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**COMMONWEALTH STATE RELATIONS – ‘WHEN SHOULD THE
COMMONWEALTH INTERVENE IN A STATE?’**

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Ladies and Gentlemen,

At this very moment many electors in NSW are toying with the conundrum of how to overcome the limitations imposed by the fixed four year terms and the constraints of the Australian Constitution in dealing with a manifestly incompetent Government. One of the options would be to ask for Commonwealth intervention. For political reasons among others, it is highly unlikely that the Commonwealth would contemplate such action.

Whichever way you turn, short of a monumental financial crisis or some other unthought of cataclysm, such as a World War, it is exceedingly difficult for the Commonwealth to intervene and takeover the entire administration of an Australian State.

Because Australia, as a whole, has become a national market with widespread international involvement the Commonwealth has acquired stealthily roles and functions undertaken by the States e.g. Agents General in London have disappeared and Universities are all but for their establishing legislation a responsibility of the Commonwealth.

However, the complete reluctance of the States to return to levying their own income tax has meant that the Commonwealth has gained and will retain increasing powers over the States. Also the States’ agreement, albeit reluctant in some cases, to eliminate or reduce State based taxes has

further strengthened the financial powers of the Commonwealth over the States.

As far as I know there have been only four clear instances where the Commonwealth was or could have been justified in intervening in the affairs of an Australian State: -

- 1) World War I,
- 2) World War II,
- 3) The NSW Government under Premier Jack Lang in the Great Depression Years (but the Governor, Sir Philip Game saved them the trouble), and
- 4) Victoria in the early 1990's during a short, but destructive period of financial mismanagement and policy incompetence.

There may have been other occasions when a partial intervention by the Commonwealth could have been justified. An example of the types of intervention was the Commonwealth's decision to intervene with the Mersey Hospital in Tasmania. The concept was probably correct but the execution was appalling.

The topic begs an important political question. It contains a presumption that any federal government will be more competent than those of the States.

Some of the absolutist defendants of States' rights might argue that the reverse question should be asked also – when should the States (presumably with the assistance of the Crown) intervene in the affairs of the Commonwealth? Two recent examples justify this question being asked. They are periods of the Whitlam era in the mid 1970's and the immediately preceding Gorton-McMahon years of Coalition Government.

In addition, there is a concomitant question as to whether or not Commonwealth Ministers and officials would adequately understand and be able to manage the operations of the State that is subject to intervention and also could federal officials be trusted not to abuse their powers. Certainly most of the States' public services have harboured suspicions about the long term motives and competencies of some Commonwealth Ministers and agencies.

It needs to be noted, in respect of this topic, that the Commonwealth is essentially involved with tax collection and income redistribution, defence of the realm and national regulation. With some major exceptions (mainly welfare services) the Commonwealth is not involved with hands-on services deliveries. The different roles have developed two significantly different cultures between the Commonwealth and the States.

One of the concerning things that arose out of the recent case involving Jim Selim and Pan Pharmaceuticals Ltd, was that Senior Commonwealth officials in a major Commonwealth regulatory agency (the Therapeutic Goods Administration) were prepared to work together to bring about the downfall of an organisation. The worry is they were able to do so, get away with it and not be found out until five years later. Their actions would never have been discovered if Selim had not litigated. It gives rise to a wider question, could the same thing happen if Commonwealth officials were put in charge of a State's civil service and instrumentalities? Three weeks ago my answer would have been emphatically NO! Today it is maybe!

The Australian Constitution and the structures of our system makes it inevitable that any attempt to intervene, will be post facto. Certainly, had

the Commonwealth reached a view about Victoria in 1991 or 1992 that it should have intervened, at a minimum, in the financial affairs of that State, it may well have assured the re-election of the Kirner Government in 1993 or its re-election at a later time whenever the Commonwealth decided that the State was in a position to be allowed to hold an election.

The nature of the intervention also raises several questions. If the situation was sufficiently serious, would the sittings of the State's Parliament be suspended or would it only sit to ratify decisions made by the Commonwealth?

If the situation was not deemed sufficiently serious to warrant effective suspension of Parliament, would agreement be reached between the Commonwealth and the State that certain legislation and perhaps the Appropriation Bills could not be passed without the formal approval of the Commonwealth?

Or in the new 'era of enlightenment' would the Council of Australian Governments or a sub committee of its Premiers and Treasurers take over the running of the miscreant State for a defined period of time?

Probably none of these approaches or actions. But as our society becomes more and more interconnected with far more of a national identity the impact of a major State finding itself in trouble could have much greater impact nationally than in the past. In 10 to 20 years time it may be something that has to be thought about. Meantime the Commonwealth's risk management strategies should be aimed at precluding such an event occurring.

One lesson that arose from Victoria is that a State economy can turn around unfavourably in a very short time but restoring it takes a great deal longer.

The Pyramid Building, Society and the Tri Continental Bank had collapsed with widespread implications. The State was spending well beyond its means and also ignoring the guidelines of the Loan Council which was then operative. It only took three years for Victoria to be in a serious position and to be facing further downgrades of its international credit ratings.

Would these events have been the sufficient and necessary conditions for intervention? If so, when and how would the Commonwealth have acted?

Politically what would have been the implications of a wholesale intervention and conversely what were the consequences of not acting?

At the time the view taken would probably have been that the events probably did not warrant intervention.

Firstly, the Cain Government and subsequently the Kirner Government were elected by what was regarded as a fair election.

Secondly, basic human rights were respected and the judiciary maintained its independence.

Thirdly, pre-federation border checks were not reinstated and there was no restraint on freedom of speech.

Fourthly, although the Government was increasingly influenced by the very powerful trade unions in Victoria and allegations were made that Trades Hall told Cabinet what to do, it would be difficult to argue this on

its own or with some of the financial problems was sufficient to justify the Commonwealth intervening on a whole of government basis.

Even for the Commonwealth to have taken a more activist role when the events started unfolding would have been fraught with considerable political difficulties.

The recent Victorian experience and the current mess in NSW raises the fundamental questions: -

- (i) Why should the Commonwealth step in? and
- (ii) If it does step in - when?

In a despotic, nationalistic political system it would not be difficult to connive jingoistic reasons why the Commonwealth should step in to protect the ‘glorious fatherland’ or in our case, the interests of downtrodden Australian working families!

Like it or not, agree with it or not, Australia’s traditions are now well established and deep enough to be revulsed by any attempt of a ‘coup’ or a ‘forced occupation’!

All the governments of the States and Territories are validly elected. They are fair elections and as close as one can get to one person one vote! This is fundamental to political legitimacy. If it results in the election of a government of “sisters, cousins and aunts who you reckon up by dozens” that is a decision of the electorate who on the day, was unconvinced by the Opposition. The electorate must carry some responsibility for who it elects!

What the past situations of Victoria and the present position with NSW does do is to make the electorate far more responsive to the measures proposed by the current Commonwealth Government to:-

- 1) Move roles, and responsibilities and functions to the Commonwealth that treat Australia as a national market, e.g. occupational health and safety, industrial relations and health funding,
- 2) Objectively measures the performance of key areas of major policies and programmes; especially in: -
 - i) Health,
 - ii) Aged Care,
 - iii) Education,
 - iv) Transport,
 - v) Housing, and
 - vi) Indigenous affairs.

It is an absolutely fundamental element of the proposals to objectively measure the performance of the States' services delivery areas that there be rigorous overhauls of elements of the Commonwealth public service – especially in areas such as health.

The current Commonwealth proposals also rely on consistent, accurate, reliable, relevant nationwide data being provided from the States.

Presently, in some areas, there is little consistency between fundamental data being provided from individual components of services delivery agencies to a State department and then to the Commonwealth.

This is a boring, arcane area of public administration. Vast amounts are spent on IT and MIS systems but I doubt if any former or present

Ministers would be prepared to aver that the data they received is beyond question or doubt.

- 3) Reorganise the financial arrangements between the Commonwealth and the States so that there are not a vast number of Commonwealth payments to the States that circumvent strict scrutiny such as the former Commonwealth – States Housing Agreements.
- 4) Reconstitute the Loan Council and to make it operate effectively so that as we move out of an era of little or no State debt into an era of increasing State debt there is at a minimum a modicum of effective, proactive control over State debt, and
- 5) Encourage the States to vacate business and operations they should not be in e.g. electricity generation and distribution, wholesale and retail water distribution and possibly also, metropolitan public transport.

Some of the States' Government business enterprises and their utilities have been very convenient vehicles for increasing revenue flows back to the States Treasuries – rather than being used to encourage the optimal policy outcomes. In some cases, such as water, there are inherent conflicts of interest.

In the Victorian case the assets of almost every G.B.E. were mortgaged and the State effectively became the captive of the mortgagees-in-possession for a short time.

The debt situation and, in particular, the way it was structured and secured, greatly limited the capacity of the State to deal with a deterioration in its financial circumstances quickly and effectively.

There is little doubt in my mind that had Victoria been an independent sovereign state it would have been seeking assistance from the International Monetary Fund. Following close behind would have been the World Bank with structural adjustment loans! In addition, we might have had to countenance AusAID providing advice! Some would argue that is leaping out of the frying pan into the fire!

One of the dilemmas of the current arrangements is that they are reactive rather than proactive. Inevitably, it leads to descent into chaos rather than being able to deal effectively with problems before they become disasters. It also exacerbates the cyclical financial fluctuations and hardships e.g. Victoria's imposition of the states \$100 per head poll tax, the savage reductions in the levels of some services such as education and health and destabilisation of the civil service.

However, the fact that the Bracks and Brumby governments have not radically reversed any of the major measures of the Kennett Coalition Government suggests that the pain was worth the gain.

On the presumption that Australians would not countenance an Australian Government marching into a State to takeover its roles, responsibilities and functions – even for two or three years it seems that the options are:-

- 1) Creating a set of political, social and economic conditions that make Australia operate as a nation not as a collection of States dependant on a 'fairy godmother' with the tax revenues,
- 2) Pursue the current federal Government so that it stands firm and resists some pretty powerful verified interests and:-
 - i) introduces objective performance measures and targets across a wide spectrum of key policy areas and programmes,

- ii) ensures the data that is fed into the systems of local, regional and States areas is accurate, relevant and timely,
- iii) overhauls parts of the Commonwealth public service so they have the ability and the capacity to promptly analyse, interpret and provide ‘frank and fearless’ advice to ministers,
- iv) insists that the ‘competition policy’ type payments are only paid when a State can substantiate and the Commonwealth can verify that the performance criteria have been met,
- v) avoid doing political ‘side deals’ with individual States so that when they do not deliver the outcome is ‘fudged’ – in fact when States start asking for ‘special side deals’ they should be put on the equivalent of a corporate credit watch!,
- vi) as painful as it might be in the short run, the Commonwealth should be prepared to use the Productivity Commission to ensure that it is receiving ‘frank and fearless’ advice – especially in key policy and programme areas involving the States,
- vii) the Commonwealth Grants Commission, which has a significant amount of data about all the States, should be asked to maintain a ‘watching brief’ over a State if there are indications that it might be getting into troubles, and
- viii) COAG should also be putting tighter timelines on creating national roles and responsibilities in areas where States’ borders have become and will continue to become irrelevant.

On a broader canvass, the States also need to re-examine the current practices of fixed four year terms. If Australian society really believes in the accountability of its politicians it may be time to revert to a minimum

of two years without an election and thereafter for a State Parliament to be able to put a motion of no confidence with the knowledge it can be passed and force an incompetent government to the polls.

The stage may have been reached where the arrogance that has grown with fixed four year terms has overtaken the notion of fixed four year terms providing certainty and allowing State governments ‘getting on with the delivery of services’.

Amazing as it might seem, I agree with the former NSW Premier Bob Carr, that the current trend is for the role of the States to diminish and become custodians of large metropolises. If this notion is correct it may change the question from ‘should the Commonwealth intervene in a State’ to ‘how will the Commonwealth deal with a de facto non-constitutional change in the political and economic structures of the country’?

SYDNEY
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