
Local Government in the Federation of Malaysia – A Comparative Context*

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Abstract: This article provides a comparative analysis between the local government structure and operations in the Federation of Malaysia and Australian local government. In doing so, literature will be referenced where relevant to the application of local government legislation in the Federation of Malaysia to Australian local government as well as reference data from several case studies of selected Malaysian local governments in regard to how the system of local government legislation in Malaysia compares to local government legislation in Australia. In particular, this will also include a comparison between the legislative arrangements of the Malaysian Federal Territories of Kuala Lumpur and Putrajaya that are governed directly by the federal government and the Australian non-self governing external territories of Christmas Island, Cocos (Keeling) Islands and Norfolk Island. The article will not only provide an historical account of the development of local government in the Federation of Malaysia to the present day, but also place this narrative in a comparative context with the Australian local government contemporary environment. In doing so, the local

¹ I acknowledge and appreciate the assistance provided by various people and organizations that allowed me to study selected local government jurisdictions in the Federation of Malaysia. The Malaysian Consul General, Mr Ahmad Fikri Zakian and his staff in the Perth WA office of the Consulate General of Malaysia who provided valuable assistance to me in contacting several local governments in Malaysia. My appreciation is also extended to the Kuala Lumpur City Council and the Johor Bahru Council who assisted me in my visit to their respective Councils and provided valuable information and data. In particular Dato Haji Mohd. Noorazam, Mayor of Johor Bahru Council, Mr Muhammad Shafee bin Muhtasham, Chief Information Officer at Johor Bahru Council and Ms Hasliza Binti Abdul Hamid, Deputy Director of Corporate Planning at Kuala Lumpur City Council. Finally, my appreciation is also extended to Azmi Yon and Zuraine Md Sharif on Christmas Island who translated the Survey Questionnaire to Malay Bahasa. I extend my thanks to you all.

government community (sector) in Australia can/should consider the opportunities in the Malaysian local government sector for any application to the Australian local government system that would have positive benefits. These opportunities are further explored throughout the applicable sections of this article.

INTRODUCTION

On 1 August 1957 the Federation of Malaya became a free and independent country under a Yang Di-Pertuan Agong (paramount ruler), elected every five years from among the nine Malay Rulers.² The federation emerged as the post-colonial solution to demands for Malayan independence as well as the struggles taking place elsewhere in the region among British colonies. The Federation of Malaysia consists of thirteen largely autonomous states that occupies the tip of the Malayan Peninsula and part of the island of Borneo and is located roughly midway between Europe and Australia, and between Europe and the Far East.³ Having achieved independence within the British Commonwealth in 1957, Malaya expanded to become Malaysia in 1963, though Singapore left the federation in 1965.

Malaysia's federal government is constituted along the same lines as the Westminster model adopted by many former British colonies.⁴ In addition to the 13 states, nine of which are sultanates, there are three federal territories. Today, Malaysia is a constitutional elective monarchy, its leader chosen for five years among the nine sultans. The parliament is located in the capital Kuala Lumpur and consists of two houses – the Chamber of the Nation (Dewan Negara) and the Chamber of the People (Dewan Rakyat). The Chamber of the Nation (Dewan Negara), or Senate, consists of 70 senators comprising of 44 appointed by the king (Yang di-Pertuan Agong as the head of state) and 26 members elected by the State Legislative Assembly to represent 13 states (with each state represented by 2 members).⁵ The lower House of Representatives (Chamber of the People – Dewan Rakyat) consists of 222 elected members and each

² Saw Swee Hock, *The Population of Peninsular Malaysia*. Singapore: Institute of Southeast Asian Studies, 2007, p. 3.

³ M. Bakri Musa, *Towards a Competitive Malaysia*, Selangor: Strategic Information and Research Development Centre, 2007, p. 200

⁴ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis*, Oxford: Hart, 2012, p. 85.

⁵ Parliament of Malaysia Official Portal, Accessed at: www.parliament.gov.my/senate/generalinformation.

member represents a Parliamentary Constituency.⁶ A General Election is held every five years to elect members of the House of Representatives.⁷

THE HISTORICAL DEVELOPMENT OF LOCAL GOVERNMENT IN THE FEDERATION OF MALAYSIA

Modern day local government in the Federation of Malaysia is very much a product of British colonial rule. Ibrahim and Nordin note that the local government system which was first introduced in the country in 1801 can be considered as a legacy of the colonial era, especially its concept of democracy, although the British system of government was an imposition upon the country's socio-political system.⁸ This is supported by Hughes, Orr and Yusoff who note that the historical development of the local government system in the Federation of Malaysia is in part a British colonial legacy but has experienced incremental reform since the country gained independence in 1957.⁹ Ibrahim and Nordin also note that although Malaysia operates under a Federal system, it functions more like a unitary system where the central government enjoys vast power vested upon it by the Federal Constitution.¹⁰

The local government system in Malaysia therefore bears many similarities to the British system of local government given its historical origins. The two main divisions of local government are enshrined in Part II of the Malaysian Local Government Act 1976, being rural district councils and urban centres.¹¹ City councils govern large urban centres, often state administrative centres. Municipal Councils have sizeable populations, whilst District Councils are in more rural areas with populations which are smaller and of lower density.

⁶ Parliament of Malaysia Official Portal, Accessed at: www.parliament.gov.my/senate/generalinformation.

⁷ Harding, *The Constitution of Malaysia*, p. 85.

⁸ Nik Hashim Ibrahim and Mohd. Yahya Nordin, *Local Government System in Malaysia: A General Perspective*, Kuala Lumpur: National Institute of Public Administration Malaysia, 1984, p. 147.

⁹ Jeffrey Hughes, Kevin Orr and Mazian Yusoff, *Strategizing for Grand Challenges: Economic Development and Governance Traditions in Malaysian Local Government*. Los Angeles: International Review of Administrative Sciences, Sage Publications, 2021, p. 5.

¹⁰ Hashim et al, *Local Government System in Malaysia*, p. 168.

¹¹ *Administration of local authorities (Local Government Act) 1976* (Malaysia), s 3.

All types of local governments perform the same or similar functions such as public health and sanitation, waste removal and management, town planning, environmental protection, health and building control, social and economic development and general maintenance functions of urban infrastructure. City Councils are led by Mayors, while municipalities and districts are led by Presidents. The state governments exercise considerable control over local government affairs, to the extent of appointing Mayors, Presidents and all Councillors.¹² The appointments are for two or three-year terms, but individuals may be reappointed and this is uniform across the country.

Tricia Yeoh notes that despite the spirit of federalism, in reality, Malaysia has practised a highly unitary system experiencing centralism within the federal government over time, starting with the abolishment of local government elections in Penang in 1951 and Kuala Lumpur in 1952 and with the current Local Government Act 1976 being promulgated, local government elections across Malaysia were permanently abolished.¹³ In fact, this provision is enshrined in section 15 (1) of the *Local Government Act 1976* whereby 'notwithstanding anything to the contrary contained in any written law, all provisions relating to local government elections shall cease to have force or effect'.¹⁴ This is of course very different to Australian local government where Councillors are elected by their community and in some cases, Mayors are elected directly by the community with Presidents usually being elected by their peers (Councillors) either prior to, or at the next full Council meeting following the election.

MALAYSIAN LOCAL GOVERNMENT SYSTEM AND LEGISLATION

The definition of Malaysian local government being a local authority is prescribed by the Local Government Act 1976 legislation whereby a local authority means any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 4 of the *Federal Capital Act 1960*.¹⁵ In this regard the Malaysian *Local*

¹² *Councillors (Local Government Act) 1976*, (Malaysia) s 10.

¹³ Tricia Yeoh, *Reviving the Spirit of Federalism: Decentralisation Policy Options for a New Malaysia*. Kuala Lumpur: Institute for Democracy and Economic Affairs, The Lower House, 2019, p. 3.

¹⁴ *Provisions relating to local government elections ceasing to have effect (Local Government Act) 1976* (Malaysia) s 15.

¹⁵ *Local authority (Local Government Act) 1976*, (Malaysia) s 2.

Government Act 1976 essentially prescribes the form, organisational structure, functions and responsibilities of a local authority. The council decision-making process and conduct of business is in accordance with the legislation provided for in Part IV of the *Local Government Act 1976*.¹⁶

In this regard the Australian local government system has similar parallels whereby legislation in all Australian States prescribe the process and conduct of council meetings. In accordance with section 10 (2) of the Malaysian *Local Government Act 1976*, Councillors (including the Mayor and/or President) are appointed by their state governments from amongst persons the majority of whom shall be persons ordinarily resident in the local authority district who in the opinion of the State Authority have wide experience in local government affairs or who have achieved distinction in any profession, commerce or industry, or are otherwise capable of representing the interests of their communities in the local authority district.¹⁷ Again, this differs markedly from the Australian local government system whereby Councillors (including the Mayor and/or President) are elected directly by the community.

Executive powers in Malaysian local government lie with the Mayor in the city councils, and Presidents in the municipal and district councils and the state government also sets remuneration annually. The respective state governments establish executive committees, which are chaired by the Mayor or President. Councils can establish other general or specific committees at their discretion. While there is no definitive legislative direction that prescribes the appointment of a Chief Executive Officer/General Manager in local government, the Malaysian Association of Local Government (MALG) note that each Council is required to have an executive Mayor or President who is the head of the paid service as Chief Executive Officer.¹⁸ This is in contrast to the Australian Local Government system whereby the local government authority is responsible for (legislatively) appointing a Chief Executive Officer/General Manager (terminology differs from each State jurisdiction) to oversee the management of the organisation.

The three Malaysian Federal Territories include the Kuala Lumpur City Council located in the national capital, Putrajaya which is the administrative centre of the federal

¹⁶ *Conduct of business (Local Government Act) 1976*, (Malaysia) s 19.

¹⁷ *Councillors (Local Government Act) 1976* (Malaysia) s 10.

¹⁸ Commonwealth Local Government Forum, 'Malaysia: Key Facts'. Accessed at: <https://www.clgf.org.uk/regions/clgf-asia/malaysia/>.

government and Labuan that serves as an ‘offshore financial centre’ and are governed directly by the Ministry of Federal Territories. The local government structure for the three territories vary, with the capital Kuala Lumpur being administered by Kuala Lumpur City Council led by an appointed

Mayor (*Datuk Bandar*), that is, the *Federal Capital Act 1960* (as revised 1977) prescribes that the municipal affairs of the City of Kuala Lumpur shall be administered by the Commissioner of the City of Kuala Lumpur and the Commissioner shall be appointed by the Yang di-Pertuan Agong for a term of five years or, if the Yang di-Pertuan Agong in any particular case so determines, for such shorter term as may be so determined.¹⁹ Putrajaya is administered by the Putrajaya Corporation pursuant to the Malaysian Federal Constitution (as revised 2010) that prescribes the Federal Territory of Putrajaya is established in accordance with section 4 of the *Constitution (Amendment) Act 2001*. Similarly, the Labuan Corporation is established under section 4 of the *Constitution (Amendment) Act 2001* and where all such Federal Territories shall be territories of the Federation and the Federation shall exercise sovereignty over the Territories with each being led by an appointed Chair.²⁰ Labuan being an island located in East Malaysia near the State of Sabah.

The Malaysian Councils (Kuala Lumpur City and Johor Bahru City Councils) that participated and responded to the authors survey question ‘How does the *Local Government Act 1976* effect your municipality?’ provided differing responses based on their legislative jurisdiction. The Kuala Lumpur City Council Deputy Director of Corporate Planning, Hasliza Binti Abdul Hamid responded that ‘elected members are appointed by the Federal Government for a two year period’ and therefore not elected per se by the community and where the organisational structure of Kuala Lumpur City Council is more an Advisory Board than an elected Council.²¹ This is consistent with section 10 (2) of the *Malaysian Local Government Act 1976* as noted earlier and supported by Hughes, Orr and Yusof who note that Councillors are government rather than elected appointments.²² Tricia Yeoh supports this by noting that Malaysia now

¹⁹ *Federal Capital Act 1960* (Malaysia) s 4

²⁰ *Federal Constitution (Amendment) Act 2001* (Malaysia) part 2.

²¹ KJ Matthews, ‘Survey Questionnaire Response – Kuala Lumpur City Council and Johor Bahru City Council. Malaysia, 2022, pp. 3 – 5.

²² Hughes et al, *Strategizing for Grand Challenges*, p. 6.

practices a highly unitary governance system experiencing increasing centralism within the federal government as a result of the abolishment of local government elections.²³

The Johor Bahru City Council Mayor, Noorazam Bin Dato Haji Osman responded to the question ‘What is the legislation for the Johor Bahru City Council that is overseen by the Johor State Government?’ that the Johor Bahru City Council ‘must have approval from the Johor State Government for the creation of all policies, by-laws and guidelines (Circulars) and can directly veto the implementation of such by the Council’.²⁴ This process also applies to administrative and financial matters where the annual budget must be firstly approved by the State Government and in some instances this prior approval is also necessary for expenditure purposes, especially large capital expenditure items.²⁵

Australian local government is not so prescriptive in this regard where policy and budgetary matters do not require prior approval from the State government. Local governments are only required to adhere to the provisions of the local government legislation such as the Local Government Act that prescribes policy making and the Financial Management Regulations that require compliance with the audit process of financial matters. In regard to the question of elected members, the Mayor responded that the (the Mayor) and the Secretary of Johor Bahru City Council are appointed by the Johor State Government as well as the 24 councillors.²⁶ Again, this is in contrast to Australian local government where all elected members in each State and Territory are elected by the community for a defined legislative term.

The functions undertaken by the Johor Bahru City Council are similar to those of compatible size and demographics in Australian local government. For example, waste management, leisure parks and sporting complexes, roads and streets, building, town planning and health functions, and parking/ranger service.²⁷ The Mayor summarised that the Johor Bahru City Council was very much under the control and scrutiny of the Johor State Government in accordance with Part 11 of the *Local Government Act 1976*.

²³ Tricia Yeoh, *Reviving the Spirit of Federalism: Decentralisation Policy Options for a New Malaysia*, p. 3.

²⁴ Matthews, *Survey Questionnaire Response*, p. 4.

²⁵ Matthews, *Survey Questionnaire Response*, p. 4.

²⁶ Matthews, *Survey Questionnaire Response*, p. 4.

²⁷ Matthews, *Survey Questionnaire Response*, p. 5.

Local government in Malaysia is a national constitutional right where the functions of local government and the relationship between central, state and local governments are stipulated in Chapter 7 of the *Federal Constitution* and in relevant local government legislation. That is, local government in Malaysia has had its basis in the nation's Constitution since independence in 1957 that prescribes there should be a 'National Council for Local Government' (NCLG) which recognises local government as essential to democracy and establishes it as part of the nation's system of governance. To this extent, Chapter 7 also prescribes that the State is to consult the NCLG in respect of any proposed legislation dealing with local government, and for any other local government matters, and for the NCLG to legislatively advise both tiers of Government (Federal and State) regarding local government matters.²⁸ This is also supported by Hughes, Orr and Yusoff who note that Malaysian local government has experienced some incremental reform since the country gained independence in 1957.²⁹ However, Harding notes that since the promulgation of the *Local Government Act 1976*, local government elections were definitively abolished.³⁰ In this regard, it appears that the reform of Malaysian local government, certainly since 1976 has diminished the concept of 'transparent democracy' for Malaysian local government to some degree, despite the intent and purpose of the NCLG.

AUSTRALIAN LOCAL GOVERNMENT SYSTEM

In contrast to the Federation of Malaysia, local government in Australia is not recognized in the *Australian Constitution*. As Lyndon Megarrity notes there have been several attempts to recognise local government in the Australian Constitution.³¹ 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. Both

²⁸ *Federal Constitution 2010* (Malaysia) part 7.

²⁹ Hughes et al, *Strategizing for Grand Challenges*, p. 5.

³⁰ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis*, p. 159.

³¹ Lyndon Megarrity, *Local Government and the Commonwealth: an evolving relationship*, Research Paper No. 10, 2010-11 Canberra: Parliamentary Library Services, Commonwealth of Australia, 2011, p. 1.

the Whitlam and Hawke Governments were unable to convince the electorate that the federal system required reform.³²

The latest 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 *Australian 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.³³ The referendum did not proceed due to an early federal election 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.

The local government system in Australia (and WA) therefore owes its existence to the Constitution(s) 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 1889 WA Constitution which provides that:

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

³² Megarry, *Local Government and the Commonwealth*, p. 1.

³³ 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*, Canberra: Parliament of the Commonwealth of Australia, 2013, p. 13.

*such powers as the Legislature considers necessary for the better government of the area in respect of which the body is constituted.*³⁴

In December 1979 an amendment to section 52 of the WA Constitution 1889 was made by the (then) Court Liberal government to recognise (WA) local government as an integral component to the system of government as a result of the recommendation by the Federal Advisory Council for Inter-government Relations to recognise local governments in each Australian state.³⁵ This however did not translate nationally where the proposal in the 1985 Constitutional Convention for local government recognition to be included in the Australian Constitution failed at a subsequent referendum in 1988.³⁶

Constitutional recognition for local government continued to be the subject of advocacy throughout the 1990s and 2000's by the Australian Local Government Association (ALGA) and all State and Territory local government associations to the extent where a (further) referendum was planned for 2013 to coincide with the September 2013 federal election. As noted earlier, unfortunately the referendum was abandoned due to a late change to the federal election date and the incoming coalition government was not supportive of a further referendum.³⁷ Accordingly, the status quo remains in terms of local government recognition in the Australian Constitution.

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 is administered by the States and Territories, who in turn are the *second tier* of government. Fisher and Grant note that in the Australian context, local governments are overseen by other tiers of government and conceptualised as political/administrative entities, rather than 'local polities' overseeing 'local administrations' and that municipal governments are creatures of

³⁴ *Local government (WA Constitution) 1889* (Perth: WA) ss 52-52.

³⁵ C. Berry, *To Dwell in Unity*. Fremantle: Fremantle Press, 2021, p. 369.

³⁶ Berry, *To Dwell in Unity*, p. 370.

³⁷ Berry, *To Dwell in Unity*, p. 467.

respective states and territories.³⁸ This is also noted by Donald Purdie in his earlier publication *'Local Government in Australia – Reformation or Regression?'* where local government in Australia lacks any constitutional safeguards for its functions and resources and where its powers flow from State laws.³⁹ 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).⁴⁰ 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 (WA) Parliament recommending the disallowance of the instrument in the Parliament. In this regard, local government can be interpreted as being sub-servient to its relevant States and Territories legislation. This is similar to the prescriptive control and scrutiny the Malaysian State government has over Malaysian local government.

Unlike Malaysia, 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. For example, Part 2, Division 1 of the WA *Local Government Act 1995* deals with the constitutional framework of the system of elected local government in the State be maintained as required by Part IIIB of the *Constitution Act 1889*. In particular, where a local government district may be divided into wards and representation.⁴¹ This section does not define the statute distinction between

³⁸ 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, Lismore: Southern Cross University Publishing House, 2011, p. 12.

³⁹ Donald Purdie, *Local Government in Australia – Reformation or Regression?* Melbourne: The Law Book Company Limited, 1976, p. 16.

⁴⁰ *Functions of local governments (Local Government Act) 1995* (WA) Part 3.

⁴¹ *Constitution of local government (Local Government Act) 1995* (WA) Part 2.

District (rural/regional) or urban (metropolitan) and only refers to the definition of a metropolitan region for the purposes of the *WA Planning and Development Act 2005*.⁴² Accordingly, there is no statute distinction in Australia such as in Part II, section 3 (d) of the Malaysian *Local Government Act 1976 – Declaration and Determination of the Status of Local Authority Areas* where there is a clear legislative distinction between rural district councils and urban metropolitan councils. Other comparative differences between the Malaysian and Australian local government system(s) are summarised later in the article.

AUSTRALIAN EXTERNAL TERRITORIES AND MALAYSIAN FEDERAL TERRITORIES

As noted earlier in this article, Malaysia has three Federal Territories being, Putrajaya Corporation, Kuala Lumpur City Council (which are both located in the national capital) and Labuan that serves as an ‘offshore financial centre’ and is located in East Malaysia. All three are governed directly by the Ministry of Federal Territories. Part 1, section 1 (4) of the Malaysian Federal Constitution prescribes the establishment of the Federal Territory of Kuala Lumpur, the Federal Territory of Putrajaya and the Federal Territory of Labuan.⁴³ As Harding notes with regards to Kuala Lumpur City Council, the *Datuk Bandar* (Mayor) is directly appointed by the Federal government for a period of five years and the Kuala Lumpur City Council is placed under the Prime Minister’s Department. The NCLG, comprising of Federal and State appointees, coordinates policy for the development, promotion and control of the local government and for the administration of the local government.⁴⁴ In other words, the Kuala Lumpur City Council is directly controlled and administered by the Malaysian Federal Government that can be interpreted as the Malaysia Federal Government exercising more of a direct unitary system approach as opposed to the concept of federalism, especially in the context of the Malaysian Federal Territories that appear to have spread to all Malaysian local governments. This substantiates Yeoh’s comments that Malaysia was originally formed

⁴² *Introductory matters (Local Government Act) 1995 (WA) Part 1.*

⁴³ *Federal Territories (Federal Constitution), 2010, (Malaysia) Part 1.*

⁴⁴ Andrew Harding, *The Constitution of Malaysia: A Contextual Analysis*, p. 156.

as a federation but in recent decades it has experienced rapid centralisation at the federal level of service.⁴⁵

In contrast, the non-self-governing (inhabited) territories of Australia are Christmas Island and the Cocos Keeling Islands comprising the Indian Ocean Territories (IOTs), and Norfolk Island. These non-self-governing territories are administered directly by the Commonwealth government in Canberra. As Roger Wettenhall notes, Australia's three small off-shore island territories – Norfolk Island in the Pacific Ocean and Christmas Island and the Cocos (Keeling) Islands Group in the Indian Ocean – can be seen as monuments to 19th century British-style colonisation, though their early paths to development took very different courses. Their transition to the status of external territories of the Australian Commonwealth in the 20th century – early in the case of Norfolk and later in the cases of Christmas and Cocos – put them on a common path in which serious tensions emerged between local populations which sought autonomous governance and the Commonwealth government which wanted to impose governmental systems similar to those applying to mainstream Australians.⁴⁶

As there is no direct Commonwealth legislation to govern the IOTs, they are governed through an 'applied laws' agreement (or Service Delivery Agreements SDA's) between the WA State and the Commonwealth that occurred without any direct consultation with the community. Until recently, this system also applied on Norfolk Island between the NSW State and the Commonwealth when the Norfolk Island Assembly was abolished in 2016 by the Commonwealth. The governance legislative arrangements for all three of the Australian non-self-governing external territories were introduced as a result of the Commonwealth *Islands in the Sun* Parliamentary Inquiry into the legal regimes of Australia's External Territories in March 1991 which recommended the introduction of an applied legislative system within a broader package of initiatives and actions.⁴⁷ The *Islands in the Sun* Inquiry recommendations therefore formed the basis for the current legislative regime that was formally introduced in 1992 whereby they

⁴⁵ Tricia Yeoh, *Reviving the Spirit of Federalism: Decentralisation Policy Options for a New Malaysia*, p. 20.

⁴⁶ Roger Wettenhall, 'Decolonizing through integration: Australia's offshore island territories'. *Islands Study Journal*, 11(2), 2016, p. 1.

⁴⁷ *Islands in the Sun Report – The Legal Regimes of Australia's External Territories*, Commonwealth Standing Committee on Legal and Constitutional Affairs, Australian Government Publishing Services, Canberra: March 1991, pp. 193, 206 and 221.

(the non-self-governing territories) can therefore still be considered 'subordinate' to the Commonwealth.

The most obvious difference(s) therefore between the Federal Territories of Malaysia and the non-self-governing (inhabited) territories of Australia are its legislative and governance arrangements, and where these arrangements impact on local government. From these legislative and governance arrangements come financial and service delivery arrangements. The *Malaysian Constitution*, the *Malaysian Local Government Act* and subsidiary legislation clearly prescribe the status of the Malaysian Federal Territories. That is, where Part 1, section 1(4) of the *Malaysian Constitution* clearly prescribes the establishment of the Federal Territories of Kuala Lumpur (City), Putrajaya and Sabah.⁴⁸ Further, the *Malaysian Federal Capital Act 1960* specifically provides for the Local Government of the City of Kuala Lumpur. The Australian Constitution conversely does not define the status of its federal territories other than section 122 of the *Australian Constitution*. That is, section 122 of the *Australian Constitution* is the applicable constitutional instrument relevant to the non-self-governing territories of Australia that allows the representation of the three (inhabited) territories in either House of the Australian Parliament to the extent and on the terms which it thinks fit.⁴⁹

COMPARATIVE LESSONS OF MALAYSIAN AND AUSTRALIAN LOCAL GOVERNMENT SYSTEMS

While there are numerous similarities between the Malaysian local government system and Australian local government, there are also numerous differences as highlighted throughout this article and summarised below that can provide potential theoretical reform options.

- Constitutional recognition - first and foremost there is no constitutional recognition (or mention) of local government in the Australian Constitution. At the time of Federation in 1901 and in the decades of debate leading to final Federation, the composition of the 'colonial' local governments was much different than today.

⁴⁸ 'Federation: Destiny and Identity'. Canberra: Parliamentary *Federal territories (Federal Constitution) 2010* (Malaysia) Part 1.

⁴⁹ *Government of Territories (The Australian Constitution) 2006* (Cth) s 122.

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.⁵⁰ Conversely, Malaysian local government is recognised in the Malaysian Constitution as referenced throughout this article to Part VI of the Malaysian Constitution when independence of the Federation of Malaya in 1957 was granted in accordance with the British Westminster model that embraced federation and the constitutional monarchy. Any such consideration for local government recognition in the Australian Constitution would require a referendum in accordance with section 128 seeking to change the constitution. As noted by Megarrity, this seems very unlikely given the lack of importance the Australian community has in local government and the lack of bipartisan support at the federal political level.⁵¹

- Elections and appointed terms - voting in Australian local government is promoted and prescribed in each State and Territory legislation (either compulsory or voluntarily) that differs from the Malaysian local government system as outlined by several academic sources in this article such as Yeoh and Harding. That is, local government elections in Malaysia were abolished in accordance with the *Local Government Act* in 1976 and to date have not been restored, despite numerous recommendations since then that they be restored as noted by Harding and Yeoh in this article.
- Finance models - the Commonwealth government has generally been compelled to provide (financial) subsidies to local government indirectly: that is, through the States. For example, financial grants are provided to local governments through the federal Grants Commission process.⁵² Similarly, section 39 of the

⁵⁰ John Hirst, *Federation: Destiny and Identity*. Canberra: Parliamentary Library Services Papers on Parliament No. 37, 2011, p. 162.

⁵¹ Megarrity, *Local Government and the Commonwealth*, p 11.

⁵² *Distribution of Commonwealth funds (Local Government Grants Act) 1978* (WA) s 16.

Malaysian *Local Government Act 1976* prescribes that the revenue of a local authority shall consist of all other revenue accruing from the Federal Government or of any State and to distribute to local governments and known as Revenue of a local authority.⁵³ Purdie wrote in his 1976 publication that many local governments depend on the income from the FAGs source in order to financially survive.⁵⁴ More recently, Berry also notes that the introduction of Commonwealth financial assistance grants saved some Councils from the brink of financial revenue accruing from the Government of the Federation or of any State, together with other revenue sources.⁵⁵ Harding notes that (Malaysian) local governments derive their revenue from rents, fees for services and licences, as well as from Federal and State Governments by fiscal transfers. Fiscal transfers in the form of equalisation grants are made to local governments however these represent only approximately 10 percent of the shortfall in revenue against the local governments assessed needs, therefore requiring local authorities to source other revenue needs.⁵⁶ This differs comparatively with Australian local government where the fiscal equalisation grants provided by the Commonwealth in the 2023-24 financial averaged approximately \$3.2 billion in untied funding with WA receiving circa \$394 million for distribution.⁵⁷

- Separation of powers - separation or delegation of executive powers differ between Malaysian local government and Australian local government. Malaysian local government clearly defines the process of executive management appointments and subsequent delegation of executive powers through its applicable governance and legislative instruments. In particular, where Ibrahim et al reference section 3 of the *Local Government Act 1976* that provides the State authority with powers to appoint a Secretary (CEO) of the local authority along with powers to also approve other (senior) staff appointments.⁵⁸ That is, supported by the survey

⁵³ *Revenue of the local authority (Local Government Act) 1976* (Malaysia) s 39.

⁵⁴ Donald Purdie, *Local Government in Australia – Reformation or Regression?* Melbourne: The Law Book Company Limited, 1976, p. 153.

⁵⁵ Berry, *To Dwell in Unity*, p. 425.

⁵⁶ Harding, *The Constitution of Malaysia: A Contextual Analysis*, p. 156.

⁵⁷ Department of Infrastructure, Transport, Regional Development, Communication and the Arts, 'Territories, Regions and Cities: Local Government – Financial Assistance'. Accessed at <https://www.infrastructure.gov.au/territories-regions-cities/local-government/financial-assistance-grant-local-government>.

⁵⁸ Ibrahim and Nordin, *Local Government System in Malaysia*, p. 153.

respondents interviewed by the author whereby both the Mayor of the Johor Bahru City Council and the Deputy Director of Corporate Planning at Kuala Lumpur City Council confirmed that the Secretary of both Councils are appointed by their respective State and Federal Governments.

- Conversely and in accordance with Part 5, Division 4, section 5.36 of the WA *Local Government Act 1995* that is also reflected in other Australian State/Territory local government legislation, the local government authority itself is responsible for the recruitment and appointment of a Chief Executive Officer/General Manager (terminology differs from each State jurisdiction) to oversee the management of the organisation.⁵⁹
- Levels of local government services - service delivery responsibilities differ in several instances between Malaysian Local Government and Australian local government as highlighted in this article. For example, where Part XII, section 101, sub sections (a) to (u) of the Malaysian *Local Government Act 1976* prescribe several functions such as the establishment and control of botanical and zoological gardens and aquaria or to establish and maintain an ambulance service that are not included in any Australian local government legislation.⁶⁰

As with any mature democracy (such as Malaysia and Australia) there is scope to evolve democratic systems through ongoing review. This article has attempted to explore the differences between the Malaysian and Australian local government systems that also includes comparisons between the Indian Ocean Territories (Christmas Island and Cocos Keeling Islands) and Norfolk Island as non-self-governing external territories to that of the directly administered Malaysian Federal Territories to highlight the comparative difference in the areas of constitutional recognition, electoral processes, financial arrangements, separation of executive powers and the levels of service delivery responsibilities.

⁵⁹ *Local government employees (Local Government Act) 1995* (WA) s 536.

⁶⁰ *Further powers of local authority (Local Government Act) 1976* (Malaysia) s 101.