
Japanese Delegated Legislation: The Local Autonomy Law*

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* Double-blind reviewed article.

Abstract: This article provides a comparative (and historical) analysis between the Japanese Local Autonomy Law and the Western Australian (WA) local government legislation. In doing so, data from several case studies of selected Japanese local governments will be referenced in regard to how the system of delegated legislation (the Local Autonomy Law) impacts on Japanese local government. Selected literature will also be referenced where applicable, and especially where relevant to the application of the Local Autonomy Law to WA local government legislation and governance systems. In doing so, the article will not only provide an historical account of the Local Autonomy Law but also place this narrative in a comparative context with the WA local government legislation – notably the *Local Government Act 1995* (WA) and subsidiary legislation.

¹ I acknowledge and appreciate the assistance provided by various people and organizations that allowed me to study selected Japanese local governments. The Hyogo Prefectural Government Cultural Centre in Perth WA, and particularly Mr Onishi and Ms Melissa Luyke who provided valuable assistance to me in contacting several local governments in the Hyogo Prefecture such as Kobe, Ako and Toyooka Councils as well as the Hyogo Prefecture Government itself. My appreciation is also extended to Ms Noriko Hirata – Regional Director – Government of WA Japan (Kobe Office) who meticulously arranged my meetings despite the extraordinary COVID 19 circumstances in 2020 that had some adverse effects in attending these meetings. Mr Koichi Ueta from the San'in Kaigan Geo Park organization provided valuable support to me when I visited the Toyooka local government area. I extend my thanks to you all.

INTRODUCTION

This article provides a comparative (and historical) analysis between the Japanese Local Autonomy Law and the WA local government legislation. It aims to provide an historical account of the Japanese Local Autonomy Law but also place this in a comparative context with the Western Australian (WA) local government legislation, with a view to offering insights into possible lessons for both jurisdictions, relating to accountability when it comes to delegated law making. Before undertaking this comparison, it is useful to explore the meaning of the term ‘delegated legislation’ from the Australian and Japanese perspective.

Meaning of Delegated Legislation

Delegated legislation refers to laws made by persons or bodies to whom parliament has delegated law-making authority. Where Acts are made by parliament, the principal Act can make provision for subsidiary legislation such as regulations to be made and will normally specify who has the power to make these. Accordingly, delegated legislation can only exist in relation to an enabling or principal Act. Comparative overseas experience also makes it clear that the democratic legitimization of secondary delegated legislation can also be secured by involving the public in its approval, at least indirectly through elected representatives.²

The term delegated legislation in its broad sense is the term usually referred to as those laws made by persons or bodies to whom parliament has delegated law-making authority. Further, where Acts are made by parliament, each principal Act makes provision for subsidiary legislation (such as Regulations) to be made and will normally specify who has the power to do so under that Act. Therefore, delegated legislation can only exist in this context in relation to an enabling or principal Act that allows for the delegated process. According to Hotop, the expression delegated legislation (or subordinate legislation) is the name given to legislative instruments made by a body (usually within the administration) expressly authorised so to do by an Act of Parliament.³ Uncertainty will invalidate delegated legislation only where it is such that

² H. Pünder, ‘Democratic Legitimization of Delegated Legislation—A Comparative View on the American, British and German Law’, *International and Comparative Law Quarterly*, 58(2), 2009, p. 353

³ Stanely D Hotop, *Principles of Australian Administrative Law*, 6th Edition, (Sydney: The Law Book Company Limited, 1985), p. 115.

the delegated legislation does not constitute a proper exercise of the power conferred by the enabling Act.⁴ Notwithstanding that, delegated legislation may be invalid if it is inconsistent with the 'general law' where the general law comprises fundamental constitutional principles embodied in the common law.⁵ As Meagher and Groves note, secondary (delegated) legislation must be read down to protect the rights, freedom or principle in play or it is ultra vires as law-making if that is not interpretively possible.⁶ Further, governments have long used secondary or delegated legislation, but the concept of legislation made by a body other than parliament does not sit easily with the notions of parliamentary sovereignty or democratic accountability.⁷

The above definitions of delegated legislation are not finite and are noted for the purpose of this article as they apply to Japanese and WA local governments that are made under the authority of an 'Act' or 'parent' legislative instrument that enables it to do so. For example, Chapter VIII of the Japanese Constitution or the *Local Government Act 1995* (WA) (that is currently under review). The *Constitution Act 1889* (WA) prescribes that the legislature shall maintain a system of local governing bodies elected and constituted in such a manner as the legislature may from time to time provide and 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.⁸

JAPANESE LOCAL GOVERNMENT SYSTEM AND THE LOCAL AUTONOMY LAW

In 1868, the feudal military dictatorship that had been in power in Japan for nearly seven centuries, the shogunate, came to an end in a swift political coup. The country returned to imperial rule, at least nominally. After the restoration came the Meiji period, which lasted until 1912 - an era of sweeping social, economic and political

⁴ Hotop, *Principles of Administrative Law*, p. 159.

⁵ Hotop, *Principles of Administrative Law*, p. 146.

⁶ Dan Meagher and Matthew Groves. 'The Common Law Principle of Legality and Secondary Legislation.' *UNSW Journal* 39, No. 2 (2016), pp. 453 and 486.

⁷ Meagher and Groves, *The Common Law Principle of Legality*, pp. 453 and 486.

⁸ *Constitution Act 1889* (WA) Part IIIB – Local Government – s52 (1) and (2).

changes that modernised the once-isolated country and encouraged a fusion of traditional Japanese values with Western influences. The feudal system and four-tier class structure that had defined Japanese society, economy and government for centuries was removed.⁹ In 1889, the Meiji Constitution created a parliament, or diet, with an elected lower house and a prime minister and cabinet to be appointed by the emperor. The governments of the Meiji period introduced policies to unify monetary and tax systems and compulsory education was brought in based on Western models. Indeed, the beginnings of Japanese local government can be traced to the Meiji period that have progressed to what is recognisable in modern Japan today, especially since the Japanese Constitution in 1946 which recognises local government as essential to democracy and establishes it as part of the nation's system of governance.¹⁰

Japanese central government and local governments have different jurisdictional structural roles. The structure of local autonomy and the relation between the central government and local governments are detailed in the Local Autonomy Law, based on Chapter VIII of the Japanese Constitution. Chapter VIII of the Japanese Constitution – Local Self Government - prescribes that regulations concerning the organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy (Article 92), the local public entities shall establish assemblies as their deliberative organs in accordance with the law, the chief executive officer of all public entities, the members of their assemblies and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities (Article 93), local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within the law (Article 94), and a special law applicable only to one local public entity cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned and obtained in accordance with the law (Article 95).¹¹ The regulations prescribed as Article's derive from the Chapters of the Japanese Constitution and as such are delegated instruments themselves. Hiroshi Ikawa notes

⁹ Andrew Gordon, *A Modern History of Japan: from Tokugawa to the Present*, (4th ed, London: Oxford University Press, 2019), pp. 117 – 129.

¹⁰ Japan Local Government Centre, 'An Outline of Local Government in Japan' (London: Council of Local Authorities for International Relations, 2004), p. 1-2.

¹¹ The Constitution of Japan - 'Chapter VIII – Local Self Government – Article 92 to 95' (Tokyo: Prime Minister & Cabinet of Japan), p. 10.

that Chapter VIII of the Constitution of Japan that deals with local government, was newly added. Under the Meiji Constitution, there had been no Articles dealing with local government, so as a result of the establishment of the new post World War Two Constitution, Japanese local government was directly guaranteed by Articles 92 through to 95.¹² Furthermore, Yuichiro Tsuji notes that Article 92 of the Japanese Constitution provides only for the ‘principle of local autonomy’, and regulations concerning the organization and operations of local entities are fixed by law. Accordingly, the meaning of the ‘principle of local autonomy’ is subject to interpretation.¹³

The local government system in Japan consists of two tiers: prefectures and the municipalities that make up the prefectures. Municipalities are local public entities that have a strong and direct relationship with local residents and deal with affairs directly related to the residents. These tiers are founded on two principles. Firstly, the right to establish autonomous local public entities that are, to a certain extent, independent of the national government and secondly, it embraces the idea of ‘citizens self-government,’ by which residents of these local areas participate in and deal with to a certain extent, the activities of the local public entities. Atsuro Sasaki notes in *Local Self-Government in Japan* the organs and organization of local governments and the relationship between the Assembly and the Chief Executive as follows:

Assembly: Legislative organ

The number of local assembly members is determined by ordinance (The 2011 revision of the Local Autonomy Act eliminates limits by population size.)

The term of office of local assembly members is 4 years

Candidates for election of assembly members must be residents and at least 25 years old

¹² Ikawa Hiroshi, ‘15 Years of Decentralization Reform in Japan’, *National Graduate Institute for Policy Studies*, 2008 p. 6.

¹³ Yuichiro Tsuji ‘Local Autonomy and the Japanese Constitution – David and Goliath’, *KLRI Journal of Law and Legislation*, 8 (2), 2018, p. 2.

Voters for election of assembly members must be residents and at least 18 years old (as amended in 2016)

The major authorities of the local assembly are creating, amending, and repealing ordinances, approving budgets, authorizing the settlement accounts, making motions of no confidence against the chief executive, etc.

Regular sessions are held 4 times a year. Ad-hoc sessions take place as necessary.

Chief Executive: Executive organ

The term of office is 4 years

Candidates for election of chief executives must be at least 30 years old for

prefectural governors, 25 years old for municipal mayors

Voters for election of chief executives must be residents and at least 20 years old

The major authorities of the chief executive are enacting regulations, submitting bills, implementing budgets, etc.¹⁴

Satoru Ohsugi supports the description by Sasaki where an assembly is established as a procedural organ of local government (Article 89 of the Local Autonomy Law) and composed of assembly members who are directly elected by residents of the area concerned.¹⁵ Ohsugi provides a comprehensive analysis of the functions of Japanese local government assemblies to the extent where he advocates in his article by example that assemblies will seize the principles of residential autonomy and organizational autonomy and, while remaining focused on realizing the goal of true local autonomy and self-government, will adopt a standpoint of autonomy that is markedly different from the standpoint of the national government and of the political parties.¹⁶ In this

¹⁴ Atsuro Sasaki, 'Local Self-Government in Japan', Director General for Policy Coordination, Ministry of Internal Affairs and Communication, 2014, p. 8.

¹⁵ Satoru Ohsugi, 'Local Assemblies in Japan', Graduate School of Social Science, Tokyo Metropolitan University, Tokyo, 2008, p.2.

¹⁶ Ohsugi, *Local Assemblies in Japan*, p.26.

regard the organs and functions of Japanese local government assemblies and chief executive officers are somewhat similar to WA local government. However, the responsibility of (or for) functions is entirely different as noted in the next section.

The practical operation of the organs of Japanese local government in the context of the Japanese Local Autonomy Law was subject to a survey by the author of selected prefectures and municipalities in the Hyogo Prefecture of Japan.¹⁷ These included the Kobe, Ako and Toyooka Councils as well as the Hyogo Prefecture Government itself. The survey questionnaire itself distributed to all participating Councils was generically based regarding the description and responsibilities of each of their organizations, as well as specific questions how the Local Autonomy Law impacted on their particular organization.¹⁸ For example, the population of Kobe City Council is circa 1.5 million and where the City Council is responsible for providing services to its population varying from roads and streets, aged care, public transport, primary health care and hospitals, schools (primary and secondary), waste management and all aspects of cultural activities.¹⁹ Ako City Council is equally responsible for the same services as Kobe City Council with a population of circa 48,000, while Toyooka Council has a population circa 82,000 and is also responsible for the above services.²⁰

In comparison none of the WA local governments are responsible for providing the same level of services such as aged care, public transport, health and hospital services or education (schools). These services in WA are delivered by the WA State Government, similar to other Australian States and Territories. That is, the responsibility for aged care, education, hospitals and health, public transport and police etc are primarily the jurisdiction of the Australian relevant State and Territory, with some exceptions being the Brisbane City Council who have some responsibility for public transport (ie public bus transport) limited to within their local government boundary metropolitan jurisdiction and Victorian local governments who have some

¹⁷ K J Matthews, 'Survey Questionnaire Response – Kobe, Ako and Toyooka Councils', Japan, March 2020, p. 2 - 3.

¹⁸ Matthews, *Survey Questionnaire Response*, p. 2-3.

¹⁹ Matthews, *Survey Questionnaire Response*, p. 2-3.

²⁰ Matthews, *Survey Questionnaire Response*, p. 2-3.

limited responsibility for the delivery of maternal child health and immunisation services.²¹

All participating Councils (Kobe, Ako and Toyooka) responded to the question 'How does the Local Autonomy Law effect your municipality?' stating that they follow the Japanese Local Autonomy Law, although they did cite some frustration in the application of the Local Autonomy Law, especially in the area of equal fiscal distribution to meet the future demands of an ageing population and increased reliance on the provision of services.²² This is supported by the response from Kobe City Council where they are required to fulfil the capability of governance and finance by themselves in accordance with Article 252 of the Local Autonomy Law as an Ordinance Designated City.²³ From the survey questionnaire response provided by the Hyogo Prefectural Government, it appears that they perform more of an administrative overview function as designated by the Japanese Constitution and the Local Autonomy Law whereby the Prefectural Government provides a management role of the Councils within their region and:

Liases with cities and towns,

Provides a management role where city/town government are not able to provide,

Oversees fiscal and administrative compliance of each Council in the region,

The Japanese national government gives prefectural government independent authority to exercise its management/services in the region,

Advises the Japanese national government on the performance of each Council within its region, and

²¹ 'Know Your Council: Guide to Councils', Victorian State Government Website, 2015 available at <<https://www.brisbane.qld.gov.au/traffic-and-transport/public-transport>>;- <<https://knowyourcouncil.vic.gov.au/guide-to-councils/what-councils-do/health-services>>.

²² Matthews, *Survey Questionnaire Response*, p. 2-3.

²³ Matthews, *Survey Questionnaire Response*, p. 3.

Ensures each Council in its region complies with regulations and legislation.²⁴

As noted above, Japanese local government is a two-tiered system where prefectures serve wider geographical areas and municipalities provide more local type services in accordance with the Local Autonomy Law.²⁵ Further, the concept of citizens' self-government is incorporated in the Local Autonomy Law (*Chiho Jichi Ho*), which gives specific legal validity to the principle of local autonomy enshrined in Chapter VIII of the Constitution of Japan. The Local Autonomy Law specifies the types and organizational framework of local public entities, as well as guidelines for their administration. It also specifies the basic relationships between these local entities and the central government.

The principle of local autonomy is an important pillar of Japan's political system and took effect on the same day as the (post war) Japanese Constitution. Yuichiro Tsuji notes that the constitutional history of Japan has shown that the structure of local government was mainly regulated not by constitutional provisions but by statutes.²⁶ The Local Government Act was established, along with the current Constitution, in 1947. Article 92 of the current Constitution provides only the 'principle of local autonomy,' and regulations concerning the organization and operations of local public entities are fixed by law. In particular, the Local Autonomy Law was enacted to implement Article 92 of the Japanese Constitution as noted above, which stipulates the autonomy of local government. The Law empowers the local government to determine matters relating to its organization and operation. The Law also promotes democratic and efficient administrative system and guarantees sound development of local government. It further explains the division of local government such as education, public safety and law and order, election and audit committee, and matters related to the operation of local government, including formulation and dissolution of council, the duties of governor, and property management of local government. Of interest is Article 93 whereby the Chief Executive Officer of all public entities and such other local

²⁴ Japan Local Government Centre, *An Outline of Local Government in Japan*, p. 2.

²⁵ Tsuji, *Local Autonomy and the Japanese Constitution*, p. 2.

²⁶ Tsuji, *Local Autonomy and the Japanese Constitution*, p. 2.

officials as may be determined by law shall be elected by direct popular vote within their several communities.²⁷

The meaning of the ‘principle of local autonomy’ is also subject to interpretation, and there are three conventional theories that provide such accounts. The first theory explains that local government has inherited inviolable fundamental powers, like central government. It asserts that local government may have sovereignty like central government does. The second claims that local government exists as long as the central government consents. According to this theory, parliament may abolish the autonomy of local government by statute. However, as Tsuji notes in his article ‘Constitutional Law Court in Japan’, any amendment to the Japanese Constitution is highly contentious in contemporary Japan and may cause controversies that are unnecessary.²⁸ Accordingly this theory has also not been supported by scholars. The third theory, called institutional protection, states that the Constitution guarantees the institution of local government, and the core autonomy of local government is not violable by statute.²⁹ Nobuyoshi Ashibe notes that the Japanese Constitution cites two principles: local residence self-governance and local autonomy.³⁰ Local residence self-governance means that the local government will be managed by local residents and requires their participation. Local government autonomy means that the local government may conduct its business independently, without central government interference.

Having said this, Yuichiro Tsuji’s critique of Ashibe’s article notes that it cannot explain why it is difficult to overturn central government decisions in the name of the principle of autonomy of local government even though they may violate local residence self-governance and local government autonomy.³¹

In 1993 the Japanese Diet adopted a resolution promoting local autonomy that promoted decentralization. A law that abolished administrative duties the state was supposed to fulfil but instead imposed on prefectures and municipalities was enforced in 2000. Subsequent reforms introduced from 2011 to 2014 transferred more power

²⁷ Tsuji, *Local Autonomy and the Japanese Constitution*, p.2.

²⁸ Yuichiro Tsuji ‘Constitutional Law Court in Japan’. *University of Tsukuba Journal of Law and Politics*, 66, 2017, p. 65.

²⁹ Tsuji, *Local Autonomy and the Japanese Constitution*, p 3.

³⁰ Nobuyoshi Ashibe *Kenpo (Constitution)*, Iwanami Shoten Publishers, 6th Edition ed. 2015, p. 367.

³¹ Tsuji, *Local Autonomy and the Japanese Constitution*, p 48.

from the national to local governments. It was introduced under the post war Constitution of Chapter VIII which deals with 'local self-government.' Following several rounds of further reforms, the national and local governments are equal partners de jure.

In practice, however, autonomous powers of prefectures and municipalities remain insufficient. As Hiroshi Ikawa notes the national government should continue efforts to continually assist the decentralization process so local governments can better serve the needs of local residents, communities and economies. That is, the National government's efforts from the perspective of strengthening the autonomy of local residents, is still far from satisfactory. Problems continue to exist in terms of such matters as control of local government administrative and financial management by means of laws and government ordinances. In the area of local financial reform, it cannot be claimed that autonomy and independence in the local government financial sphere has been satisfactorily achieved, especially when there continues to be a reliance on the central government for financial support through grants and funding. In this kind of situation in Japan, it is fair to say that there is a need to continue the effort into constructing a decentralized local government system.³² Again, in comparison to WA (and Australian) local governments there continues to be a reliance of WA (and Australian) local governments on the central governments (State and Commonwealth) for financial support through the Grants Commission(s) and the Federals Assistance Grants (FAGs) processes.

Held and Schott note in *Models of Democracy* that the principle of autonomy lays down the right of all citizens to participate in and deliberate on public affairs. What is at issue is the provision of a *rightful share* in the process of 'government'.³³ The idea of such a share was, of course, central to Athenian democrats, for whom political virtue was in part synonymous with the right to participate in the final decisions of city-state politics. The principle of autonomy preserves 'the ideal of the active citizen'; it requires that people be recognized as having the right and opportunity to act in public life. However, it is one thing to recognize a right, quite another to say it follows that everyone must, irrespective of choice, actually participate in public debate and activity. Participation is

³² Ikawa Hiroshi '15 Years of Decentralization Reform in Japan', *National Graduate Institute for Policy Studies*, Tokyo, 2008, p. 28.

³³ David Held and Gareth Schott, *Models of Democracy*, Cambridge: Polity Press, 3rd ed, 2008, p. 281.

not a necessity.³⁴ This principle would most certainly appear relevant to both the Japanese Local Autonomy Law and the *Local Government Act 1995* (WA), whereby the right to participate in local government affairs is legislatively prescribed but not always enacted.

WEST AUSTRALIAN LOCAL GOVERNMENT SYSTEM

Local government in Japan is a national constitutional right where the functions of local self-government and the relationship between central and local governments are stipulated in the Local Autonomy Act.³⁵ That is, local government in Japan has its basis in the nation's Constitution which recognizes local government as essential to democracy and establishes it as part of the nation's system of governance.

In contrast local government in Australia is not recognized in the Federal Constitution. The local government system in Australia (and WA) owes its existence to the Constitution of each State, and in the case of WA, the WA local government system had its origins in Part IIIB, sections 52 and 53 of the *Constitution 1889* (WA) whereby 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 and 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.³⁶

Local Governments (and WA local government) play a key role in the Australian Federation system and provide democratic representation and a range of services to their respective local communities. The local government system in Australia is the *third tier* of government in Australia and are administered by the States and Territories, who in turn are the *second tier* of government. Local government is not mentioned in the Federal Constitution of Australia although every State and Territory governments recognise local government in their respective constitutions. Fisher and Grant note that in the Australian context, local governments are overseen by other tiers of

³⁴ David Held and Gareth Schott, *Models of Democracy*, Cambridge: Polity Press, 3rd ed, 2008, p. 281.

³⁵ 'Local Autonomy in Japan – Current Situation and Future Shape', Ministry of Internal Affairs and Communications, Tokyo, 2009, p. 1.

³⁶ *Constitution 1889* (WA), Part IIIB – Local Government – s52 (1) and (2).

government and conceptualised as political/administrative entities, rather than 'local polities' overseeing 'local administrations' and that municipal governments are creatures of respective states and territories.³⁷

Australian local government is therefore governed directly by State and Territory legislation which is prescriptive in regard to the (limited) autonomy that Australian local governments can exercise. For example, the process of making Local Laws by WA local government authorities (Councils) in accordance with section 3.18 of the WA Local Government Act 1995 is subject to scrutiny by the WA Joint Standing Committee on Delegated Legislation (JSCDL) who retain the power to disallow and/or amend the local law(s).³⁸ Indeed, a major role of the JSCDL is to review local government local laws and where the Committee may find that a local law could offend one or more terms of reference of the JSCDL, it will usually seek a written undertaking from the local government authority to amend or repeal the instrument in question. Where a local government does not comply with the Committee's request for an undertaking, the Committee may, as a last resort, resolve to report to the Parliament recommending the disallowance of the instrument in the Parliament.

Similar to the Japanese Local Autonomy Law, the *Local Government Act 1995* (WA) and subsidiary legislation prescribe the process for community participation and engagement in local government affairs. For example, section 5.56 of the *Local Government Act 1995* prescribes that a local government is to ensure that strategic community plans are made in accordance with any regulations about planning for the future of the district and the Local Government (Administration) Regulations 1996 and the detail whereby a local government is to ensure that the electors and ratepayers of its district are consulted during the development of a strategic community plan and when preparing modifications of a strategic community plan.³⁹ The WA Department of Local Government, Sport and Cultural Industries (DLGSCI) provides guidance how to strengthen the relationship between communities and local government, enabling stakeholders to become part of the process, while assisting to build a regulatory framework. A Fact Sheet for this participation and engagement is provided by the

³⁷ Josie Fisher and Bligh Grant, 'Public Value: Positive Ethics for Australian Local Government'. *Journal of Economic and Social Policy*, Volume 14, Issue 2, Special Edition on Local Government and Local Government Policy in Australia, Southern Cross University, 2011, p. 12.

³⁸ *Local Government Act 1995* (WA) Part 3 Division 2.

³⁹ *Local Government Act 1995* (WA) Part 5 Division 5 Annual Reports and Planning.

Department that describes how community engagement ensures that communities can participate in decisions that affect them, and at a level that meets their expectations. The community engagement strategy adopted by a local government aims to capture a community's vision, aspirations and service expectations for inclusion in the local governments Strategic Community Plan. This Plan is supported by other informing strategies such as asset management and long term financial plans to ensure the local government's resources are best placed to meet community needs.⁴⁰

Accordingly, the principle of autonomy that Held and Schott refer to in their publication *Models of Democracy* would appear to have some parallel between Japanese local government and WA local government whereby community participation and engagement is evident, at least in both the Japanese and WA local government legislation.⁴¹ As Held and Scott note however, public participation is not a necessity even though the principle of autonomy should be regarded as an essential premiss of all traditions of modern democratic thought with the capability of persons to choose freely, to determine and justify their own actions, to enter into self-chosen obligations, and to enjoy the underlying conditions for political freedom and equality.⁴²

Furthermore, unlike Japan, there is only one level of local government in each Australian State and Territory, with no 'statute' distinction between metropolitan and regional local governments, or municipalities. Accordingly, there appears to be a similar parallel in Japanese local government to that of WA local government where the concept of local autonomy could be applied. In this regard researching the effects of the local autonomy law on Japanese local government could provide positive benefits for further application to WA (and Australian) local government. As Fisher and Grant note, Australian local government has been subject to continual reform processes in the post World War Two period and therefore examining (overseas) structural change models would not be unusual.⁴³

⁴⁰ WA Department of Local Government, Sport and Cultural Industries, 'Strengthening Community Engagement', Department of Local Government, Sport and Cultural Industries, 2012, p.1.

⁴¹ Held and Schott, *Models of Democracy*, p. 266.

⁴² Held and Schott, *Models of Democracy*, p. 266.

⁴³ Fisher and Grant, *Public Value: Positive Ethics for Australian Local Government*, p. 1

COMPARATIVE LESSONS OF JAPANESE AND WA LOCAL GOVERNMENT SYSTEMS

While there are numerous similarities between the Japanese Local Autonomy Law and the *Local Government Act (WA)*, there are also some striking differences. One of the most striking features as noted above is that Japanese local government is directly recognized in Chapter VIII of the Japanese Constitution that prescribe regulations concerning the organization and operations of local public entities which shall be fixed by law in accordance with the principle of local autonomy. Conversely there is no constitutional recognition (or mention) of local government in the Commonwealth Constitution and the Commonwealth government has generally been compelled to provide (financial) subsidies to local government indirectly: that is, through the States. At the time of Federation in 1901 and in the decades of debate leading to final Federation, the composition of the 'colonial' local governments were much different than today. Similarly, the roles and responsibilities of the colonial local governments (Road Boards in rural areas or Municipal Boards in urban areas) were also vastly different, being confined to mainly roads and streets, and health and sanitation functions. It could also be argued that at the time of the Federation debate, recognition of local government in the final constitution was simply not that important in comparison to working through the issues of formulating an acceptable Australian Constitution and federal system to all the colonies that eventually borrowed from the United States and worked on the principles of Westminster.⁴⁴

As Megarrity notes there have been several attempts to recognize local government in the Australian Constitution.⁴⁵ An attempt by the Whitlam Government to enshrine a direct financial link between the Commonwealth and local government within the Australian Constitution failed when put to the people via referendum. A subsequent referendum proposal by the Hawke Government to provide constitutional recognition to local government also failed.⁴⁶ Both the Whitlam and Hawke Governments were unable to convince the electorate that the federal system required reform.⁴⁷ The latest

⁴⁴ John Hirst, 'Federation: Destiny and Identity', Papers on Parliament No. 37, November 2007, Parliamentary Library Services, Commonwealth of Australia, 2011, p. 162.

⁴⁵ Lyndon Megarrity, '*Local Government and the Commonwealth: an evolving relationship*', Research Paper No. 10, 2010-11, Parliamentary Library Services, Commonwealth of Australia, 2011, p. 1.

⁴⁶ Megarrity, *Local Government and the Commonwealth: an evolving relationship*, p. 1.

⁴⁷ Megarrity, *Local Government and the Commonwealth: an evolving relationship*, p. 1.

attempt by the local government sector for constitutional recognition was undertaken on behalf of all Australian local governments by the Australian Local Government Association (ALGA) in 2013 seeking a referendum to amend the Constitution to provide specifically for financial recognition of local government. In this regard a successful referendum would have had the potential to introduce increased scope for the Commonwealth to bypass the states in allocating funding directly to local governments.

In late 2012 the Commonwealth established a Joint Select Committee to inquire into and report on the findings of the Expert Panel on Constitutional Recognition of Local Government that recommended that a referendum on the financial recognition of local government be put to Australian voters at the 2013 federal election.⁴⁸ The referendum did not proceed due to early federal elections being called by the (then) Prime Minister in August 2012 that ended the possibility of a referendum in 2013 to coincide with the election. However, it could equally be argued that there was little appetite on behalf of the federal government to pursue the question of local government recognition by referendum, especially given little information was disseminated other than by the local government sector to the broader community.⁴⁹

Another further difference is the requirement for chief executive officers of Japanese municipalities in the Japanese Local Autonomy Law to be selected and appointed by the community of the particular local government district. That is, where significant powers are allotted to local assemblies, which are elected by direct public vote, as are their chief executive officers. Satoru Ohsugi notes that the relationship between local assemblies and chief executives can be viewed as a dual representation system of local assemblies.⁵⁰ The term 'dual representation system' signifies a system whereby both the assembly and the chief executive officer of local governments are directly elected in a public election as representative organs by residents.⁵¹ Among advanced democratic countries, examples of the political form of local governments which have

⁴⁸ Megarrity, *Local Government and the Commonwealth: an evolving relationship*, p. 1.

⁴⁹ Joint Select Committee on Constitutional Recognition of Local Government, *Final Report on the Majority Finding of the Expert Panel on Constitutional Recognition of Local Government: the Case for Financial Recognition, the Likelihood of Success and Lessons from the History of Constitutional Referenda*. Parliament of Australia, 2013, p. 24.

⁵⁰ Ohsugi, *Local Assemblies in Japan*, pp. 22 - 23.

⁵¹ Ohsugi, *Local Assemblies in Japan*, pp. 22-23.

belong to a minority, including about half of American cities in the USA, which adopted a dual representative system are comparatively few; such systems have adopted the system of a city assembly and a city mayor, and cities in Britain which have adopted the system of the direct public election of city mayors. Moreover, due to the fact that the chief executive officer is directly elected in a public election, likened to the election of the American president in the USA, the system is often termed a presidential-type system. However, with the mechanism available in Japanese Local Autonomy Law, the assembly has the right to pass a vote of no confidence in the chief executive officer, while as a counter to this, the chief executive officer has the right to dissolve the assembly.⁵² A characteristic of this system is that there is a very clear mutual check built into the relationship between the chief executive officer and the assembly, very different from the relationship between the president and the federal Congress in the US. Furthermore, on the basis of the characteristics of this dual representation system, mechanisms of control are built into the relationship between the assembly and the chief executive officer. These can be broadly characterized as follows:

- provisions concerning the position of the chief executive officer regarding resolutions and elections; reconsideration and re-election
- provisions concerning a resolution of no confidence in the chief executive officer and dissolution of the assembly, and
- exceptional action by the chief executive officer.⁵³

Notwithstanding this, on the basis of any tension between the two sides (assemblies and chief executive officers) occurring, Ohsugi notes that a cooperative style of management of local governments has evolved.⁵⁴

As Ohsugi further notes, matters concerned with the organization and management of local government rest on law on the basis of the principle of local autonomy, as determined in constitutional provisions (Article 92 of the Constitution of Japan), and central government's control over local government organization and management depends on legislative rules.⁵⁵ In Japanese local government at the present time, what

⁵² Japan Local Government Centre, *An Outline of Local Government in Japan*, p. 1-2

⁵³ Joint Select Committee on Constitutional Recognition of Local Government, *Final Report*, p. 13.

⁵⁴ Ohsugi, *'Local Assemblies in Japan*, p. 22.

⁵⁵ Ohsugi, *'Local Assemblies in Japan*, p. 22.

is known as a dual representative system is adopted, whereby an assembly is established as a procedural institution, and the chief executive officer (hereafter: Chief) and the assembly members are separately chosen by direct election. A major characteristic of organizational regulations in the context of the Local Autonomy Law is that, with the exception of some differences in titles and minor exceptions, there is almost total uniformity, regardless of whether the local government in question covers a wide area like a prefecture or is a basic unit like a municipality and regardless too of differences in scale. Interestingly while Japanese mayors are directly elected for four-year terms with no term limits, most candidates prefer stand as independents and are then backed by local chapters of the main national parties, therefore not being seen as directly associated or linked to any national party that may also bring them into conflict with an elected CEO.⁵⁶ Conversely, Sasaki notes that that one of the major authorities of the local assembly are making motions of no confidence against the chief executive, etc.⁵⁷ This is further argued by Ohsugi where as an example of the check-and-balance system of control as a defining mechanism of the relationship between the chief executive officer and the assembly, the assembly is able to pass a resolution of no confidence in the chief executive officer, who is able for his part to dissolve the assembly (Article 178).⁵⁸

As with any mature democracy (such as Japan and Australia) there is scope to evolve democratic systems through ongoing review. This article has attempted to explore the differences between the Japanese Local Autonomy Law and the West Australian local government systems that apply delegated legislation, highlighting where lessons can be learned and applied. Particularly fertile ground for such lessons relates to differences in the areas of autonomy, funding arrangements and the process of elected positions.

⁵⁶ Ohsugi, *Local Assemblies in Japan*, p. 22-23.

⁵⁷ Sasaki, *Local Self-Government in Japan*, pp. 8- 9.

⁵⁸ Ohsugi, *Local Assemblies in Japan*, p. 24.