

Is Local Government a 'subset of the State Government'?

By Denis McLeod

In an interview on the ABC's 720AM morning program on 10 February 2015, the Premier, in confirming that he was 'surrendering' on the program of local government reform (save for his City of Perth proposals), also said that people should remember that local government in WA is only a 'subset of the State Government'. That is not the first time statements of that kind have been made by the Premier and others in the State Government.

In fact the statement is not correct.

The State Government is bound by the *Constitution Act 1889* (WA) (**Constitution Act**). The Constitution Act provides in s.52 –

"52. Elected local governing bodies

1. The Legislature shall maintain a system of local governing bodies elected and constituted in such manner as the Legislature may from time to time provide.
2. Each elected local governing body shall have such powers as the Legislature may from time to time provide being such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted."

Under the version of the *Westminster* system operating in WA, the Legislature, the Executive and the Judiciary are maintained in separate systems. The government, which the Premier leads, represents the Executive branch. The Legislature is of course related to the Executive, in that the Cabinet members of the Executive Council (which convenes with the Governor) under the WA system are all members of the State Parliament. However, the *Constitution Act to maintain* "local government is a separate branch of government, which the Legislature is required under the

Clearly the Legislature has the responsibility under the Constitution Act of maintaining the system of local governing bodies. It would be as well for the Government to be aware of the fact that local government is a separate branch of government, which the Legislature is required under the Constitution Act to maintain.

The recent attempt at metropolitan local government reform was initiated by the government, not the Legislature. If the attempt to reduce the system of local government is accepted by the State Government as its program, there must be some question as to whether the method used was consistent with the spirit and intent of s.52 of the Constitution Act.

At the very least, local government clearly is not a subset of the State Government.

For further information in regard to the above, contact Denis McLeod on 9424 6226 or dmcleod@mcleods.com.au. The



information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstances of each case.