

Comment on Murray's Paper by Anthony Nicholas

Richard Murray is to be congratulated on creating and publishing his proposal to modify the constitution. Having drafted a set of specifications for a [Citizen's Constitution](#), I know something of the effort required, as well as the satisfaction of having created a solution to this long-running problem. At some time, our constitution will evolve into a workable model of governance.

BUT! Contrary to Murray's assertion, our existing constitution is already a two-tier model; the Parliament and the States make two tiers, not three. Local government is not included or implied in the constitution and the proposition that it should be, has been defeated in two referendums.

Murray proposes a second tier of 'cities and regions' and illustrates it by a map in which the states are divided into parts with a felt-tipped pen. A region is a part of the earth's surface with a definable characteristic, with or without fixed boundaries. The 'regions' of Murray's model would be better called 'mini-states', because for the most part they do not have definable, identifying qualities. Moreover, fixed regional boundaries will always be an impediment to good governance.

On the other hand, **functional administrative regions** are working now, each within a region specific to its function. These functions could be supervised by boards drawn from local and commonwealth governments without ignoring 100 years of experience and development. Local governments already collaborate to provide services such as regional libraries, regional waste management and re-cycling, community health and tourist promotion.

Murray ignores a major problem with our constitution in the implied acceptance of the Westminster tradition. Whilst having some worthwhile features, the Westminster system has given us a two-party political oligarchy and a dysfunctional, adversarial parliament that wastes the scarce talent available within the parliament to form governments. It also allows the PM to dominate the parliament, rather than enabling the democratic process whereby the parliament monitors, supervises or even controls the government. Worries about the reserve powers of the GG are another consequence of that archaic system. The idea that an expanded parliament would provide greater representation is negated by the two-party system; it would merely allow the election of more representatives of the major parties.

The greatest improvement offered by Murray's proposal is the long overdue assumption of power by the federal government over issues of "national strategic significance". However, that advantage would be confounded by his proposed continuation of a list of subjects and functions, like Section 51.

Surely, the history of the use of those powers would advise against making a new list. Murray seems to be unaware that Aviation is not included in Section 51, a fact that argues strongly for not making lists. A single blanket power over national issues, such as [Article 43a](#) of the Swiss Constitution, would be much more effective, even if it would exclude the Murray-Darling Basin plan from federal jurisdiction because it may be regarded as a regional issue. A similar statement in our constitution would create an over-riding rule that our successors could interpret, according to the changed circumstances of their times and preferably as a statement in accord with the Principle of Subsidiarity.

The alternative of setting out powers under major subject headings defies the historical experience that has led to many of our current constitutional difficulties. But, to do both, as in Murray's proposal, would be utterly confusing and lead to contradictions.

Murray's supposition on page 47 that the creation of a 'mini-state' level would "...condense State and local government into a single layer, that would sharpen the focus on service delivery of national, urban, regional and local programs, while at the same time opening up opportunities to significantly streamline public administration." is counter-intuitive and thus unbelievable. With the centres of 'mini-states' in the country up to 400 km from their people, either local government would have to be rapidly re-invented, or the mini-state governments would need to be backed up by Indian call-centres. The propensity for centralized governments to build empires and palaces would quickly dispose of any savings made by abolishing existing state and local governments.

In summary, the proposal could be characterized as a *Bureaucrats' Constitution*; a slight improvement on the *Politicians Constitution* we have now. Overall, it is regressive, not only because its emphasis on applications to today's economic problems gives it a short term bias, which is quite undesirable in a national constitution, but also because of the abolition of local grass-roots democratic processes. Nevertheless, adoption of a **national** role for the **national** government would be most welcome.

At some time, our constitution will evolve **beyond federation** into a workable model of governance; Richard Murray has made a contribution to that process.