

Panacea or snake oil? An examination of local government reform process in New South Wales

Philip Willis and Michael Paddon¹

'Injustice, poverty, slavery, ignorance, these may be cured by reform. However men live by positive goals, a vast variety of them predictable, at times incompatible' Sir Isaiah Berlin

Introduction

This paper is an examination of the process of local government reform in New South Wales 'captured in', and driven by, the 1993 Local Government Act. It is part of a larger research project investigating the reform process instigated by the 1993 Act, but continued by the important revisions to the Act in 2010.

This Paper makes an initial assessment of the impacts of the 1993 Act as a significant if not fundamental attempt at local government reform by, first, undertaking a policy analysis of the objectives of the Act then, using the reflections from eleven people who were significant contributors to or actors in the reform process in NSW local government in the 1990s.²

The Paper will provide a commentary on views expressed by these interviewees leading to the conclusion that reforms have been a partial success in meeting their stated objectives. In the more detailed case studies as part of the larger research project, these conclusions will be reviewed in greater detail from the practical experience of local councils in implementing the legislation.

Overview of Reforms

Local government in Australia has often been termed 'a creature of the State' (for example see O'Keefe, 1993). In essence local government only exists at the whim of the State Government, The New South Wales Constitution only allows that there shall continue to be a system of local government at the State government's pleasure (Ellis-Jones, 1993). Local Government is established by specific state legislation and the major reforms are enshrined in legislation. Less obvious is the fact that up to and including the 1993 Local Government Act, legislated reforms have tended to follow the directions and concerns of changes in the UK. The New South Wales political system has been founded on the 'Westminster' political model. (Hood, 1991, p3), hence it followed that developments in English local government were closely observed by New South Wales reformers, and later with modification, introduced into that State.

Prior to 1993, the defining framework of New South Wales local government was legislation previously enacted in 1919 (Local Government Act); itself a compromise and revision of two previous Acts; viz. 1906, and 1858 (Dept of Local Government, 1991a)). Jones, 1989, p.74 has commented that these Acts were based on their English counterparts but amended to suit Australian conditions. The result was that local government was a product of a 19th century legacy (Hill 1974 p 186, Wensing 1997, p89).

¹ The research project reported in this paper is being conducted by Philip Willis for a PhD thesis. Michael Paddon is supervising the thesis with Professor Graham Sansom. The authors would like to acknowledge the contribution by Graham to the research

² The larger research project includes three detailed council case studies in which the impacts of the local government reforms will be reviewed

Though 74 years elapsed between the key legislative anchor points for local government, the history of local government in New South Wales (following England) has been one of continual reappraisal and reform (see for example the writings of Keith-Lucas and Richards, 1978; Larcombe, 1978; and Maiden, 1966). From the late 1960s, we can see a pressure through detailed recommendations for reform picking up momentum in both England and New South Wales.

The Maud Inquiry (1967) in England was followed by the Barnett Report (1973) of New South Wales. Maud/Barnett were concerned with a local authority's effectiveness and, in Barnett's articulation, strongly recommended widespread amalgamations. At the time Barnett produced his Report in 1972 there were in New South Wales 223 municipalities and shires and 50 county councils – too many in his opinion. Further (ibid, p.11) he observed that there had been no general review of local government in 60 years. Barnett was also concerned with the efficiency of local government and commented that an efficient council is one which had effective ways of recognizing the needs for its area (ibid, p.29). He also saw the need for a basic change in local government areas (amalgamations) (ibid, p.31); plus the need for a system of local government which will enable councils to assume greater responsibility for decision-making (ibid, p.32). He warned that unless that could be achieved the power of local authorities would decline. He further submitted separation of policy (council) from administration (staff) (ibid, p.50). He argued that councillors should no longer be concerned with day-to-day matters, but should be charged with the major responsibility of determining broad policies including the allocation of resources (ibid, p.53). None of Barnett's recommendations were immediately implemented though subsequently most of Barnett's recommendations were included in the '93 Act.

In 1978 Bains was requested to report on the state of New South Wales local government following the Report he had recently produced for the British Government on English councils (Marshall and Bains, 1972). Bains drew heavily on Maud, and reiterated four basic principles underpinning local government (Bains, 1978, p.11)

- Effective and efficient management controlled and directed by members
- Clear leadership and responsibility
- Intelligible system of government
- Responsiveness to the needs of the public

The 'Bains Reports' were concerned with a council's efficiency and recommended wide-ranging changes to its managerial structure. Bains' main thrust was on management and organization, and a clear distinction between the roles of elected members, and staff. The recommendations were not too dissimilar to those from Barnett. However he adds the function of review of performance, and appointment of senior staff; to the roles for the elected members. He also adds the function of stimulating policy formulation, and promoting management efficiency to the roles of senior staff. His recommendations were subsequently broadly included in the '93 Act.

The Widdicombe report was completed in England in 1986 at the time when the process of preparing what became the '93 Act was getting underway and the early drafters for the new Act were aware of his recommendations (General Counsel, 1987). By that time a driving force behind some of the notions for reform was the 'New Right/New Management Program' that swept the private sector, and the Australian Federal Government in the late '80s/early '90s (Levitas, 1986; Holmes & Shand, 1995). Concurrent with the advent of the New Right Movement was the perceived need to modernise local government generally.

Widdicombe was concerned with the processes of decision-making and the respective roles of senior staff and elected members. For example, Widdicombe comments (1986, p.67) that there is uncertainty about the proper relationships between councillors and officers; and councillors and their constituents. Further (ibid, p.68) Widdicombe indicates that there is no source of executive authority other than the Council itself. Widdicombe saw the chief executive as being the head of staff responsible for staff generally and to have overall management authority (ibid, p.75). He recommended Codes of Practice for chief executives (ibid, p.76), and merit-based appointments. As before these (somewhat contentious) recommendations have been incorporated (in part) into the New South Wales reforms (the Codes of Practice now being a Departmental Guideline – Department of Local Government, 2006(a).

Background to the introduction of the '93 Local Government Act

In 1987, the then Minister for Local Government, the Hon Janice Crosio MP, through the Department of Local Government initiated the formal process for developing a new piece of local government legislation on local government by appointing a firm of consultants – General Counsel Pty Ltd – to commence the drafting of a new Local Government Act (Department of Local Government file,1987).

The Brief to the consultants included the following;

- The legislation should be comprehensible(i.e. written in 'Plain English')
- It should provide a basis for the next 20 – 30 years
- It should aim to maintain excellence in the best Councils
- Ensure that those below par improve their performance
- Provide for greater local involvement
- Broadly express powers of councils
- Consolidate regulatory systems
- Provide a clear policy role for councillors
- Require performance contracts for senior staff
- Ensure accountability focussed on the community
- Ensure accountability focussed on the State
- To be useable by all

(Dept of Local Government, 1992a)

The Brief, however, provided a degree of latitude in the approach to the task. Whilst it was anticipated that this would be a revision to the 1919 Act in practice what was initiated was the creation of a completely new piece of legislation with only limited reference and recourse to the old Act (General Counsel, 1987b) . It was indicated (ibid) that the main thrust for the new Act would be the following:

- Creation of a 'modern Act'
- Elimination of certificated and departmental responsibilities
- Reduction in numbers of differing approvals
- Be more outcomes focussed.

The first Phase in developing the legislation was completed in 1990, when a White Paper was produced and stakeholder consultation undertaken. In August 1991, the consultants' engagement/participation was wound up and the Department of Local Government assumed the ongoing responsibility for progressing the work to the gazettal of a new Local Government Act (Department of Local Government, 1991b). A Discussion Paper was released, and written submissions containing in excess of 4,000 comments were received. By the end of the year (1991),

the Exposure Draft Local Government Bill 1991 had been produced, and together with companion legislation (e.g. Roads Bill) was circulated for general comment. In excess of 7,500 comments were received.

The Bill was tabled in Parliament in November, 1992. (Hansard, 1992). The Act received the Governor's proclamation on 08 June 1993 and formally commenced on 01 July 1993.

Objectives of '93 Act

The initial objectives for the Act were signalled in the brief given to the consultants. We have seen that the Act incorporated many of the recommendations made in the series of reports from the 1960, 70s and 80s. Overall we can identify the five "higher level" objectives in the legislation

- Accountability
- Efficiency
- Effectiveness
- Transparency
- State Government control;

Accountability

It was proposed that by requiring councils to think ahead, and to publicly articulate their intentions, that councils would be accountable to their stakeholders. It was presumed that councils would plan ahead for at least three years and actively engage the community in the process (Dept of Local Government, 1990). Councils were to produce annual Management Plans which were to include not only details of a council's physical works, but include details of its proposed financial activities; its management of its assets; its proposed care for the environment; social responsibilities; and equal employment plans. The Department of Local Government, 1999 commented that by ensuring that councils plan ahead; determine future priorities; and develop strategies and for their achievement, they will ensure that they will be publicly accountable for the management of their operations.

Grant, 1993 considering the provision of the new Act commented that the proposals were designed to encourage a greater community involvement as well as increasing the accountability of local government. Further he noted that this accountability will be enhanced by councils being required to give notice of their draft management plans, and allowing the public to make submissions. The Hon Gerry Peacocke, MP, the then Minister for Local Government commented (1993) that the new legislation will establish clear lines of accountability in the community, and greater transparency for councils.

Allied to the provision of preparation of long-term management plans was the preparation and public release of Annual Reports. Prior to the new Act, Annual Reports had been required and submitted to the Department; these however, were only financial in detail and comprised in many cases documents of no more than two to three pages (Department of Local Government, 1991a). The new requirements sought an accounting of all those matters previously commented upon in the preceding Management Reports. The intent was for the Annual Reports to be readily available to the community, and it was anticipated that they would be distributed to all ratepayers. Thus as the Department commented (1992b), there would be an enhanced community focus. The intent was that the members of the public could be assured that their Council was managed efficiently and effectively (Department of Local Government, 1991b).

Efficiency

A major thrust of the new Act was that councils be efficient, which went hand in hand with accountability. The proposed Act in particular looked to the respective roles of the General Manager, the Mayor, and the councillors. In essence the proposed Act established that the General Manager would be responsible for day-to-day operations and the councillors would be responsible for the formulation of policy (amongst other things). The proposed legislation in this regard enshrined many of the recommendations from Barnett (1972) and Bains (1978); and to a lesser extent the managerial recommendations of the English Widdicombe Report (1987). The proposals implied but did not specifically state, that the General Manager would effectively be the Chief Executive Officer (Henningham, 1993). Further initiatives regarding staff were the abolition of mandatory certification; recruitment based on merit; and senior staff being placed on fixed-term contracts. Thus making the staff/general manager accountable to the Council, and as a result to provide a legal framework for an effective, and efficient system of local government (Department of Local Government 1993)

In addition to reorganizing the management of council staff, the proposed legislation sought to set down roles and responsibilities for the elected representatives. The Department in its Phase II Review (1991b) commented that the legislation will contain a broad statement of the roles of councillors and Mayors being:

- The roles of councillors will be to attempt to balance ultimate responsibility to those who elected them with their responsibility to oversee the proper effective, fair and efficient operation of the council
- The role of the mayor will principally be one of civic leadership and leadership or chairmanship of proceedings.

All contact with staff is to be via the General Manager, who cannot be directed as to his/her recommendations (Department of Local Government, 1993).

Effectiveness

In order to allow local government to function effectively, the Department (1991a) envisaged the inclusion of a Charter which would embody and encompass those functions in which it would be free to operate. It was also anticipated, however, that a council in the exercise of its functions must pursue the charter but that nothing contained within it could give rise or be taken into account for any civil course of action (Cl. 8. Local Government Bill, 1992). The Charter provided broad powers to councils to carry out the positive functions of providing goods services and facilities (Department of Local Government, 1991a). These proposals comprised a broad objective which was to provide a broader scope of powers and greater flexibility (Department of Local Government, 1992b). Garry Payne (1993) commented that the new Act based around the Charter will liberate Local Government, and will provide more latitude for councils. Garry West speaking as the new Minister for Local Government (1993) opined that the new legislation will give considerable freedom for councils. As early as January 1991, the Department (Department of Local Government, 1991a) expected that the new measures will result in significant improvements in the effectiveness of local authorities

Written into the proposed Bill to provide those powers to councils was the concept of liberating councils from the strictures of over-prescriptive legislation. The 1919 Act contained some 100 ordinances which were reduced to 10 regulations in the new Act (PFS Consultants, 1988). A major thrust was also presumably to remove the statutory requirement for actions to be approved, sanctioned, or regulated by individual certificated department heads (general Counsel, 1987b). In this regard Garry West (1993) commented that local government has laboured too long under

stifling and prescriptive legislation. Earlier the Department (Department of Local Government, 1992b) stated that wherever possible prescription has been reduced, replaced by an approach which sets down parameters and principles. Later, Garry Payne (1993) stated that the old prescriptive style of the old Act had been done away with. Jeff Shaw (1993) the Shadow Minister commented that Local Government will be liberated from the shackles of outdated restrictive legislation.

Transparency

Two of the Department's broad objectives (Department of Local Government, 1992b) were to ensure the highest degree of integrity, and to provide legislation that is user-friendly (i.e. so that the community and interested parties can readily appreciate a council's actions). Indeed Garry Payne (1993) commented that transparency has driven much of the current Local Government reform. The Hon Gerry Peacocke MP, as Minister for Local Government (1993) affirmed that the new legislation would establish greater transparency for councils. From the draft Charter (Department of Local Government, January, 1991a) it was stated that a Council should adopt as a Council objective, transparency of operations. To assist in this regard the new Act included features whereby Council Meetings and Committee Meetings were not in camera,, with the exception of a few specified contractual, staff, and sensitive matters. The new Act also incorporated features such as Codes of Conduct and Disclosures of Pecuniary Interest. There was to be a public access to information held by councils (Local Government Bill, 1992 – Chapter Guide).

A major feature of the broad objectives was the requirement that the proposed legislation be user-friendly (Department of Local Government, 1992b). The Department commented (Department of Local Government, 1991a) that simple legislative provisions will encourage more transparent processes. The Department also commented that broad goals will ensure simplicity, openness, and transparency. In short the Department's intention (ibid) was that the proposed legislation be a piece of Plain English expression. A Departmental Overview (Department of Local Government, 1992c) considered that the proposed legislation will be simple and understandable, and thus provide the community with more openness and transparency as to its actions, Gerry Peacocke (1992) commended the new Act on its Plain English style and was particularly impressed with the use of boxes and diagrams which he saw as being a template for all future legislation. In this regard, the Department itself, (Department of Local Government, 1992b) saw the proposed Act as representing a huge step in Plain English drafting.

Government Control

We observed earlier that local government is the creation of state government. The new Act did not fundamentally change that relationship. Whilst the Department (Department of Local Government, 1992b) commented that the new Act would reduce the need for State Governments to be involved in local government's day-to-day activities, the degree of State Government control still gave State Government an enormous scope (Local Government Focus 1993). The Act did not give local government any powers of general competence and it was subject to abolition, dissolution or dismissal by the governor (O'Keefe, 1993 Ellis-Jones, 1993). The Department retained the right to detailed oversight of a local authority's broad policies and activities. Furthermore the Department in its Briefing Note to Staff (Department of Local Government, 1992a) advised that the Minister would have a supervisory role in the oversight of annual management plans and revenue policy. Later in an Overview (Department of Local Government, 1992c) the Department advised that it expected that its requirements would produce more focussed and purposeful reporting, and increased oversight. It further anticipated that the councils' accountability would be focussed not only on the community but importantly to the State Government.

The 1993 Act in Practice- How Much reform?

From this policy analysis, we have identified the precursors to, and objectives of, the '93 Act as a focus for fundamental reform to local government intended to take it into the next (ie the current) century. To ground truth in the secondary accounts of the intentions behind the legislation and to get a broad assessment of how well the objectives have been delivered in the intervening 17 years, eleven interviews were conducted with senior practitioners, academics and governmental representatives who had been involved in drafting or implementing the legislation, commenting or assessing its impact, or advising local government on its application³

The comments from the interviews have been summarised under to the 'higher level' objectives for the reforms identified in the policy analysis

Accountability

We have indicated that increasing accountability of local government was one of the "high level" objectives of the '93 Act. Our interviews identified two different dimensions to accountability. For our respondents, these are different in emphasis, possibly at odds with each other and the degree to which they have been achieved in their entirety is questionable

The primary dimensions or objective of accountability was of a council to its local community. There was general endorsement from the interviewees that the planning and reporting requirements of the Act have increased the apparent accountability to the community (though Respondent G was a notable dissenter). One interviewee (Respondent D) took this further in affirming that the Councils' corporate Plans will only be affective if they are genuinely community-based. However, there was acknowledgement from another interviewee (Respondent B) that council's greater accountability may not be seen purely in a positive light since in opening councils to greater scrutiny this also potentially opens them up to public criticism. Overall two major qualifications were voiced in the interviews to the notion that the act has actually increased accountability to the community. The first is by asking whether there has been any real, identifiable benefit to the community or to ratepayers arising from this apparent accountability in planning and reporting. The second was in response to the mandatory nature of the obligations

The mandatory nature of the obligations leads into the second dimension of accountability: a council to the State Government. Whilst all the respondents accepted the importance of community accountability, most were more critical of the notion that councils should be accountable to the State Government through obligations which are mandated. Interviewees were overall more comfortable with a notion of encouraging councils to use Strategic Planning and Annual Reporting as good business practice rather than a legislated obligation. The involvement of the State Government with local government through this process is formal rather than real, as evidenced by the lack of feedback from the Department of Local Government to local councils ' plans and annual reports (Respondent D)

Efficiency

The question of improved efficiency has been a salient issue in local government since the Barnett Report of 1972. The respondents highlighted that the most important concept to improvement of efficiency was the rationalization of the council/staff relationships; and in particular the Mayor/General Manager relationship.

Whilst the Act had endeavoured to clarify this situation, the interviewee's felt that the requirements fell short. Respondent K made the observation that the new Act is imprecise as to who does what

³ Semi structured hour long interviews were conducted by Phil Willis in 2010/2011 with people who had been significant in designing, or implementing the Act.

and the takes responsibility for what. Further, the interviewees were of the opinion that there remain too many power struggles as a result of this imprecision, which is to the detriment of local government generally. They felt that a defined Chief Executive Officer would improve this situation.

There were also opinions that as a result of a lack of sufficiently defined roles, there is a low calibre of mayors and councillors. For as Respondent E commented, councillors do not really understand what is expected of them. They also felt (e.g. Respondent D) that legislated Guidelines or even a 'Duty Statement' would further improve matters.

Effectiveness

The respondents were cognisant that one of the principle tenets of the new Act was that it was not to be prescriptive. In this regard they also noted the intention to 'liberate' local government and 'give it freedom to act'.

Generally, the respondents felt that the ideals had not been realized. Respondent H in particular was of the opinion that the new Act and subsequent legislative requirements were such that local government is now faced with a vast array of legislation. In this regard he further opined that the reform process has in fact increased bureaucratization and over-regulation. The respondents generally felt that the Act remains over-prescriptive and bureaucratized.

A second issue the respondents focussed on was that of governance. They noted that the intention was for corporate council to act as a private sector Board of Directors. Respondent E in particular noted that little account had been taken of the political environment of local government; hence the intended model was naive. The respondents were thus of the opinion that the model has not and cannot work.

Transparency

A major thrust of the new Act was that a council's actions be transparent and readily discernible to members of the community and the State Government. In addition, the Act itself should be readily understood by all.

To assist in this regard was the inclusion of a Council's Charter in the new Act; and the Act itself to be written in 'Plain English'. A further contributory requirement was for council meetings to be open to the public wherever possible.

The respondents felt that the inclusion of a council's Charter has been beneficial, Respondent D making the observation that it was a major step forward.

Another major feature to improve transparency was the writing of the Act in 'Plain English'. Generally the respondents were ambivalent on this topic, although the comment was made that as much of the Act has survived without radical amendment, it must have achieved its purpose of being simple and more readily understood. In fairness the 'Plain English' approach was innovative for legislation in 1993 but is now somewhat passé.

With regard to opening council meetings, and council actions, generally the respondents were of the opinion that there had been improvements. Respondent B in particular noted that the Act had opened up council's action to public scrutiny, and Respondent L noted that a council's accounting and finance functions were readily available for all to see.

Government Control

Whilst the State Government espoused 'freedom to act' and 'liberation of local government', these were to be within the confines of local government remaining 'a creature of the state'. The State determined to retain the right to dismiss councils, and its Department retained the requirement for mandatory reporting. During the preparation of the new Act there was no consideration or discussion relating to amendment of the State Constitution. In brief, the State retained the right to ensure local councils 'toed the line'.

The respondents viewed the new Act as an exercise in overall control by the State as epitomized by general oversight and mandatory reporting. Generally the respondents did not dispute the State's right of oversight and direction, but within reasonable bounds. In this regard Respondent H asserted there was a significant difference between oversight and interference. Much the same stance was taken with mandatory reporting. There was no objection to reporting per se, only its excess. As Respondent B commented the number of reports could be drastically reduced.

Again generally, the respondents were unhappy with the degree of control exercised by the State Government and cited the retained facility to dismiss councils; rate-pegging; and cost-shifting as areas of unnecessary control.

Where does reform end?

It is tempting to regard reforms in terms of their ultimate outcomes, since this is the way they are usually articulated and justified. In this reading reforms start with high expectation which leads to disappointment (Moynihan, 2006, p84). These reforms were no exception. As one respondent commented 'there were high hopes'. During the preparation of the Act, it was being touted as 'all things to all people'; or 'a panacea for all ills'. The Minister commented that it was a 'work in progress' (Peacocke, 1992). However, it does appear to have achieved many of its objectives, hence it could not be classified as 'snake oil'.

In practice reform is a process which may be initiated by a piece of legislation like the '93 Local Government Act but which is carried through in disparate ways in the very different locations of individual councils. The continuing/incomplete nature of the reform process is recognised by academic commentators and by practitioners. Sproats saw the '93 Act as a starting point, and argued that the reform process should embrace the micro-economic reform agenda and improved governance (Sproats 1996, p2; Sproats, 1998, p3). Jones (1993, p.138) also saw reforms as continuing and urged that reforms should be more than structural reform. Johnston, as early as 1997, foresaw problems with lack of long-term strategic planning (Johnston, 1997). The NSW Department of Local Government has recognized this deficiency, and endeavoured to address the problem in a series of publications (NSW Dept of Local Government, 2006a; 2006b; 2008), finally enshrining the requirements in legislation (Amendment to Local Government Act, 2009). The Department of Local Government jointly with the NSW Local Government and Shires Associations (2008) produced Guidelines (2008) addressing the thorny question of a councillors roles under the new Act. Further, the Local Government and Shires Associations are endeavouring to move local government into the 21st century, and have produced a Paper with recommendations accordingly (Local Government and Shires Associations, 2010). Importantly, the Associations also commissioned an Inquiry in the Financial Sustainability of Local Government (the 'Allan Report') (2008). Allan, independent of that report has been campaigning to improve local government's financial sustainability (see Allan, 2006). These issues have also been taken up and commented by Dollery and others (Dollery & Marshall, 1997; Dollery et al. 2003; Dollery & Robotti, 2008).

So the reform process can be viewed as work in progress- it is a dynamic process. There have been 51 direct amendments to the Local Government Act since its introduction, which reinforces that comment. With these facts in mind, and based on the responses from the eleven interviewees, it is concluded that the implementation of the 1993 Act has achieved many of its objectives, but not all. Further, the Act has not necessarily delivered benefits to all parties.

This paper has provided a snapshot of the impacts of the reform process arising from the 93 Local Government Act. However, reforms are truly played out and experienced in the individual councils. The next stage of the research is to examine in detail the activities of three local authorities to ascertain how they have reacted, and still react, to the reforms initiated by the Local Government Act 1993.

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