

Dinner Address

Returning Power to the States: Risky or Responsible?

Hon Richard Court, MLA

It is quite a humbling experience to address such a learned audience; and when I look around the tables and see so many people from so many parts of the country that have contributed so generously to the economic, the social and the political debate in our country, it is a terrific experience.

And to see you, Sir Harry, at this conference is especially terrific because you have the unique ability to be able to put a complicated issue into a simple written form for people like myself so that we can understand many of these constitutional issues.

On many occasions I have referred to your contributions, your articles on some of these constitutional issues, and they have certainly helped me get a better understanding as we face what hopefully is going to be a period of some change in our federation.

I hope my contribution at the beginning of your conference tonight is one that will provide a practical perspective on what positive change can be realistically achieved when we consider some of those important issues facing our federation.

As Sir Harry said, my subject is *Returning Power to the States: Risky or Responsible?*, and I say, for the good of the nation it is essential.

When I last spoke to this group, I was concentrating on Native Title issues and I addressed the practical problems that had developed with the then impending Commonwealth legislation, and how those issues could be resolved.

There are people here tonight with whom we worked closely four years ago, who were a part of the team that we put together when we came into government to develop the State traditional land usage legislation, which we saw as a responsible, constructive approach to a difficult issue.

Four years down the track, people are now having another look at that legislation, and recognising perhaps that it was a practical way to address the issue.

But Native Title has been the classic case of a federal government introducing legislation which has effectively neutered the States' ability to control land and resource management, which is our constitutional responsibility.

We are sovereign States and we have the constitutional responsibility to manage land and resources.

The federal government of the day developed Native Title legislation with virtually zero practical experience in running a land and resource management system. They ignored the States' concerns both during the drafting of that legislation and when it was put into operation.

The end result has been a disaster -- totally unworkable legislation; and any democracy that doesn't have certainty in its land management system has big problems.

The Coalition that was elected has initially been slow to move on this issue. But eventually they have put forward amendments to try and address the problems.

Last year's High Court decision, the *Wik* decision, has made the Coalition's job that much harder, because following that decision we now have a situation where the High Court has said that there can be the co-existence of Native Title on leasehold land.

Paul Keating said, when his *Native Title Act* was passed, that it would only benefit five per cent of Aboriginal Australians. Hence he justified creating his Indigenous Land Fund, the revival of "extinguished" Native Title on Aboriginal-held pastoral leases, and a "social justice" package which never eventuated.

Those things were all proven to be false, and the nation now sees that Act sponsoring huge ambit claims around this country.

Over 600 Native Title claims have been lodged nation-wide. Half of them are in Western Australia and, as of today, 82 per cent of Western Australia is under claim.

Individual claims in the south-west cover some 200,000 square kilometres and stretch from Eucla to Walpole. The majority of the claims also overlap, and some areas in the Goldfields have 18 claims over a single piece of land.

I said in the Parliament last week that one project in the Goldfields has to negotiate with 24 different claimants. The Labor member for the area said I was wrong -- he said it was 27 different claimants.

All the claimants are financed by the Commonwealth, and they have been placed in a commercially advantageous position by gaining the access to the "right to negotiate" provisions of the Act, irrespective of the merits or otherwise of their claim.

At the end of September, 1450 mining leases were subject to the right to negotiate -- half of which were in the Goldfields, and if these can't be cleared through agreement they will go to the Native Title Tribunal for determination.

Since early 1994, when the legislation came in, only 10 leases have been determined, and some of those still haven't been granted as the Native Title parties have appealed the Tribunal's decision.

So this situation is wreaking havoc on the land management systems, and it's causing escalating cost and delays.

Kalgoorlie's short of land, Karratha's short of land, Port Hedland's short of land, Kununurra's short of land -- you can go around the State. The council in Karratha wrote to us and said that the price of land has now doubled as a result of the shortages of land in that area.

And these claims all occur without any proof of continuous association between the claimants and the land.

The longer all of this is allowed to continue, the further we will move away from the High Court's *Mabo* principles and the less tolerant the community will become of that legislation.

Now I just want briefly to say that the federal Government has released what has become known as their ten point plan.

These proposals do pick up many of the Western Australian government's objectives to return the control of land and resource management to the States.

The plan provides for the confirmation of the extinguishment of Native Title by freehold and other exclusive tenures.

Remember, we were accused of scaremongering when we said that there could be claims on freehold land, etcetera. Well, when you've got 82 per cent of Western Australia covered, you've got most of it covered.

Future activities within town and city boundaries will be exempt from the right to negotiate, while government services -- like the building of public infrastructure -- will be freed up.

The changes will also introduce a registration test to ensure that only *bona fide* claims attract the right to negotiate.

And very significantly, the Prime Minister has agreed to the Commonwealth sharing the compensation liability with the States.

Now we are going to work hard to try and achieve that workable Native Title legislation, and that must happen very quickly.

If the Labor Party knocks this legislation out, as they may well do in the Senate, they will have to take full responsibility for sabotaging a constructive proposal to make their unworkable legislation workable.

Now I've just given you that brief summary of Native Title because it's another classic example of how federal government legislation has overridden State legislation and again seen more power centralised in Canberra, and effectively taken away our ability for the State to properly and responsibly manage its land and resources.

Now we've spent a lot of time on that issue -- very time consuming, as many in the room would know. But we've done what we can at this stage.

We are now focusing our attention on what we now see as the next major issue, and that has been the ongoing weakening of the Federation through the centralisation of powers, particularly financial powers, in Canberra.

Now that the federal Government has put the issue of Commonwealth/State revenue sharing and tax reform on the agenda, this State is playing a constructive role in lifting the level of debate, as we see it as a once in one hundred year opportunity to get this thing right.

We started off with a Federation that the States all agreed to go into. It's deteriorated to the point where we have seen this drift of power to Canberra, and the time has now come to rebuild and strengthen the Federation along the lines originally proposed when the negotiations took place in the late 1890s and when the Federation was finally established in 1901.

In our nearly five years in government, we have argued vigorously for a major reform of the Commonwealth/State financial arrangements.

This was very often in an environment of ignorance and even hostility.

In February, 1994, I released a document called *Rebuilding the Federation*. We did it in Hobart, and it outlined in simple terms how this drift had occurred since 1901.

At Hobart the media asked the other Premiers and the Prime Minister whether they had read it, and none said that they had.

A leading national reporter said I had made a goose of myself.

Over Native Title, I can recall being told I was a "lone wolf", I suppose howling out there in the dark, but you've got to start these processes somewhere.

People four years ago in Hobart were not interested in raising the issue of Commonwealth/State financial arrangements in the federal arena.

They were the days, only four years ago, when you were not meant to disagree with Labor's central Canberra machine's thinking.

That Hobart meeting was one of my early ones as a new Premier, and it was what turned out to be a typical Council of Australian Governments (COAG) meeting under Labor. You were there to consider the federal Government's political agenda, and the communiqués for the meetings were actually distributed before the meeting had started.

We have come a long way since then.

The big breakthrough that was actually achieved was that we had the Premiers meet privately, just for a short period, and they somewhat reluctantly agreed that we would come together in an informal way and meet without the federal Government being present.

That was the beginning of what has become known as the Leaders' Forums. These Forums have become amongst the most constructive political meetings that I'm involved in. They are short, sharp, and we quickly reach common agreement on major issues, regardless as to what political party you are from, because we are able to openly discuss issues affecting our States or Territories.

It was the beginning, I believe, of us as States and Territories starting to work in a more united way. The old trick of the federal Government is always to divide the States and then it gets its way.

I can recall one of the early Premiers' meetings I went to: the Commonwealth basically put \$10 million on the table and had the States spend a day working out how they were going to share it. Consider the beauty of that tactic: everyone wants to go back and say, I got my fair share of what turns out to be petty cash in the scheme of things.

But those days hopefully have gone.

In this country we now have a situation where there is an acceptance that Commonwealth/State financial arrangements must be reformed, particularly following the recent High Court decision, where the States had the ability to raise business franchise fees removed.

We are now starting to see a debate slowly developing with some substance, not just looking at the need for reform, but how can we do it.

As a country, we have a unique opportunity to look at what is occurring in the rest of the world, and examine the pros and cons on how the different countries, the different capitalist systems, are evolving in those countries.

We have seen quite amazing changes take place in recent times. We have seen recently, in the United Kingdom, the Labour Party tapping into the sentiment of the devolution of power to Scotland and Wales, and how successful that has been politically.

We are seeing in China the major shift from a controlled, planned economy to a market based economy, and one where they are slowly moving their responsibility back to the provinces. And where, in the commercial world, they are publicly acknowledging that their State owned enterprises are a disaster and they need to get them back into a more competitive corporate environment.

It's just fascinating seeing the speed of change. A couple of weeks ago I had the opportunity to sit down for a couple of hours with the Chinese Vice-Premier, Zhu Rongji in Beijing. We were presenting a proposal for that Government to include LNG among their future energy options, and this person had a completely open mind and showed a lot of flexibility in understanding what we were putting forward, and as a result of a two hours meeting, we hope by Christmas time to have achieved our goal.

It's fascinating to see that country being prepared to be flexible, and to be quite lateral in their political and economic thinking, when only a few years ago that would have been unheard of.

Now in Australia there is a strong sentiment for the greater devolution and decentralisation of powers, but that sentiment is not being tapped into. Whichever political party wakes up to it first is going to be a major winner on the federal scene.

In 1995, the States -- this is one of the initiatives that the Leaders' Forum established -- commissioned a qualitative opinion survey by the U.S.-based Wirthin Group, to examine public views towards the Federation.

The survey involved focus groups throughout the country, and there were some interesting results, including that less than 20 per cent of the people believed that the federal Government understood the needs of the people.

Some 58 per cent said that tax dollars were not being fairly distributed to the States. In New South Wales, that figure was nearly 70 per cent, much higher than the national average.

And two-thirds of those surveyed supported the retention of the States.

In essence, the decentralisation of more economic and political power to the States has become, I believe, quite an important under-current in our political system.

Four years ago it was not seen as a big issue; now it has become an issue which can have major political appeal and it can be electorally very attractive.

I believe the Labor Party is locking itself out of the debate, because at heart they continue to be putting forward, at the federal level certainly, centralist views.

The latest recruit to the Labor Party, Cheryl Kernot, said back in 1993, and I quote: "It seems that perhaps the obvious way to go is to get rid of the middle man by abolishing the States."

Only a few weeks ago, when the High Court announced its decision in relation to franchise fees, and Mrs Kernot was commenting on the High Court's decision, she said that the Court's decision posed obvious questions, namely: "*What is the purpose of the States? Why do we need them?*"

If that sort of thinking is going to be part of the Labor Party's platform, we have to concentrate on trying to persuade federal members in the Coalition parties to do something about it.

Fortunately, the Coalition has said publicly -- and the Prime Minister has committed himself to it -- that it will be putting a package in front of the people prior to the next election that will address revenue sharing between the Commonwealth and the States, and associated with it a taxation reform package.

The good news, I believe, is that they are talking about a major policy differentiation; and if they can effectively come up with a strategy that will help rebuild the strength of our Federation, I see it as a great winner.

So we have this unique historic opportunity to return to those core principles of the Federation as we move towards celebrating one hundred years of that Federation.

Now I want just briefly to comment on this issue of revenue sharing and the associated taxation reform packages, and to quickly outline the position that we see could well evolve in this regard.

When the States agreed to going into the Federation back at the turn of the Century, in Western Australia's case our major source of revenue was customs duty and excise.

We had gone through the 1890s, where the rest of the country went through a difficult depression but we went through a gold rush.

And a lot of development took place, there was a lot of infrastructure built, including things like the Perth to Kalgoorlie (C Y O'Connor's) water pipeline, and the major source of revenue was from those customs duties and excises.

Basically, when we entered the Federation we had the ability to raise the revenues that we needed for our expenditures.

That continued for the next 40 odd years, and it wasn't until 1942, when the States voluntarily gave their income taxing powers to the federal Government during the War, that we saw a major drop in their ability to raise revenues.

Between the War and today a number of things took place.

In 1971, the federal Government gave the States the ability to raise pay-roll taxes.

Between 1973 and 1989 we saw franchise fees introduced, and the financial institutions duty. In 1991 the bank debits tax was transferred to the States, and then of course most recently the States have lost their ability, with that High Court decision, in relation to those franchise fees.

But basically, from the War through to now, the States have only had access to a very narrow revenue raising base.

We now have a situation where the federal Government collects 80 per cent of all taxes in this country.

We have a situation where the States receive more in Commonwealth grants, \$40 billion, than they do from their own revenue raising, \$35 billion.

The States' revenue is coming from that narrow base: the gambling taxes, land taxes, F.I.D.s, bank debits tax, stamp duties, pay-roll tax.

When you compare our Federation, the Australian Federation, with those of the other O.E.C.D. countries, there is one glaring difference, and that is that we are the only Federation where the States do not have access to an income tax base and a general consumption tax base.

And when you look at those other countries, it is only Switzerland, the Cantons in Switzerland, which have access to an income tax base but not a consumption tax base.

But apart from that partial exception, we are the only country; and that's why we have this major imbalance, where the States now basically get the major part of their revenue coming through from Commonwealth grants.

When we look at the Commonwealth's tax reform principles, they've set out five simple principles:

1. They want to have no increase in the overall burden of taxation.
2. They want any new taxation system to involve major reductions in personal income tax.
3. We should consider a broad-based indirect tax to replace some or all of the existing indirect taxes.
4. There should be appropriate compensation for those deserving special consideration.
5. Number five -- which should be number one -- they want reform of the Commonwealth/State financial arrangements to be addressed.

But in addition to these, we have put forward some general principles, and no doubt at next week's Leaders' Forum these principles will be further advanced.

But we believe that there is a need to basically eliminate Commonwealth grants: to get rid of the vertical fiscal imbalance, the States should have autonomy in revenue raising, and the States should have access to some broad-based growth taxes, and we should rationalise Commonwealth and State taxes.

When we're talking about taxation reform, there is one thing that John Hewson learned the hard way, and that is that taxation is a very difficult issue to sell. It's difficult to sell before an election and it's difficult to sell after an election.

And in this country we have seen, certainly in relatively recent times, three attempts to try and change the system.

During the Fraser years there was a genuine attempt to hand back income taxing power to the States. You would recall that Neville Wran ran a very effective scare campaign on that in New South Wales and everyone ran for cover.

During the Hawke years we saw the debate developing which culminated in the tax summit, and any major reform was actually scuttled at that summit. And I think you can be critical of politicians, but I think that the business community, with many vested interests, also didn't exactly act responsibly during that exercise.

What was interesting during that process was that, at one stage, Paul Keating came over to Western Australia and addressed the Labor Party, and gave an impassioned plea to them to

support the introduction of a broad-based Goods and Services Tax (GST). They passed a motion and supported it. Of course, when it became appropriate, he was able to use the GST very effectively to sabotage the third major attempt, which was John Hewson's *Fightback!* package in the 1993 election campaign.

I just hope, I hope that in the months ahead we have a debate on these issues. I hope we can be mature enough not to go for the short-term political point scoring, and hopefully try and get an arrangement in place that has the support of the States, the Territories and the federal Government.

So when you look at those three previous attempts, you can see why any federal Government is going to be very nervous. I just hope that we will be able to address the matter, because if we fail this time I believe no one will want to touch the issue, and then you will have a very dangerous situation, where States like Western Australia, that are becoming major net contributors to Canberra, will start becoming very restless.

I am optimistic that we will be able to achieve a positive result.

I believe that, for the first time, certainly in my relatively short political career, the Australian community is actually quite prepared to accept major change in this regard, provided some positive benefits are spelled out to them.

So when you look at what is a complex issue, I believe it can be simplified by saying that the imbalance that we have between the States and the Commonwealth can be addressed by effectively abolishing grants to the States, and replacing that with a share of income tax.

I believe that the different State taxes -- the F.I.Ds and the B.A.Ds and the stamp duties and the like -- that a large number of those can be abolished if the States have a share of a GST.

The debate will be: should the States have the ability to vary their component of income tax. I believe that would be good. It would be good to have competition between the States as to the rate of income tax they would set.

In an ideal world, it would probably be good to have a varying rate of a broad-based indirect tax as well, but I think, being realistic, that would be more difficult to achieve. We have seen recently the problems when the federal Government was forced to put uniform excise duties in place on tobacco, alcohol and fuel, where there had been differences between the States.

But I hope we are able to sit down, and get back to a situation where the States would have to be both accountable and responsible for raising the revenues they need, and responsible and accountable for the expenditures they commit to.

So that, in a nutshell, for me, is one of the most critical debates that we have to work through in the forthcoming months. And I say months, not years, because the federal Government has said that we will put out an option before the election, and you have to have an election at the end of next year, and time will just go like that. That's why we have to work cooperatively, to get a decent debate.

What we are seeing in this country is a growth in government businesses being exposed to more and more competition.

But I believe the one last remaining bastion of centralisation in this country is really our political system.

We've been caught in a time warp, and if we can address that, I have no doubt that we can become one of the most sought after countries in the world in which to live.

I'll just conclude my comments by informing this conference of what I believe is a very positive initiative.

Next week, we will be officially opening the State's first Constitutional Centre. In fact, it's going to be the first Constitutional Centre of its type in this country.

We have been able to carry out a magnificent restoration of the old Hale School building opposite Parliament House. That will be, hopefully, an opportunity for us to help widen the debate in relation to constitutional issues.

We will be holding a series of forums around the State. They may well culminate in our own form of Convention next year to address a number of issues, the Republican issue, the State Constitution, federal constitutional issues.

I know there may well be some criticism of how that constitutional centre operates; but just seeing the young children that are already starting to go through that centre from the schools, instead of just coming to Parliament House and having a look at what happens there, is something that I find very encouraging.

So I wish your conference well. It has been a pleasure to speak to you again.