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Reconstituting the Constitution

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expression in both our statements to the United Nations, and other regional and multilateral organisations and fora.

Just how influential would New Zealand be within an enlarged federation? Historians have written about how New Zealand shifted from being the third strongest voice of the Australasian colonies to a smaller and independent voice on the world stage following Australian Federation. In population terms, if New Zealand were to join the federation, it would be the third largest state, smaller than New South Wales and Victoria and just ahead of Queensland, Australia's fastest growing state. In effect, it would be resuming its historic place as an influential voice in deliberations with the Australian states. In a Federal Parliament, if it were allocated on the current population, New Zealand would receive 12 Senate seats and probably 30–35 House seats. But New Zealand could well divide and join as two states, which could mean an additional 12 Senate seats. So New Zealand has the potential to be a powerful and influential voice in the federation.

This contrasts with the experience of Newfoundland when it joined Canada, which is often mentioned as an example of a smaller country joining a larger federation. But three key points need to be made here – first, Newfoundland was broke, and New Zealand is clearly not, even if it lags behind Australia on wages and indicators such as GDP per capita; second, Newfoundland is much closer to continental Canada than New Zealand is to Australia; and third, Newfoundland was joining a confederal structure rather than a federal structure. In confederal structures, powers mostly remain with the provinces or states, rather than the federation. Also, with regard to Newfoundland, there was external pressure from Britain for Newfoundland to join Canada. That external influence or pressure simply does not exist in New Zealand's case. It is a much larger country in both size and population compared to Newfoundland.

A complex, but not insurmountable issue, would be the actual process of admission to the Australian federation. While it is true that the Constitution of Australia provides for the admission of new states, there would need to be negotiation over how New Zealand would be admitted, should it wish to be.

And any decision by New Zealand to join the Australian Federation would most likely stir up debate in Australia itself. There are a number of proposals – historic and contemporary – for new states in Australia. The most well known are New England in northern New South Wales, and a state in northern Queensland. In recent times, there have been calls to separate out the major cities (Sydney, Brisbane, Melbourne) from the regional areas. And in fact, during 2010 there were press reports of a proposal for a new state of North Queensland and a combination of most of the Northern Territory and a northern section of Western Australia to form Northwestern Australia.

Any serious expression of New Zealand interest in joining Australia could well provoke a debate in Australia about the form of the federation, particularly if New Zealand were to be added to it. The end result could be not just changes to the political map of Australia and New Zealand, but changes in the way government at different levels – local, state, federal – do business with each other and the people they represent.

In any case, there is a considerable amount of contact and interaction between politicians and senior civil servants on both sides of the Tasman. There are regular visits to each other's countries, and New Zealand Ministers attend meetings of the Council of Australian Governments. There are strong links between the Australian Labor Party and the New Zealand Labour Party, as well as between the Coalition in Australia and the National Party in New Zealand. And this is not a phenomenon confined to the major parties. For example, there are long-standing ties and ongoing organisational, ideological and tactical cooperation between the Green parties in both countries, as well as strong links with the worldwide environmental movement. Increasingly, political parties in Australia, at both state and federal level, and New Zealand are taking notice of what happens in each other's jurisdictions. They learn from each other's experiences, adapt ideas and maintain close connections.

But these links are not solely between Australia and New Zealand. Our politicians also maintain links around the world, with sister parties in the United Kingdom, across Europe, in Canada and the United States, to name a few. Ideas and shared experiences are not just shared across the Tasman, but around the globe. In addition, major parties in both countries are involved with the centre-left Socialist International and the centre-right International Democratic Union global party groupings.

21.6 Confederation?

There is a clear interest in both countries in building stronger ties, but that does not necessarily have to lead to New Zealand joining Australia. There are already a number of extra-governmental frameworks that New Zealand and Australia can use, short of full federation, and in fact, as I have already noted, New Zealand is already a member of committees of the Council of Australian Governments.

Another possibility is that New Zealand could enter a confederal structure with Australia – where it maintains sovereignty, but pools resources in some clearly defined areas with Australia. Confederal structures have operated throughout history – some well, others less so. But this model could provide both countries an opportunity to pool their resources where it is in their mutual interest to do so, while offering reassurance to those concerned at the possible loss of New Zealand sovereignty.

21.7 A Practical Way Forward

Much of the preceding discussion merely sets out some possibilities. They are not the only options, and remain largely in the domain of the hypothetical. The more likely reality, at least in the short term, is that both Australia and New Zealand will continue to move the bilateral relationship forward in an ad hoc and pragmatic

fashion – moving forward where there is a clear interest to do so, and parking issues or problems where there is no clear resolution in sight. This part of the world, historically, has not been a place for grand programmatic schemes, but rather the adapting of frameworks to suit as needed. This is likely to continue, at least for a while yet.

And this is an approach that could well be to our advantage in a constantly changing world. Less than two decades ago, the Internet was not the communication phenomenon it has since become, transforming our lives dramatically. Mobile telephones, iPods, broadband, TV on demand, Skype – all these things are recent innovations, and yet they have drastically changed the way we communicate with each other and have revolutionised the way we do business, including across the Tasman.

21.8 Some Possible Models

With that in mind, our discussions on how trans-Tasman relations might develop in the future are likely to be more fruitful, and informed, if we take a look at how other countries in similar situations operate, and how we compare in terms of doing things together. That does not mean we have to pick up on every single arrangement, idea or mechanism that might be out there, but rather, what might be useful for both countries to do is look at whether there are things we could be doing better together that we are not doing currently.

Arguably, Australia and New Zealand measure up pretty well when compared with similar arrangements in other parts of the world. But there are some similar arrangements between other countries that we could realistically look at and benchmark against.

These include the Nordic Council of the Scandinavian countries, which provides for full labour market mobility, passport-free travel, and regular meetings of representatives of constituent Parliaments.

Compared to the Nordics, we already have some runs on the board, but there is some way to go. Australia and New Zealand have labour market mobility, and some progress towards ease of travel (although for the moment, passports remain necessary). And the Council of Australian Governments meetings and Australia New Zealand Leadership Forum, along with the recent Joint Cabinet Meeting and regular Parliamentary Exchanges, provide regular opportunities for the representatives of both countries to meet and engage.

Over time there has been a lengthy history of economic integration between countries – with examples such as Benelux (Belgium, the Netherlands and Luxembourg). And looking at Europe, the model of the European Union has been mooted, but as recent events have shown, it provides as much a cautionary tale as a model of integration.

In a number of ways, the European Union has done much to bring Europe together yet it also remains problematic. Problems with the joint currency, the

Euro, have become evident, because of the large variation in fiscal and monetary policy amongst the states that are signed up to it. For Australia and New Zealand, a joint currency would not necessarily represent the same range of problems, but it would require careful consideration of a range of fiscal and monetary policy issues, not least the approach of both countries to taxation. Whatever the framework, a joint currency does result in some loss of flexibility for the countries that are part of it.

But under the Closer Economic Relations Agreement, there is much more ease of operation and our bilateral relationship is not just confined to trade and economic issues. Indeed, it says something about the relationship between the two countries that it covers a broad spectrum of issues.

In these discussions about economic and governmental models, whatever the advantages and disadvantages of them, and how they are assessed at any point in time, the empirical evidence internationally is that the historic connections between countries – in our case, shared colonial origins, the ANZAC connection and the strong contemporary bonds between us – remain intense points and touchstones of their relationships. These will endure, regardless of the constitutional scaffolding at any particular moment in time.

21.9 Conclusion

Discussions over constitutional arrangements today take place in a global environment that is characterised by the rapid pace of technological advances and rapid change, where the actions of individuals and businesses are influential within both countries, and globally.

Technology has helped drive that process. In our own part of the world, it has dramatically improved the ease of communication across the 1,200 miles that just over 100 years ago was such a formidable barrier. It is now quicker to fly from Melbourne to Wellington than drive from Canberra to Sydney. And beyond both Australia and New Zealand, our citizens and our companies as well as our Governments are interacting with people and organisations – corporate, governmental and inter-governmental – around the globe.

As Australia and New Zealand both look out at this rapidly changing world, sometimes with different interests and perspectives, we continue to have much in common. To quote from the long-serving Australian Prime Minister, Sir Robert Menzies: “the world interests of Australia and New Zealand are, properly viewed, not identical, but inseparable.” We need each other, but we have our own distinct identities.

New Zealand and Australia do have some considerable advantages – a shared history, strong ties, burgeoning economic relations, strong people-to-people connections, and arguably, overall, we are more similar than any two other developed countries. What we also have is a constitutional framework that has been adaptable enough to meet the challenges that have faced us so far. If New Zealand

wishes to join Australia in the future, that possibility certainly exists; but should New Zealand wish not to, there remains much that we can, and will want to, do together. We have the capacity and the capability to shape our relationship with each other and the world by ourselves, for ourselves, together.

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Part 9

The Role and Governance of Sub-National Government

Jonathan Boston

How many levels or tiers of government there should be, how should the functions of the state be allocated across these tiers, and what limits, if any, should be placed on the powers, roles and responsibilities of sub-national government? Such questions are amongst the most important constitutional matters facing nation states, whether democratic or otherwise. Over recent centuries constitutional experts, political philosophers, economists and other scholars have offered many different answers: some have favoured centralised, unitary states; others have preferred highly decentralised, federal states; yet others have favoured unitary states but in a context of vigorous local and regional sub-national governments. Various factors have shaped scholarly opinions on such matters, not least considerations of history, geography, ethnic and cultural diversity, and political acceptability. Differing ideological orientations have also been influential, with advocates of “strong” or “participatory” democracy typically favouring a substantial measure of devolution, while defenders of “thin” democracy and those less concerned about the need for checks and balances have often been comfortable with more centralised forms of government.

Since the abolition of the provinces in 1876, New Zealand has been one of the most centralised democracies in the world, certainly if micro states are excluded. Currently, around 90% of total public expenditure is allocated at the national level, most major public services (including education, health and social services) are the responsibility of the central government, and sub-national government has only limited revenue-raising powers. Nevertheless, both regional and territorial authorities have important public functions, and their structure and activities have been the subject of ongoing debate and regular review. In the late 1980s, the Fourth Labour government undertook a major overhaul of the structure of local government. This included many forced amalgamations, the abolition of special purpose authorities, and a sharper separation of the roles and responsibilities of regional government and territorial authorities. In 2002, the Labour-Alliance government expanded the powers of sub-national government and imposed new long-term planning obligations. More recently, the National-led government has reformed the governance of New Zealand’s largest city and established a single, integrated

local authority to manage its affairs – the Auckland Council. It has also initiated a wider debate about the appropriate constitutional role of sub-national government.

The three chapters in Part 9 of this volume provide a range of perspectives on recent policy developments in New Zealand with respect to sub-national government. In Chap. 22 Jenny Rowan summarises and critiques the changes to the governance of Auckland, and highlights their risks and implications for local government elsewhere in the country. As the Mayor of a modest-sized district council (just north of the capital city, Wellington) and a strong advocate of local democracy, she has deep concerns about the small size of the new Auckland Council, the limited resources available to the 21 local boards, and the relatively limited control that elected officials will be able to exercise over the various Council Controlled Organisations that have been created to manage 75% of the city's services.

In Chap. 23 Mike Reid outlines and contrasts the functionalist and autonomist conceptions of local government, and highlights the value of “distributed government” (that is, the decentralisation of power and authority). He also summarises the recent debate in New Zealand over whether local government should be given greater constitutional recognition, including a power of general competence. Importantly, he emphasises that whatever the precise role and powers of sub-national government, many contemporary issues will require effective forms of horizontal integration or co-governance if they are to be adequately addressed.

Finally, in Chap. 24 David Shand (a member of the Royal Commission on Auckland Governance 2008–2009) discusses two of the key issues addressed by the Commission and which continue to generate lively debate: the future relationship between the new Auckland Council and central government, and the question of Māori representation. Following this, he turns his attention to recent debates over whether the role of local government should be restricted to certain “core services”, whether there should be changes to the financial accountability regime for local government, and whether local government should be bound by standardised requirements with respect to non-financial performance measures (either mandated by central government or voluntarily agreed). Such issues highlight that there is much unfinished business in relation to the role and accountability of sub-national government in New Zealand. Equally, they demonstrate that the constitutional status of sub-national government remains very unsettled.

Chapter 22

The Role and Governance of Sub-National Government: Impact of the “Super-City”

Jenny Rowan

22.1 Introduction

I have been asked to talk about the role and governance of “sub-national” government.

To begin with, the concept of governance is poorly understood, even by those empowered and entrusted to undertake the role. Even the term “sub-national” sounds a little problematic. Perhaps I am picking up the inference that this level of government, sitting as it does under our national government, is less important, needs less attention, less money, and does not need to be taken as seriously as its dominant partner.

22.2 The Auckland Super City Reforms

The creation of the Auckland Super City will herald the greatest change in local government the country has seen for the past 20 years. Indeed, New Zealand local government has not experienced such radical reform since 1989. The Auckland Super City will not only bring radical change to local government in Auckland; it will also define the shape of local government in the rest of New Zealand. Now that Auckland has sneezed we are all starting to catch the cold, and it is one whose symptoms will linger for years – not days.

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Today, I want to bring a community viewpoint to the discussion about how we govern ourselves locally. My experience is based on nearly 30 years in local government, including a previous term as Mayor of Inglewood, a term as Deputy-Chair of the Taranaki District Council, 16 years as a Commissioner in the Environment Court, and a term as Deputy-Chair of the Paekakariki Community Board.

I am very alarmed at the changes I am seeing to our democratic process and believe the Auckland experiment will have to be managed carefully if we are to move on in the twenty-first century as a stable and involved population. We are not only creating a major imbalance in the way our local government is run; we are also creating an imbalance that will impact on national governance.

One thing most New Zealanders understand about the Auckland Super City is that the Mayor of Auckland will be the second most powerful person in New Zealand. Whatever the structures, when the Mayor of Auckland calls the Prime Minister, the Prime Minister will jump! This will create an automatic distortion, with other local authorities looking at how to enlarge and enhance their power bases to get leverage and compete. The jury is still out on how this will play out over the next few years, but what I am clear about is that this experiment will not just cause a ripple; it will be a tidal wave!

The impetus for these so-called reforms was to ensure that local government was strengthened, while at the same time becoming more efficient and less costly. What is clear is that the critical role local government has to play in *representing* 1.4 million people in Auckland has been given much less attention.

As the largest city in New Zealand, Auckland will need to be involved in development and have an investment role both nationally and internationally. This is not considered a core business for most local authorities in New Zealand at present. Our Council currently spends two cents in every rating dollar on economic development! This role will require a whole range of new expertise. It will change the focus of existing commercial imperatives and invite in a whole new set of stakeholders – many of whom will not even live in New Zealand. And it will change, for all time, the way local government does business.

So, what is happening on the ground with the new Super City that will drive a new governance regime for the rest of New Zealand over the next decade? And why should we care?

22.2.1 The Structure of the Super City

First, as you all know, there will be the election of a Mayor – who will be paid \$240,000 (a similar salary to a Cabinet minister), and given extra constitutional powers to become the second most powerful person in New Zealand. Undoubtedly he will have more responsibility than most Cabinet ministers.

There will be 20 full-time Councillors, who will be paid \$80,000 plus expenses (\$51,000 less than an MP) to represent 1.4 million people (a third of our national population). The representation ratio will be approximately 65,000 people to every

Councillor elected. To give you some context for these figures, I have a Council of ten and four Community Boards to represent our District of 47,000 people – I work up to 12 h a day and often 6 days a week. The responsibilities of the Super City Council will include Auckland’s planning, its overall financial management, the management of assets, levying rates, regulation, service delivery, and the employment of a chief executive officer who will employ the staff.

Then there are the 21 Local Boards. These people will be paid between \$20,100 and \$37,100. In my view this is a gross underpayment because the jobs they are being asked to do will be full-time as their population bases are so large.

Some figures are worth considering. By way of comparison, six of the new wards, each only represented by two people, have over 130,000 people in them. The largest, Waitakere City, has a population of 158,700 – only 5,700 less than Wellington City. It will be represented by two people on the new Super City compared to the 14 councillors and a Mayor currently representing Wellingtonians. It will also have two Local Boards – one for Waitakere and the other for Henderson–Massey.

Finally, a new set of Council Controlled Organisations will be created to manage 75% of the city services. The largest of these will have responsibility for transport with a budget of \$680 million that it can spend with little or no accountability to its 1.4 million ratepayers.

In my district, our total asset base is \$640 million. We are expected to consult with and account to our ratepayers through the Long Term Council Community Plan (LTCCP), the Annual Plan and the District Plan. On top of this almost all our meetings are open to the public, with opportunities for public speaking provided. Any current or future Councillor who dabbled with the idea that they could spend this money with no accountability would be in for a very rude awakening!

To return to Auckland and the Local Boards, the theory here is that Local Boards will take responsibility for community engagement and make decisions on local matters, including input into Council strategies, policies and plans. They will also make local decisions on non-regulatory matters, unless they have regional implications, and local regulatory matters delegated by the governing body. Potentially, there could also be delegated decision-making on local transport issues, a three-yearly Local Board Plan (linked to the LTCCP), local bylaws, and annual local board agreements based on local board plans, included in the Auckland Council LTCCP and Annual Plans. On top of this they could be expected to have input into Statements of Intent for Council Controlled Organisations and the Auckland Social Policy forum.

I have set out these activities to give you a real feel for the huge workload that could await the new Boards. This will mean they need as much support as their councils need now. My Council employs 250 staff to do many of these jobs and, of course, some others as well, and we are extremely busy!

The fair allocation of resources to boards will be vital. However, the workload will depend on the Mayor’s attitude to the new boards. There is an over-riding role of the Mayor to ensure there is effective engagement between the Auckland Council and the people of Auckland.

If he (sadly there are no women candidates at the moment) sees them as a critical link from the community to the council then the boards will be very busy. The more decisions are made at a local level, the more administration and infrastructure will be required locally. My prediction is that to run effectively, the new Boards will need to have a similar level of administration and infrastructure to that now existing in Auckland, Waitakere, North Shore and Manukau cities.

If the new Mayor does not make this a priority, then some of the boards could find themselves in the same situation as half the community boards in New Zealand where, over the last 20 years, they have effectively been starved of resources and not able to attract good people.

We then need to add the Remuneration Authority to this mix. For some reason, it has never fully understood the workload of local government elected representatives, especially at the local level, so they are highly unlikely to understand the inequity that is currently playing out.

All of this brings me to the conclusion that this Auckland model does not strengthen or support the role of local government for the future and may, in fact, put the fundamental principles of our democracy at risk in the long term.

22.3 The Principles of Local Government

I have come to understand certain principles that underpin a healthy democratic process in local government.

Firstly, it is important to see a functioning grassroots democracy as a benefit to our way of life and not a cost. This is a real challenge for all of us. The issue is the priority we are prepared to give to local democracy and community engagement compared to efficiency.

Secondly, it is imperative that people can relate to their local board representatives, have their voices heard, and know that they can meet face-to-face with someone on matters of importance to them. Given that the population ratio for the Auckland Super City is 10,000:1, compared to Denmark which is only 1,084:1, Sweden only 667:1, Italy even less at 397:1, and France smaller still at 116:1, I have real concerns about how this can really happen. It is interesting that all these countries have experienced the loss of democracy in the comparatively recent past – so they understand how truly precious it is!

Thirdly, remuneration packages need to be set at a level that will attract good people. For too long, participation in local government has been restricted to those that can afford to make themselves available – the retired, the self employed, those with a private income or a partner behind them, and a small handful of community-minded beneficiaries. It is different for the big cities, but to offer \$20–30,000 for a local board member to work for this huge organisation is simply unacceptable.

Then there is the issue of “relevance”. How relevant is twenty-first-century local government when many sections of our community are still not adequately represented at any level?