meeting to devise some mechanism to preserve a measure of parliamentary sovereignty.

So, my message to the Prime Minister and his Ministers is, "Do not allow yourselves to be seduced by the perceived power of dominating the nation, and therefore the States and Territories, from Canberra. Do not allow the bureaucrats to persuade you to ignore the role of Parliament within the Federation, or believe that everything must be uniform".

All of these tendencies by the Commonwealth, of any political persuasions, will lead to undermining the very diversity and creativity we celebrate as the mortar which makes this nation strong.

It is, indeed, the very antithesis of our diversity -- a smothering kind of uniformity which undermines the competitive edge of the States and therefore the competitive edge of Australia.

Take the Australian Securities Commission. There is currently a move to downgrade the capacity of the regional offices in Adelaide, Brisbane, Hobart and Darwin to deal with takeovers and mergers.

I have no quarrel with the ASC becoming more efficient and lean, but that will not come from concentrating resources in Melbourne, Sydney or Perth.

This is still the subject of discussion between the States and the Commonwealth in the hope that necessary services can be maintained in centres such as Adelaide to provide a critical mass for the provision of services to South Australian business.

The States have to be respected for their knowledge of their people and their individual needs and their capacity to encourage a critical mass for efficient conduct of business.

The best picture I could paint of a flourishing Australia as a federation in a global marketplace, would be dominated by the States thriving as competing regions, sparring with one another, constantly pushing one another to achieve better performances - in much the same way as our sportsmen and women do.

In fact, you can use the sports analogy : the strongest team is the one with the biggest number of high performers - striving for "personal best" performances - but doing it for the ultimate good of the team, which is all the stronger for the internal competition.

So that's a key choice for the future : just how good do we want to be as a nation? - and how prepared are we to let our individual regions strive for competitive excellence?

One of the on-going challenges to federalism is developing a successful model for the distribution of revenue.

This may have as much constitutional significance as vertical fiscal imbalance, which has developed as a result of those controlling the purse strings - the federal Government.

In this, as in many areas, the Commonwealth tends to act as if the words "Commonwealth" and "national" mean the same.

In my dictionary, they don't.

We have a chance now, when the nature of Federalism is under scrutiny, for the States to help shape the agenda and the priorities for reform as major Commonwealth-State interactions. One of the most important challenges here is managing the Premiers' Conference.

This Conference has been a dominating feature of Commonwealth-State relations for almost 100 years.

As well as the declared intention of the new federal Government and the Premiers and Chief Ministers to work for a more co-operative relationship, the proximity of the Centenary of the first such meeting of Premiers in 1899 makes it timely to review this annual ritual.

As a reflection of the maturity of relations between different levels of government in Australia, I do not believe it serves us well.

There is the common perception that the Premiers and Chief Ministers go begging to Canberra to be beaten up by an increasingly powerful federal Government.

As such, these annual meetings have become little more than media events. There is no meaningful negotiation about shares of the financial cake, or the direction of the national economy, and other important issues affecting intergovernmental financial relations in Australia.

The Prime Minister comes to the meeting given little room by his Cabinet to manoeuvre.

The Premiers and Chief Ministers are always left to complain that the Commonwealth has not been fair.

- As such, for a long time these meetings have served little purpose in encouraging the Commonwealth and the States and Territories to work cooperatively to deal with financial issues.

They have tended to alienate the States from the Commonwealth and impede the opportunity to resolve social and economic issues requiring national consensus.

My view is that the national interest would be better served if the reality were recognised by all participants at Premiers' Conferences that the meeting is not a negotiating session.

Rather, it is an exchange of views about the programs of the participating governments, their outcomes and the economic and financial constraints within which those programs are being undertaken.

The States and Territories are seeking longer term certainty in the funds they receive from Canberra. However, this does not mean that an annual meeting of the States and Territories with the Commonwealth does not have a place in dealing with important financial and economic issues.

- The States, increasingly, are bringing in early budgets to assist in their annual forward planning.

It is to be hoped that the new federal Government will do the same from next year.

There is little purpose served in going to Canberra in June when all the key budget decisions for the following twelve months have been taken.

I suggest that the annual Premiers' Conference should be held early in the calendar year and certainly by early February.

- At the meeting, the Commonwealth and the States and Territories should discuss the progress of their respective budgets and the financial and economic outlook for the following financial year.

This should be a genuine exchange.

The State and Territory leaders should be given the opportunity to have input to the federal Budget process.

This would give the process a regional focus it tends to lack at present.

It would allow the State and Territory leaders to provide valuable input to national economic and financial settings.

The States and Territories would have a clearer picture, at a much earlier stage in their budget cycles, about the financial and economic objectives of the Commonwealth to maintain or increase their share of the financial cake.

Having been informed of the position of the States and Territories, the Commonwealth would then make public by early March its proposed funding allocations to them for the following financial year.

This could be done through a statement to federal Parliament which could be the subject of debate in the States' House, the Senate.

Such a debate would allow issues in the individual States and Territories to be canvassed before the federal Government finalises its funding allocations by the end of March.

In this way, financial issues of significant regional and national importance could be debated in a much more mature way.

The ritual of Premiers and Chief Ministers having to lament outside the federal Parliament about the cold and mean financial winds of Canberra would become a thing of the past.

- The federal Government would have to give more serious and sustained consideration to the information provided by the States and Territories, rather than go through the charade of punch and counter-punch around the table at a Premiers' Conference lasting only a few hours.

The federal Government would then have to account fully to its Parliament through the States' House, for the decisions it makes.

In my view, after almost 100 years of Federation, there must be a much better way to conduct the important financial affairs of our nation and the States and Territories.

I thank The Samuel Griffith Society for the opportunity to address it tonight at what is a unique stage in the evolution of federalism in Australia. The Commonwealth wants to cut duplication, the States want to stop the Commonwealth looking over their shoulders with tied grants, and the Commission of Audit has the capacity to bring about the biggest changes to Federal-State relations in the past 20 to 30 years.

In closing, I remind you of the words of Sir Samuel Griffith during the first of the Constitution debates :

"We must not lose sight of an *essential condition* - that this is to be a Federation of States and not a single Government of Australia ... the separate States are to continue as autonomous bodies, surrendering only so much of their powers as is necessary to the establishment of a joint Government to do for them collectively what they cannot do individually for themselves, and which they cannot do as a collective body for themselves."

And I urge you all to keep up the fight for the preservation of federalism within Australia.

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