
The Parliament of the Commonwealth of Australia

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

Joint Select Committee on Constitutional Recognition of Local Government

March 2013
Canberra

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ISBN 978-0-642-79868-8 (Printed version)

ISBN 978-0-642-79869-5 (HTML version)

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Foreword

Our Constitution was drafted over 100 years ago when people travelled by horse and cart, and travelling more than 15 kilometres was a long journey. We were still a continent of separate colonies, when local government was responsible for ensuring that settlements had access to markets (roads) and that they were hygienic (rubbish removal). Back then, these 'property' services were funded simply by levies on property (rates).

However, the days of local government doing just roads, rates and rubbish are long gone. Local governments are now recognised by the Commonwealth, state and territory governments as ideally positioned to both deliver services and to advocate for their communities. Over the past century, local governments have progressively expanded their roles and responsibilities, and this trend will only continue.

When the Constitution was drafted at the end of the nineteenth century, local government was not included. There was no suggestion that the Commonwealth would need to make financial transfers to local government. The situation in 2013 is markedly different. The Commonwealth has been providing substantial funds directly to local government for over two decades, or four decades if the Regional Development Employment Scheme is included.

Today the Commonwealth funds many programs by granting money directly to local government, across services such as roads, child care, economic development, aged care, environment protection, water efficiency and dozens of other areas. However, following recent decisions of the High Court, local government as a sector has expressed increasing uncertainty about this funding being secure in future. Constitutional experts have told the Committee that there is serious doubt about the direct funding of local government surviving a constitutional challenge. And the Committee was told that there is already a case on its way to the High Court.

The Parliament has remedied the immediate implications of those High Court decisions in the *Financial Framework Legislation Amendment Act (No.3) 2012*, and this is good law. However, there is immense uncertainty in councils and shires around

Australia about the possibility of further challenge. This uncertainty is infecting the strategic planning of local governments, and making it difficult to make long term business decisions. In both urban and regional areas, the local council is often the largest single employer, and this uncertainty can have significant economic impacts locally. It is in the economic interests of these communities to have this issue resolved.


The Committee has considered the work of the Expert Panel on Constitutional Recognition of Local Government, and agrees that the financial recognition of local government is a worthwhile referendum proposal to put to Australian voters. The Committee's preliminary report recommended that this referendum be put to Australian voters in 2013, and set out a number of important steps that would support a successful referendum. The Committee reiterates its support for the recommendations and conclusions of the preliminary report.

The Committee has also considered the likelihood of success of a referendum on the financial recognition of local government. In particular, the Committee has reported on the level of state support, and the extent to which public education 'preconditions' have been – or can be – met. There are a number of other important strengths to the case for a referendum in 2013. There is currently bipartisan support at the federal level for the financial recognition of local government. The previous referenda on local government did not enjoy this support, and there is no guarantee that it will survive past 2013. Additionally, the Committee is pleased to report that the Australian Local Government Association (ALGA) has committed to support a 2013 referendum.

The Committee believes that these considerations, taken together with the readiness of local government to campaign for change, and the momentum already in the community, the referendum has a good prospect of success.

I thank all Members and Senators for their work on this inquiry, and commend this final report to the Parliament.

Ms Michelle Rowland MP
Chair



Membership of the Committee

Chair Ms Michelle Rowland MP

Deputy Chair Senator David Bushby

Members Mr Mark Coulton MP

Senator Lee Rhiannon

Senator Trish Crossin
(to 29/11/2012)

Senator the Hon Lisa Singh
(from 29/11/2012)

Senator David Fawcett

Senator Glenn Sterle

Mr Steve Irons MP

Mr Tony Windsor MP

Ms Kirsten Livermore MP

Mr Tony Zappia MP

Mrs Jane Prentice MP

Committee Secretariat


Secretary Dr Glenn Worthington

Inquiry Secretary Mr Thomas Gregory

Research Officer Ms Leonie Bury

Office Manager Mr Daniel Miletic

Administrative Officer Ms Emily Costelloe



Resolution of appointment

- (1) a Joint Select Committee on Constitutional Recognition of Local Government be appointed to inquire into and report on the majority finding (financial recognition) of the Expert Panel on Constitutional Recognition of Local Government including by amending section 96 of the Constitution, and in conducting its inquiry, the Committee will assess the likelihood of success of a referendum on financial recognition, and will take into account the following matters:
 - (a) the report of the Expert Panel on constitutional recognition of Local Government, including preconditions set by the Expert Panel for the holding of a referendum;
 - (b) the level of State and Territory support;
 - (c) the potential consequences for Local Government, States and Territories of such an amendment; and
 - (d) any other matters that the Committee considers may be relevant to a decision on whether to conduct a referendum, and the timing of any referendum;
- (2) the Committee consist of twelve members, three Members of the House of Representatives to be nominated by the Government Whip or Whips, three Members of the House of Representatives to be nominated by the Opposition Whip or Whips, and one non-aligned Member, two Senators to be nominated by the Leader of the Government in the Senate, two Senators to be nominated by the Leader of the Opposition in the Senate and one Senator to be nominated by any minority group or groups or independent Senator or independent Senators;
- (3) every nomination of a member of the Committee be notified in writing to the President of the Senate and the Speaker of the House of Representatives;

- (4) the members of the Committee hold office as a Joint Select Committee until presentation of the Committee's report or the House of Representatives is dissolved or expires by effluxion of time, whichever is the earlier;
- (5) the Committee elect:
 - (a) a Government Member as Chair; and
 - (b) an Opposition Member as its Deputy Chair who shall act as Chair of the Committee at any time when the Chair is not present at a meeting of the Committee, and at any time when the Chair and Deputy Chair are not present at a meeting of the Committee the members present shall elect another member to act as Chair at that meeting;
- (6) in the event of an equally divided vote, the Chair, or the Deputy Chair when acting as Chair, has a casting vote;
- (7) three members of the Committee constitute a quorum of the Committee provided that in a deliberative meeting the quorum shall include one Government Member of either House, and one non Government Member of either House;
- (8) the Committee has power to appoint subcommittees consisting of three or more of its members and to refer to any subcommittee any matter which the Committee is empowered to examine;
- (9) the Committee appoint the Chair of each subcommittee who shall have a casting vote only and at any time when the Chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as Chair at that meeting;
- (10) two members of a subcommittee constitute the quorum of that subcommittee, provided that in a deliberative meeting the quorum shall include one Government Member of either House and one non Government Member of either House;
- (11) members of the Committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum;

- (12) the Committee or any subcommittee:
 - (a) has power to call for witnesses to attend and for documents to be produced;
 - (b) may conduct proceedings at any place it sees fit; and
 - (c) has power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives;

- (13) the Committee may report from time to time but that it present a preliminary report no later than December 2012 if possible, and a final report no later than March 2013; and

- (14) the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Paragraph 13 was varied (as above) by the Parliament on 6 February 2013.



Recommendation

Recommendation

Taking the major finding into consideration, the Committee recommends that a referendum on the financial recognition of local government be put to Australian voters at the 2013 federal election.

The inquiry

- 1.1 The Joint Select Committee on Constitutional Recognition of Local Government was established by the passing of a Resolution of Appointment through the Parliament on 1 November 2012. The Committee received full membership by 28 November 2012, and its first meeting was held on 29 November 2012.
- 1.2 The Committee invited submissions to the inquiry, and received a total of 252 submissions and seven supplementary submissions. A full list of submissions is at Appendix A. A summary of the content of submissions is below. The Committee also received a number of exhibits, and these are listed at Appendix B.
- 1.3 The Committee held two public hearings in Sydney, on 16 January and 20 February 2013. Full details of these hearings are at Appendix C, and transcripts of the hearings are available on the Committee's website.¹
- 1.4 The Committee presented its preliminary report to the Parliament's Presiding Officers on 24 January 2013 which is available on the Committee's website.² Further discussion of the preliminary report is below.
- 1.5 The Committee's Resolution of Appointment was varied by the Parliament on 6 February 2013 to provide for this final report to be presented no later than March 2013.

1 www.aph.gov.au/jsclg.

2 http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsclg/localgovt/preliminaryreport.htm.

Scope of the inquiry

- 1.6 The Committee's Resolution of Appointment directed it to inquire into, and report on, the majority finding of the Expert Panel on Constitutional Recognition of Local Government (the Expert Panel), being that:
- n a constitutional amendment to give effect to financial recognition was the most viable option (of those options considered) in the 2013 timeframe proposed by the Commonwealth;
 - n the Commonwealth should negotiate with states and territories to achieve their support for the financial recognition option; and
 - n the Commonwealth adopt steps suggested by the Australian Local Government Association (ALGA) to ensure success of such a referendum, necessitating temporary amendment to the *Referendum (Machinery Provisions) Act 1984*.³
- 1.7 The Expert Panel was appointed in August 2011, and comprised 18 members. The Final Report of the Expert Panel was presented to the Commonwealth Government in December 2011, and is available online.⁴

Major findings

- 1.8 The Committee's preliminary report made four recommendations, and the Committee maintains its support for the report and its recommendations.
- 1.9 The Committee believes that there are four strong arguments in favour of financial recognition of local government, and these are reported in Chapter 2, *The case for recognition*.
- 1.10 Since the preliminary report was published, the Committee has found increasing support for a referendum in important places. In a supplementary submission to the Committee, the President of the ALGA, Felicity-Ann Lewis, stated that:
- ALGA will support and campaign for a referendum to amend [section 96] of the Constitution to support direct funding of local government, as soon as it is proposed by the Federal Government...⁵
- 1.11 The Committee has reported on the Expert Panel's conditions for success, in Chapter 3, *Likelihood of success*. In particular, the Committee has

3 *Referendum (Machinery Provisions) Act 1984*.

4 <http://localgovrecognition.gov.au/content/final-report.html>.

5 Australian Local Government Association, *Supplementary submission 89.3*, p. 2.

considered the level of state support and the fulfilment of the ALGA preconditions.

- 1.12 The Committee believes that it is entirely feasible for the Commonwealth Government to negotiate for and secure the support of at least four state governments, including New South Wales and Queensland, as well as the two territories. This is now a matter of immediate priority for the Commonwealth Government, and the Committee understands that the Minister for Local Government, the Hon Simon Crean MP, has been discussing this issue with those parties, and will be pursuing these negotiations in coming days and weeks.
- 1.13 In respect of the preconditions, the Committee believes that there is sufficient time for these conditions to be met.
- 1.14 The Committee has taken compelling evidence from local governments around Australia about their appetite and preparedness to campaign for the referendum. Mayors, shire presidents, councillors, council staff and people who use local government facilities will together be a powerful grass-roots movement to lead the referendum campaign at a local level.
- 1.15 The Committee has also considered the broader historical context of this referendum, and reports its findings in Chapter 4, *Lessons from history*. In particular, the Committee notes that this referendum has the rare support of all sides of politics at a national level. Such unusual bipartisan support should not be squandered. As noted above, local government as a group will be a powerful campaigning force, and will help to build a momentum for change in the coming months. Finally, the Committee has reported on the significant risks involved in a delay of the referendum.

Content of submissions

- 1.16 The majority of submissions came from local government bodies. There were also submissions from state governments, local government associations, constitutional experts, Commonwealth Government departments and individuals.
- 1.17 While opinions for and against the referendum varied, the 173 submissions from local government bodies and seven from local government associations were resoundingly in favour of holding a referendum to effect financial recognition by amending section 96 of the Constitution.
- 1.18 Some of the local government bodies asked that if any preamble to the Constitution is proposed that local government be recognised in that also.

- 1.19 The majority of submissions in favour of a referendum requested that it be held at a time most likely to result in success.
- 1.20 Some concerns were raised by constitutional experts regarding:
- n centralisation of power;
 - n certain local government bodies being appointed rather than democratically elected;
 - n the extent of the problem that the referendum would address;
 - n previous mismanagement of policy initiatives by some local governments;
 - n available time for public debate on the issue;
 - n suitability of the recommended amendment; and
 - n broader ramifications for the constitution.
- 1.21 Some private individuals expressed views concerning:
- n the cost to taxpayers of holding a referendum;
 - n the issue of whether local councils, being incorporated entities, could be a valid form of government;
 - n the Westminster system is based on only two tiers of government;
 - n a perceived lack of public consultation on the issue and the Committee's time frame; and
 - n allegations of corruption in some local government bodies.
- 1.22 Some submissions were evidently distributed between numerous individuals, and additional copies of particular submissions forwarded to the Committee. While in most cases the Committee has published the original submission, it has taken subsequent copies of the same submission as correspondence, and these have not been published. Some of these distributed submissions raised questionable concerns which did not address the inquiry's terms of reference.

The case for recognition

- 2.1 The Resolution of Appointment for the Joint Select Committee on Constitutional Recognition of Local Government required it inquire into and report on the majority finding (financial recognition) of the Expert Panel on Constitutional Recognition of Local Government including by amending section 96 of the Constitution.
- 2.2 The amendment for the financial recognition of local government, which was supported by the Expert Panel proposed (amendment in *italics*):
- the Parliament may grant financial assistance to any State *or to any local government body formed by State or Territory legislation* on such terms and conditions as the Parliament sees fit.
- 2.3 As such, the Committee's work has focussed on the importance of the Commonwealth having an ongoing direct funding relationship with local government – which would be constitutionally acknowledged if section 96 was so amended.
- 2.4 There are a number of arguments in support of the financial recognition of local government in the Australian Constitution. The Committee's preliminary report focussed on financial recognition as a remedy to what constitutional experts described as the constitutional uncertainty of direct funding that was highlighted by the High Court's decisions in *Pape*¹ and *Williams*.² However, there are other equally important cases for this kind of constitutional recognition of local government.
- 2.5 This chapter will first examine the Commonwealth's direct funding of local government today. It will then detail the four major arguments in support of the financial recognition of local government:
- n removing uncertainty;

1 *Pape v Commissioner of Taxation* [2009] HCA 23.

2 *Williams v Commonwealth of Australia* [2012] HCA 23.

- n codifying government practice;
- n acknowledging the contemporary role of local government; and
- n supporting the financial sustainability of local government.

Direct funding today

- 2.6 The Commonwealth Government pursues its policy through the allocation of money through numerous avenues, including direct benefits to individuals, payments to state and territory governments, and direct grants to local governments.
- 2.7 Through direct funding to their shire, town and city councils, communities have been able to improve local services and infrastructure. These improvements contribute to the capacity of communities to prepare for social, economic and environmental shifts that will have profound impacts over the coming decades, such as an ageing population or changing local economies.
- 2.8 Professor Anne Twomey noted that the Commonwealth's use of direct funding to local government has increased substantially since the mid-1990s.³ The growth of direct funding clearly demonstrates that successive Commonwealth Governments have believed local government to be the most appropriate and effective level to pursue certain policy goals, often of national importance. In this time, the Commonwealth Government has built a strong relationship with local government.
- 2.9 Direct funding supports programs in policy areas such as ageing, childcare, water infrastructure, climate change, local community infrastructure, employment, disability services and indigenous well-being. The program most often raised during the inquiry was 'Roads to Recovery', which provides funding to construct or maintain local roads around Australia. The total funding for this program (between financial years 2009-10 and 2013-14) is \$1.75 billion.⁴
- 2.10 Lesser known programs also make a great difference to many Communities. 'Accessible Communities' for example, provides funding to make public facilities more accessible to people with disabilities. It

3 Professor Anne Twomey, *Submission 103*, p. 3.

4 Department of Infrastructure and Transport, *Roads to Recovery Program Funding Allocations 2009-2014*, www.nationbuildingprogram.gov.au/funding/r2.

provides grants of up to \$100,000, and 67 local governments have been funded since 2010.⁵

- 2.11 The ‘Suburban Jobs Program’ is intended to assist communities outside the CBDs in major capital cities that are ‘subject to pressures as a result of current or recent rapid growth (such as congestion)’. The program aims to ‘support changes that attract and retain jobs closer to where people live’, and its objective ‘is to support state and local governments to plan and provide for increased local employment opportunities.’⁶ As examples, it has provided \$11.3 million to the City of Playford in South Australia and \$14.6 million to Melton City Council in Victoria.⁷
- 2.12 A further example is ‘Water Smart Australia’, managed by the Department of Sustainability, Environment, Water, Population and Communities. The program provides funding to improve infrastructure for dams, pipelines, ground- and storm-water for many local communities. Under this program, the Commonwealth has so far co-funded projects in every state and territory at a total cost of almost \$1.5 billion.⁸
- 2.13 Importantly, the increasing cooperation between the Commonwealth and local governments does not diminish the role of state and territory governments. For example, local government has been the predominant recipient of grants under the Commonwealth’s Natural Disaster Resilience funding package. State governments, who are constitutionally responsible for emergency management matters within their jurisdiction, are responsible for administering these Commonwealth grants including determining who receives them.⁹
- 2.14 Some evidence suggested that, if direct funding to local government ceased, the Commonwealth Government could still make funding available to local governments by channelling it through state and territory governments, under existing arrangements using section 96 of the Constitution.

5 Department of Families, Housing, Community Services and Indigenous Affairs, *Accessible Communities*, <http://www.fahcsia.gov.au/our-responsibilities/disability-and-carers/program-services/for-service-providers/accessible-communities>.

6 Department of Sustainability, Environment, Water, Population and Communities, *Suburban Jobs Program Guidelines*, pp. 2-3.

7 Department of Sustainability, Environment, Water, Population and Communities, *Suburban Jobs Program*, <http://www.environment.gov.au/sustainability/suburbanjobs/index.html>.

8 Department of Sustainability, Environment, Water, Population and Communities, *Water Smart Australia*, <http://www.environment.gov.au/water/policy-programs/water-smart/index.html>.

9 Attorney-General’s Department, *National Partnership Agreement on Natural Disaster Resilience*, <http://www.em.gov.au/npa>.

- 2.15 Local governments disputed the effectiveness of such a mechanism. As pointed out by Mr Daryl Hitzman, Chief Executive Officer of the Moreton Bay Regional Council, it would not be possible to have the State Government as a partner in some projects that local government takes on, and it would be exceedingly difficult to have Commonwealth funding channelled through the states on that basis:

If I could just make a comment in relation to the affordable housing project: there is no way the state government would have entered into the agreement that we have entered into with the federal government. A kangaroo could not jump over the size of the contract that we had to sign and the conditions of those contracts, and there are significant deliverables in that contract that, if we do not deliver on, we do not get the funding. We have entered into an agreement with the developer, but it is us who takes the risks. There is no way in the world we could convince the state to enter into that contract, because there is nothing in it for them, or they would be too divorced from it. We are talking about affordable housing, around 1,750 lots in our region. It is a significant project. But, more importantly than that, it has significant ongoing development because of the infrastructure that is going to be delivered. This is a significant project, and the council were prepared to take the risk and enter into the agreement. We would not have been able to get [an agreement with] the state.¹⁰

- 2.16 Mayor David Burgess of the Mid Murray Council suggested that local government services would be reduced if money was channelled through the state government:

From Mid Murray's point of view, there would be a big reduction in services. We receive nearly half a million dollars just from Roads to Recovery to do roads. We do not have public transport and all those services. So, if that was to disappear, we would be in big trouble. If it were to come through state government, would we get the full amount, would there be a handling fee, would they then dictate what roads we do?¹¹

- 2.17 The City of Darebin pointed out that, when funding comes through state government, there can be increased overhead costs:

10 Mr Daryl Hitzman, Moreton Bay Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 17.

11 Mayor David Burgess, Mid Murray Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

With respect to roads, I think it is worth mentioning that local councils do deliver roads at a more efficient rate than through places like VicRoads. There are less management overheads. I think it has been identified as up to 15 per cent less with local councils.¹²

[When state funded], VicRoads becomes the project manager. The funding part of it pays for their project management and administration. The total at the moment [under Commonwealth direct funding] comes direct to the local government, so that we can show you that the entire money goes into the project. There is no in-kind money for that or project management. Every council does that, because we do have systems in place to manage it, under contracts or whatever. On the other hand, if you look at the projects which are coming through VicRoads, the federal government pay for the VicRoads management too.¹³

Obviously this is a case of duplication of administration and a cost to the public.¹⁴

- 2.18 It is clear that local governments are profoundly reliant on direct funding from the Commonwealth. This chapter will now deal with the principle arguments in support of the financial recognition of local government in the Constitution.

Removing uncertainty

- 2.19 As discussed in the Preliminary Report, the combined effect of the *Pape* and *Williams* decisions was to cast doubt over the validity of many programs funded by the Commonwealth Government, including those that funded local government directly. Parliament responded immediately to the *Williams* decision by passing the *Financial Framework Legislation Amendment Act (No. 3) 2012 (FFLAA)* in June 2012.

Further challenge to direct funding

- 2.20 Three professors of constitutional law expressed the view that the programs the *FFLAA* was intended to rectify – as well as others included in other legislation – would be vulnerable to constitutional challenge in

12 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

13 Mr Rasiah Dev, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

14 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

the future. These include programs that fund local government directly, such as ‘Roads to Recovery’.

- 2.21 The plaintiff in the *Williams* case, Mr Ron Williams, challenged the constitutional validity of the ‘National School Chaplaincy Program’ (NSCP) which has been in place since 2007. As noted above, following the High Court’s decision, the *FFLAA* remedial legislation was passed by the Parliament to support the continuation of the NSCP. A successful further challenge to the NSCP could have serious implications for the other programs covered by the *FFLAA* as well as other programs such as those that fund local government directly.
- 2.22 When asked if he had commenced – or intended to commence – a further challenge to the NSCP, the plaintiff, Mr Ron Williams, responded:
- The documents are all in order. I expect they will be processed within the next couple of days. We have had them in place for quite a while. I would expect that it is imminent and we could see them processed within a week.¹⁵
- 2.23 In response to a question about whether the impending legal action would, in part, challenge the *FFLAA*, Mr Williams responded: ‘It is going to be a challenge to the continued funding of the NSCP, yes, in spite of the [remedial] legislation—without wanting to give too much away about our statement of claim.’¹⁶
- 2.24 Whilst the *FFLAA* is good law, it is clear from Mr Williams’ evidence that a challenge to the *FFLAA* is imminent.

The Commonwealth’s legal advice

- 2.25 The Attorney-General’s Department could not provide definitive advice about the impact of the *Pape* and *Williams* cases on the relationship between the Commonwealth Government and local government, particularly relating to decisions about program funding. Mr James Faulkner SC said that:

...the decisions in *Pape* and *Williams*, which are the ones that people have been talking about here today, now form part of the background which the whole of the government takes into account when it makes any decision about anything, including the stuff in the local government area. I am conscious that you have heard a number of arguments today about what *Pape* means and *Williams* means. There are lots of views about that. The Commonwealth

15 Mr Ron Williams, *Proof Committee Hansard*, 20 February 2013, p. 4.

16 Mr Ron Williams, *Proof Committee Hansard*, 20 February 2013, p. 4.

government has its own views about that. They are complex questions. As you have heard suggested today, just the apparently simple question ‘Can you give some money to an airport in a local government area?’ could raise a very, very complex constitutional question. What powers are available, what powers are arguably available, what has the court decided, what has it not decided, what is an implication and what is a clear decision are the kinds of things we tie ourselves up in knots in all the time to decide.

So it is inevitably the case that significant decisions of the sorts that we are talking about here will affect the operation of the government in relation to local government and other areas as well. That is just inevitable—unavoidable. So it will have an implication, but that is not to say a great deal. That is really what I am saying, I suppose.¹⁷

2.26 However, in response to the Preliminary Report, the Minister for Regional Australia, Regional Development and Local Government stated that:

The Federal Government does not accept the evidence presented to the Committee in relation to the federal financial framework, and the Commonwealth continues to have constitutional support to make grants or payments directly to local government bodies.¹⁸

2.27 The Committee has not disputed and does not dispute the Commonwealth Government’s position on the current constitutionality of programs under the *FFLAA* and other programs such as ‘Roads to Recovery’. The Committee completely accepts the view that the *FFLAA* is good law, and it quite clearly provided a remedy to *Williams* when it was needed.

2.28 However, there is an imminent challenge to a program under the *FFLAA*. The mere fact of a challenge creates uncertainty (however remote) about the direct funding of local government. Professor AJ Brown aptly described the situation created by the *Pape* and *Williams* decisions, notwithstanding the passage of the *FFLAA*:

do we want to live with the uncertainty? And the answer to that question has to be no. It should be obvious to the committee and the committee should not have any trouble articulating the reasons that even the risk in this day and age to this federal system of

17 Mr James Faulkner, Attorney-General’s Department, *Committee Hansard*, 16 January 2013, pp. 49-50.

18 Minister for Regional Australia, Regional Development and Local Government Media Release 24 January 2013.

having that sort of uncertainty is something that is worth eliminating.

...

I think there is a range of real possibilities, but I think the risk in and of itself is something that you would not want in this day and age.¹⁹

Uncertainty in local government

2.29 The local government sector expressed doubt about the certainty of continued direct funding from the Commonwealth. In certain cases, the impact of uncertainty was put quite starkly: there is real fear in local government of the ultimate repercussions of the *Pape* and *Williams* cases:

I cannot give you the total figure off the top of my head but we have a budget of about \$20 million. We raise just over a half of that out of rates and we get an amount from the state government. The rest of it would be federal money, and that is a fairly significant part of our budget. If a third of it were to disappear we would probably have to turn bitumen roads back into dirt roads and lose a lot of support for our elderly people.²⁰

2.30 The absence of an explicit constitutional power to provide funds directly to local government has become a major source of uncertainty for local governments and their communities. A few examples of this uncertainty illustrate this point:

My Council needs certainty of funding so that Roads to Recovery can continue.²¹

Because of [the *Pape* decision] the validity of [direct] funding is not certain. Local government requires certainty if it is to remain financially sustainable in the long-term and to be able to deal with the growing needs of its communities.²²

Given that both *Pape* and *Williams* have called into question the legality of two extremely beneficial, nay critical, sources of funding to local government, Council fears that without financial constitutional recognition future direct Commonwealth funding of local government through programs such as [Roads to Recovery] and [The Regional and Local Community Infrastructure Program] may be declared technically invalid and forced to cease.

19 Professor AJ Brown, *Committee Hansard*, 16 January 2013, p. 6.

20 Mayor David Burgess, Mid Murray Council, *Proof Committee Hansard*, 20 February 2013, p. 23.

21 Wujal Wujal Aboriginal Shire Council, *Submission 41*, p. 1.

22 Shire of Halls Creek, *Submission 170*, p. 1.

Local government needs certainty and security of funding in order to provide the range and level of services expected by the community and to which the community has become accustomed.²³

As a small rural municipality it is extremely critically important that Council has certainty of directly funded programs such as the much appreciated and extremely crucial Roads to Recovery program and the Regional and Local Community Infrastructure program.²⁴

2.31 As described by Cr Paul Bell AM, this uncertainty infects many decisions made by local governments:

Every time we make a decision now in terms of accepting money from the federal government there is a concern. Many corporations would have concerns about what the implications of accepting that funding might be.²⁵

2.32 Concerns were also raised about the possible recovery of money if direct funding were ever invalidated. ALGA suggested that, if the Roads to Recovery program was invalidated, 'local government could be asked to repay the total paid under the program, amounting to more than \$4 billion by the end of the current program in 2014.'²⁶ Cr Paul Bell AM said that '[it] comes back to the reality of what might happen if Roads to Recovery was proven to be unconstitutional and we had to pay back the \$3 billion that has already been given to local government.'²⁷

2.33 The Commonwealth Government, understandably, was unable to provide a definitive answer about whether such liability for recovery of money would apply in a hypothetical situation.²⁸

2.34 In summary there is a palpable fear in local government that, in the absence of financial recognition in the Constitution, communities will not have the resources for the essential infrastructure services on which they rely.

23 Cootamundra Shire Council, *Submission 5*, p. 3.

24 Yarriambiack Shire Council, *Submission 106*, p. 1.

25 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 12.

26 Australian Local Government Association, *Submission 89*, p. 25.

27 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 12.

28 Mr James Faulkner, Attorney-General's Department, *Proof Committee Hansard*, 20 February 2013, p. 44.

Codifying government practice

2.35 As discussed above, the Commonwealth Government has been providing funding directly to local government for decades, and in recent times it has become much more common. Throughout the inquiry, there was almost no objection to this practice at a principled level. Mr Ron Williams, the plaintiff in the *Williams* case, went to pains to express his support for the direct funding of local government: regardless of any implications his case might have:

I come from Toowoomba, so my council is Toowoomba Regional Council. I did not see their name on the list of people submitting, but I would want them to have any direct funding that they are receiving. ... I think that every step possible should be taken to look at legitimising it.²⁹

2.36 Even the voluble opposition to recognition from some members of the public does not question the appropriateness of the Commonwealth Government providing funding directly to local government. Given the broad support for direct funding as an appropriate funding option for the Commonwealth Government, it is reasonable to expect that the Australian Constitution codify direct funding as a legitimate practice of the Commonwealth.

2.37 As discussed below, much has changed in Australia's governance arrangements since direct payments to local government were first made in the 1970s. Various submissions discuss the need for the Constitution to accurately reflect government practice in Australia. Benalla Rural City referred to 'the importance of changing the Constitution to ensure that it reflects how Federation works in modern Australia.'³⁰ Naracoorte Lucindale Council stated that 'the suggested changes to the Constitution being sought by local government are simply a mechanism to legalise the system which already exists'.³¹ A referendum that gave financial recognition to local government would ensure that the Constitution accurately reflects the current practice, by codifying existing arrangements.

29 Mr Ron Williams, *Proof Committee Hansard*, 20 February 2013, p. 2.

30 Benalla Rural City, *Submission 150*, p. 1.

31 Cootamundra Shire Council, *Submission 5*, p. 3.

Acknowledging local government's role

2.38 Stakeholders emphasised the expansion of local government's role in Australia over recent decades to meet increasing community expectations:

Since 1974 the communities we are servicing have changed dramatically, and the services we are giving have changed.... I have mentioned only roads and age care, but there are many other issues, a whole series of social issues that the community wants us to act on regarding homelessness, drugs and alcohol.³²

Local government is an essential part of Australia's system of government. While it continues to fulfil the traditional functions of 'roads, rates and rubbish', the size and scope of local government's role has expanded significantly over the past few decades. This is particularly so in country areas where the local 'Shire' is looked to for the provision of infrastructure and amenities as well as support for commercial growth, recreation, culture, community development, health, education public welfare and public safety.³³

The Wagga airport is the 20th busiest airport in Australia, based on passenger numbers. We have recently spent approximately \$15 million on our airport. We received \$1 million for an Instrument Landing scheme from the Commonwealth, plus an additional \$1.4 million for terminal modifications, baggage security and screening facilities at the airport. It is not just a passenger terminal; there is also a lot of business undertaken from the airport. We have seen new businesses established out at the airport. Recently Douglas Aerospace has established a new plane-painting facility, which has the capacity to service planes as big as 737s.³⁴

I would like to talk about a development we have in our region for affordable housing. There was an agreement with the federal government and the developer that we had entered into in relation to the development of just under 2,000 affordable housing sites. There is a bridge that needs to be built—a \$20 million bridge—of which the federal government is providing just under \$11 million. Without us being able to enter into that agreement with the federal government that development would not have gone ahead. It is as simple as that. That is an example.

32 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 21.

33 The Shire of Donnybrook Balingup, *Submission 27*, p. 1.

34 Mr Craig Richardson, City of Wagga Wagga, *Proof Committee Hansard*, 20 February 2013, p. 9.

We have another development at North Lakes, which is one of the thriving hot spots in our region, where we are building a \$50 million development, where the federal government has committed just under \$11 million, again. That is, again, direct funding. Without that funding, that project would not have gone ahead.

Roads to Recovery is certainly an issue for all of us but there are more significant projects for us than Roads to Recovery. The most significant one is our Moreton Bay Rail Link, where we have entered into a \$1.1 billion tripartite agreement with the federal and state governments. We have committed \$105 million. That is a direct agreement between us and the federal government and the state government.³⁵

2.39 As pointed out by Marrickville Council, this increase in responsibilities has not often been accompanied by sufficient additional funding:

Past decades have seen a rapid expansion of services that local councils are expected to deliver and cost shifting from other levels of government. It has been a long time since councils were merely responsible for roads and rubbish collection.³⁶

2.40 In the 2009-10 *Local Government National Report*, the Department of Regional Australia, Local Government, Arts and Sport identified the following local government functions and services:

- n engineering (public works design; construction and maintenance of roads, bridges and footpaths; drainage; cleaning; and waste collection and management)
- n planning and development approval
- n building (inspection, licensing, certification and enforcement)
- n administration (of aerodromes, quarries, cemeteries, parking stations and street parking)
- n recreation (golf courses, swimming pools, sports courts, recreation centres, halls, kiosks, camping grounds and caravan parks)
- n health (water sampling, food sampling, immunisation, toilets, noise control, meat inspection and animal control)
- n community services (child care, elderly care and accommodation, refuge facilities, meals on wheels, counselling and welfare)
- n cultural/educational (libraries, art galleries and museums)
- n water and sewerage (in some states)

35 Mr Daryl Hitzman, Moreton Bay Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 14.

36 Marrickville Council, *Submission 55*, p. 1.

n other (abattoirs, sale-yards, markets and group purchasing schemes).³⁷

- 2.41 Local governments around Australia believe that the additional services they provide are vital to their communities, but expressed concerns about their ability to provide these services in the absence of constitutional recognition. Quite separately to the certainty question, recognition would provide acknowledgment of local government's expanding service to communities. It would reflect and validate the additional expectations that communities have of local government.

Supporting the financial sustainability of local government

- 2.42 The Expert Panel on Constitutional Recognition of Local Government considered the broader implications of financial recognition, particularly in respect of the financial sustainability of local government. The Panel's report noted a widely held assumption in the local government sector that financial recognition is essential to its long term financial sustainability in general.
- 2.43 The 2011 report of the Senate Select Committee on the Reform of the Australian Federation undertook a comprehensive examination of financial sustainability issues facing local government. As the report notes:
- Australia's local governments provide an increasing range of services beyond the 'roads, rates and rubbish' functions with which they are traditionally associated. Yet despite their significant responsibilities and close relationship with citizens at the level of suburb, town, city and region, local governments in Australia are relatively poorly funded, lack constitutional recognition, and are vulnerable to cost shifting.³⁸
- 2.44 The report discusses the question of local government's ability to increase its own revenue sources, and noted the limitations on this, often imposed by state governments, such as 'imposing a cap on the rates that may be levied, exempting areas of land from rate levies and requiring concessions for certain persons such as pensioners.'³⁹

37 Department of Regional Australia, Local Government, Arts and Sport, *Local Government National Report 2009-10*, December 2012, p. 4.

38 Senate Select Committee on the Reform of the Australian Federation, *Australia's Federation: an agenda for reform*, June 2011, p. 81.

39 Senate Select Committee on the Reform of the Australian Federation, *Australia's Federation: an agenda for reform*, June 2011, p. 82.

- 2.45 The 2003 report of the House of Representatives Standing Committee on Economics, Finance and Public Administration inquiry into local government and cost shifting found five major areas of ‘cost shifting’ where the expectations of local government are not matched by funding:
- n the **withdrawal or reduction of financial support** once a program is established, therefore leaving local government with the choice of continuing a program or suffering the political odium of cancelling the service;
 - n the **transfer of assets** without appropriate funding support;
 - n the requirement to provide **concessions and rebates without compensation** payments;
 - n increased **regulatory and compliance requirements**; and
 - n **failure to provide for indexation of fees and charges** for services prescribed under state legislation or regulation.⁴⁰
- 2.46 The report went on to suggest that ‘[part] of the solution to these cost shifting examples lies in the definition of responsibilities of each sphere of government and how funding would match those responsibilities.’⁴¹ The constitutional recognition of local government would serve this end, by making clear the funding arrangements to support those responsibilities.

40 House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: a fair share for responsible local government*, p. 30.

41 House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: a fair share for responsible local government*, p. 30.

Likelihood of success

- 3.1 The Committee's Resolution of Appointment directs it to 'assess the likelihood of success of a referendum on financial recognition of local government.' The Preliminary Report recommended a referendum be held in 2013, and the Committee continues to believe that a 2013 referendum has a strong prospect of success. This chapter will detail these prospects in greater detail.
- 3.2 The majority finding of the Expert Panel – that financial recognition was a viable option – was subject to two conditions. First, that the Commonwealth Government negotiate with the states to secure their support; and second, that certain 'preconditions' regarding public education be addressed by the Commonwealth.

State support

- 3.3 The 'double' majority required to pass a referendum question means that constitutional change is exceedingly difficult to achieve. Vocal opposition from numerous state governments could make referendum success unlikely, and the Committee has invited each state and territory government to indicate its position on the proposed referendum.
- 3.4 To date the Committee has received submissions from the Victorian, Western Australian, Queensland, Northern Territory and Australian Capital Territory Governments. The South Australian Government has appeared at a public hearing.
- 3.5 Those state and territory governments that have declared positions are as follows:

3.6 The Victorian Government:

does not support the proposed amendment to the Commonwealth Constitution to allow the Commonwealth Government to fund local government directly in a similar manner to which it currently funds States under section 96 of the Commonwealth Constitution.¹

3.7 The position of the Western Australian Government:

is that a Constitution amendment is likely to affect the powers, capacity and function of the State Parliament and Government in relation to local governments and that any reduction or impact on these powers would not be supported.²

3.8 The Queensland Government:

supports appropriate recognition of local government in the Commonwealth Constitution. However, any recognition must not diminish the states' primary constitutional responsibility for local government.³

3.9 The South Australian Government:

has indicated its support in principle for the recognition of local government in the Australian Constitution. It has maintained this position consistently both in discussion with the [Local Government Association of South Australian] and the expert panel. Having said that, the South Australian government would not consider making a formal commitment to a specific proposition to amend the Constitution until such a proposition was confirmed by the Australian government.⁴

3.10 While majorities in the Northern Territory and the Australian Capital Territory are not significant in determining a majority of states, the views of these governments may reflect to some extent their populations, which do count in determining a majority of Australian voters.

3.11 The Northern Territory Government:

While Constitutional Recognition for Local Government is conditionally supported it still holds some concerns in regard to future funding arrangements and the possible impact on the powers, capacities and function of the Territory Parliament.⁵

1 Victorian Government, *Submission 167*, p. 1.

2 Premier of Western Australia, *Submission 131*, p. 1.

3 Queensland Government, *Submission 249*, p. 1.

4 Mr Mick Petrovski, Department of the Premier and Cabinet, South Australia, *Committee Hansard*, 16 January 2013, p. 38.

5 Northern Territory Government, *Submission 233*, p. 1.

3.12 The Australian Capital Territory Government:

As a self governing city-state that is also the nation's capital, we combine both state and local government functions. In these circumstances, the proposed amendment has limited direct relevance to the ACT. Therefore, while the ACT acknowledges there may be a need to remove legal uncertainty from funding to local government, there is also a risk of blurring of the already complex financial roles and responsibilities across different layers of government and undermining existing federal funding mechanisms....

The Committee should also be aware of the need to ensure that any proposed amendment to section 96 does not adversely impact the ACT Government's ability to access Commonwealth Government support, nor diminish its status as city-state.⁶

3.13 State positions on a referendum cover a broad spectrum, from forthright support for and lobbying in favour of the proposal, to implacable opposition to the financial recognition of local government. Within that spectrum, there is clearly an opportunity for the Commonwealth Government to negotiate for the support of at least some states.

3.14 The Queensland Government has been actively lobbying other states to support the referendum⁷; the South Australian Government is clearly willing to support the referendum if the proposed wording is seen as appropriate.

3.15 Western Australia is currently in an election campaign, and a clearer understanding of that Government's position will be possible after the election on 9 March 2013. Both territory governments have moderate positions that could well result in support, if their more general concerns are addressed by the Commonwealth.

3.16 The New South Wales Government has not provided any formal advice to the Committee. The Expert Panel reported that:

The New South Wales Government did not explicitly oppose financial recognition but raised concerns about it, stating that 'amendments to the Constitution should not be made in the absence of clear evidence that existing funding arrangements are deficient and there may be options for refining funding

⁶ Australian Capital Territory Government, *Submission 174*, p. 1.

⁷ Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 13.

arrangements between different levels of government that do not require amendments to the Constitution'.⁸

- 3.17 Media reports suggest that the New South Wales Government may be willing to support recognition in some form, and this will need to be the subject of negotiations between the New South Wales and Commonwealth Governments.⁹
- 3.18 In addition to the existing support of the Queensland Government, the Committee believes that the Expert Panel's condition of state support would be satisfied by the backing – or at least the silent opposition – to the proposal of three additional states (including New South Wales) and the two territories. The Committee believes that the Commonwealth Government should, as a matter of priority, negotiate to secure the support of any state that has not definitively declared its position on the proposed referendum. The Committee is confident that, if the state support described above can be secured, the referendum has a strong chance of success.
- 3.19 Even if unequivocal support from state governments cannot be achieved, local governments across Australia are ready to support and campaign for the referendum on behalf of rate-payers, in the absence of state support. This readiness is discussed further, below.
- 3.20 The Committee's preliminary report discussed the lack of full commitment by ALGA to a 2013 referendum, and noted the impact this would have on likely state support. The Committee is pleased to report that ALGA has now pledged unequivocal support for a referendum in 2013:
- ALGA will support and campaign for a referendum to amend [section 96] of the Constitution to support direct funding of local government, as soon as it is proposed by the Federal Government...¹⁰
- 3.21 This will go a long way to bringing states on board to support the referendum, and the Committee believes that ALGA should continue lobbying state governments directly to secure their support.

8 Expert Panel on Constitutional Recognition of Local Government, *Final Report*, December 2011, p. 17.

9 Government News, *O'Farrell warns of federal abuse*, 25 January 2013, <http://www.governmentnews.com.au/2013/01/25/article/OFarrell-warns-of-federal-abuse/JUYKYCTVUJ.html>.

10 Australian Local Government Association, *Supplementary submission 89.3*, p. 2.

Local government support

- 3.22 In addition to the formal positions of state and territory governments, witnesses suggested the campaigning power of local government as a whole would be decisive. In the words of Mount Isa Mayor Tony McGrady:

With the exception of the referendum to recognise Indigenous people, you have never had an army of people out there determined to win the battle. If you go through the famous four questions we had [at the 1974 Referendum] during Whitlam's time, they were not really earth-shattering questions and so people said, 'no'. With the [1967 Referendum] people felt it was time to do it and so you had this army of people out there convincing people to support the 'yes' case. I am suggesting to the committee that this issue is similar, because you are going to have an army of local councillors right across the continent all advocating a 'yes' vote. ...I think we have a massive 'yes' case. ... When this army goes into action, you will see a different environment.¹¹

- 3.23 Evidence also suggested that a state government, whilst formally opposed to the referendum question, might not wish to enter the public debate against the proposal:

It might be different in other states, but I would be pretty confident about taking the state government of Victoria on in a public debate at the moment, when they are simply asking to retain the status quo so that they have more control. I do not think that they will win that argument at 3AW, 3OO, in the *Age* or the *Herald Sun*.

...

We will be talking about roads and Meals on Wheels in pensioners' houses. We will be talking about real things; we will not be talking about the technicalities of constitutional law.

...

...we will be working with the two peak [local government] bodies on that, and we have councils that have good standing and 80 per cent customer satisfaction levels, and those sorts of things. We are very confident to talk to our community about these issues.¹²

11 Mayor Tony McGrady, Mount Isa City Council, *Proof Committee Hansard*, 20 February 2013, p. 16.

12 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, pp. 22-3.

Preconditions

3.24 The Expert Panel's report identified five 'preconditions' to ensure 'informed and positive public engagement with the issue', which were put to the Panel by ALGA. The first precondition related to the formation and work of this Committee. The remaining four preconditions are:

- n In accordance with recommendations of the Parliamentary Inquiry into the Machinery of Referendums, and based on its research findings, a **nationally funded education campaign** on the Constitution broadly, ahead of any 'Yes' and 'No' campaign, should precede any proposed amendment to the Constitution.
- n ALGA notes that the **'Yes' and 'No' campaigns should be overseen by the Parliament**, with panels of members appointed to prepare both the 'Yes' and 'No' cases.
- n ALGA supports the recommendation by the [report of the Inquiry into the Machinery of Referendums] **to remove the legislative limit on spending**.
- n ALGA proposes that the Commonwealth **apportion funds for the 'Yes' and 'No' cases** for each referendum based on those parliamentarians voting for and against the Bill and that this funding be equivalent to that provided for elections.¹³

3.25 There was wide consensus throughout the inquiry that progress in meeting these preconditions would be an important consideration in assessing the likelihood of a successful referendum. ALGA views the preconditions as absolutely essential, and the likelihood of them being fulfilled was doubted in the early stages of the inquiry:

In January we expressed our strong concern at the time left to put in place the preconditions for a successful referendum. We were criticised for expressing those concerns, which were portrayed by some as a lack of commitment. For the record, ALGA is committed to a referendum on financial recognition of local government in 2013, provided the successful conditions for a referendum have been met.¹⁴

3.26 Importantly, ALGA has indicated that it will commence work to prepare for campaigning in a 2013 referendum.¹⁵ The Committee's findings about particular preconditions are set out below.

13 Expert Panel on Constitutional Recognition of Local Government, *Final Report*, December 2011, pp. 16-17.

14 Mayor Felicity-Ann Lewis, Australian Local Government Association, *Proof Committee Hansard*, 20 February 2013, p. 26.

15 Australian Local Government Association, *Supplementary submission 89.3*, p. 2.

National civics education campaign

- 3.27 The Committee's preliminary report recommended the Commonwealth Government make preparations for a national civics education campaign, and recommended the Department of Regional Australia, Local Government, Arts and Sport, take steps to implement it.
- 3.28 Stakeholders expressed differing views about the length of time and scope required to optimise a positive outcome for such a campaign, and some witnesses raised concerns about the time available before the 2013 election to run the campaign. However, the Department of Regional Australia, Local Government, Arts and Sport said that:
- A national civics education campaign would need to be considered in the context of responding to the [Committee's] final report. ... Our own internal advice is that there is sufficient time prior to mid-September 2013 to achieve this.¹⁶
- 3.29 The Committee firmly believes that, if the Commonwealth Government makes an expeditious decision to hold a referendum in 2013, there remains sufficient time to finalise and run the campaign.

'Yes' and 'No' cases

- 3.30 The Preliminary Report supported the continued practice of Parliamentarians drafting and approving the 'Yes' and 'No' cases for the official referendum pamphlet for financial recognition of local government. It further recommended that, in the event that there is no requirement for a 'No' case – that is, if no Parliamentarians vote against a Constitution Alteration bill – there should be an official 'Yes' case only.

Legislative limit on spending

- 3.31 The Preliminary Report also recommended that temporary amendments be made to the *Referendum (Machinery Provisions) Act 1984* to remove the legislative limit on Government spending for referenda, in order to enable activities such as the national civics education campaign and funding for partisan campaigns.
- 3.32 The Committee understands that decisions about these matters will be made as part of a final cabinet decision regarding the referendum more generally.

16 Mrs Robyn Fleming, Department of Regional Australia, Local Government, Arts and Sport, *Proof Committee Hansard*, 20 February 2013, p. 41.

Funding of partisan campaigns

- 3.33 The Preliminary Report recommended the Commonwealth Government provide funding for partisan campaigns in the lead up to the referendum. The Committee also expressed its opinion that the funding be divided equally between those supporting and those opposing the referendum question, rather than on a proportional basis as suggested by ALGA.
- 3.34 In a supplementary submission ALGA advised that it would seek a formal commitment from the Commonwealth Government to:
- designate ALGA as the exclusive body formally responsible for the expenditure of any public funding made available to support a Yes case for a referendum to recognise local government.¹⁷
- 3.35 However, Cr Paul Bell AM suggested that, rather than designating ALGA as the sole body responsible for the Yes campaign, there should be
- a group separate from ALGA but with ALGA representatives. It should be run by a small, schmick committee. It should elevate this question, which is relevant to most of our communities, of what is going to happen to our halls, our parks and our pools.¹⁸
- 3.36 Allocation of funding is a matter for the Commonwealth Government to decide. The referendum is ultimately the responsibility of the Commonwealth Government, and it is entirely reasonable that ALGA expect financial support to conduct the campaign, especially given the substantial financial commitment already made by its members for campaigning.¹⁹
- 3.37 Witnesses suggested that the partisan campaigns should focus on the importance of local government facilities to communities. As pointed out by Mayor Tony McGrady, of the Mount Isa City Council:
- ...a local council provides facilities. It provides a facility for Debbie Mailman to start her acting career. We provide tennis courts where Pat Rafter started his tennis career. We provide golf courses where Greg Norman started. They are the sorts of things that will resonate with people when you start talking about the importance of local government and about the importance of local government being financed to provide these facilities.²⁰

17 Australian Local Government Association, *Supplementary submission 89.3*, p. 2.

18 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 12.

19 Mr Adrian Beresford-Wylie, Australian Local Government Association, *Proof Committee Hansard*, 20 February 2013, p. 29.

20 Mayor Tony McGrady, Mount Isa City Council, *Proof Committee Hansard*, 20 February 2013, p. 14.

Cr Bell expanded on this idea:

...some of our greatest sports achievers, artistic achievers, actors and others have started in town halls. Have a look at my council's financial support from the Australian government over the last five years for things like town halls, sporting facilities and those simple products of our society that build and grow into some of our nation's greatest aspects. I think you need to have those people selling it: 'I started my career in the North Sydney Town Hall as an actor, and look at where I am now.'²¹

3.38 Mr Greg McLean OAM, of the Australian Services Union, made a similar point

I am surprised that these issues are not raised on days such as Australia Day this year when councils really do run Australia Day, with all of the services and such that are required. I live in the Sutherland shire and Australia Day is a pretty big thing down there, and I would like to see councils become a little bit more informative to their communities. I think I have also mentioned in my latest brief submission the necessity to involve community groups and others—those people that use the sporting fields; those people that need to make the connection.²²

Other matters

3.39 The Preliminary Report expressed suggested that the Commonwealth Government should consider establishing a referendum panel, in line with the recommendations of the House of Representatives, Legal and Constitutional Affairs Committee's 2009 report on the *Inquiry into the Machinery of Referendums*. The Committee continues to believe that a Referendum Panel could be a useful part of the referendum campaign infrastructure.

21 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 15.

22 Mr Greg McLean OAM, Australian Services Union, *Proof Committee Hansard*, 20 February 2013, pp. 36-7.

Lessons from history

- 4.1 The lessons of previous referenda should inform its deliberations about the proposed constitutional recognition of local government. This chapter will discuss the 1974 and 1988 referenda on recognition of local government, the relative strengths of 2013, the momentum for change and the risks of delay.

Previous local government referenda

- 4.2 There have been two unsuccessful referenda held on the issue of recognising local government in the Constitution, in 1974 and 1988.
- 4.3 The 1974 question was put to the people as a result of a political impasse: ‘The 1974 referendum on local government arose out of the failure of a Premiers’ Conference in October 1973.’¹
- 4.4 Two amendments to the Commonwealth Constitution were proposed in the *Constitution Alteration (Local Government Bodies) Bill 1974*. The first would have added an additional Commonwealth legislative power in section 51 of the Constitution, as follows:
- 51(ivA) The borrowing of money by the Commonwealth for local government bodies.²
- 4.5 The second would have inserted a section relating to the funding of local government, utilising the structure and language of the existing section 96, which empowers the Commonwealth to grant financial assistance to the states, as follows:

1 Professor Anne Twomey, *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 60.

2 *Constitution Alteration (Local Government Bodies) Bill 1974*.

96A The Parliament may grant financial assistance to any local government body on such terms and conditions as the Parliament thinks fit.³

- 4.6 The referendum bills were passed by the House of Representatives twice, and rejected twice by the Senate. They were put to a referendum, under the provisions of section 128 of the Constitution, which deals with such a situation.
- 4.7 The Liberal-National Opposition stood strongly against the proposal. The referendum failed to win a national majority and won majority support in only New South Wales. The enduring result of the process was that local government bodies themselves began to speak out in favour of achieving formal recognition in the Constitution.
- 4.8 The 1988 referendum proposed to insert a new paragraph into the Constitution:
- 119A Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State.⁴
- 4.9 It has been argued that: ‘The question was added as a non-controversial bit of sugar to aid support for the other referendum questions by harnessing the campaigning power of local government.’⁵ Initially the proposal enjoyed bipartisan support; in addition opinion polls in South Australia, Victoria and New South Wales all put the chances of success at around 70 per cent.⁶
- 4.10 Despite having supported the proposal during its 1987 election campaign, including having sent a letter to the Commonwealth Attorney-General supporting the ‘inclusion of a chapter on local government in the Constitution’; after the formal announcement of the referendum the Liberal-National Opposition campaigned against it.⁷ The 1988 referendum failed in all states and territories.
- 4.11 When speaking about these two previous failed attempts, Mayor Tim Laurence of Darebin City stated that ‘[we] know the history of
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3 *Constitution Alteration (Local Government Bodies) Bill 1974.*

4 *Constitution Alteration (Local Government) Bill 1988.*

5 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 67.

6 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 68.

7 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 68.

referendums, and you need bipartisan support to succeed in any proposal. We also need three tiers of government supporting it for maximum success.’⁸ Cr Paul Bell AM reiterated this sentiment ‘the last time [1988]... there was not bipartisan support at the federal level. That is the most important thing, and I believe we have that until the end of this electoral term.’⁹

- 4.12 Having nationwide local government and related peak bodies working to support the change is also vital. The Australian Local Government Association (ALGA) stated that: ‘In previous local government referenda, local government was not intimately involved in the process and in considering the options as it is on this occasion, and there was also a lack of bipartisan support.’¹⁰

The strengths of 2013

- 4.13 Chapter 3 considered the potential for state and territory governments to support a referendum in 2013. The Commonwealth Government has a strong case to bring those governments that remain uncommitted on board. There are, however, other important strengths in 2013 – rare bipartisan support for the referendum proposal, and a compelling argument in support of a referendum to modernise the Constitution.

Bipartisan support

- 4.14 As noted by many witnesses, there is a strong bipartisan agreement in the Australian Parliament that local government should be recognised in the Constitution. The Minister for Local Government noted that ‘the Federal Government [is] clear on its commitment to achieve constitutional recognition of local government...’¹¹
- 4.15 Committee members who dissented from the Preliminary Report stated:
- The Coalition members of the Committee note that the Coalition has committed to support the appropriate financial recognition of local government in the Australian Constitution, provided that change is limited to removing the question of constitutional

8 Mayor Laurence, Darebin, *Proof Committee Hansard*, 20 February 2013, p. 24.

9 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

10 Australian Local Government Association, *Submission 89*, p. 24.

11 Hon Simon Crean MP, Minister for Local Government, *LG constitutional recognition interim report released*, media release, 24 January 2013.

validity in relation to direct Commonwealth funding of local government.¹²

- 4.16 This broad, bipartisan support is vital for the referendum's success. Bipartisan support is often cited as a 'necessary condition':

On the bipartisanship issue, which is a necessary condition to achieve success in the referendum, Labor in government has put 25 of those 44 referendums, and of those 25 it only got bipartisanship support once, and that was the only referendum Labor has ever won. So, if we ask why 24 out of 25 failed, the very simple conclusion is that the opposition rejected them. There is a simple lesson here: if the opposition does not support this referendum it will almost certainly fail. It is a necessary condition, in my view.¹³

- 4.17 Mayor Tony McGrady, of Mount Isa Council, made the case for seizing this opportunity:

when you have local government right across the Commonwealth all fighting for the yes case and when you hopefully have the major political parties on side, this is the time to have the referendum.¹⁴

Correcting uncertainty

- 4.18 Many witnesses emphasised the strength of a referendum proposal that is focussed on correcting a problem highlighted by the High Court. Chapter 2 deals with uncertainty as a constitutional issue, but in respect of campaigning for a referendum, correcting the uncertainty created by *Pape* and *Williams* is a simple and compelling case to put to voters. Professor George Williams pointed out the similarities between the situation surrounding the current proposal and the referendum put – and passed – in 1946:

A year or so before [the 1946 referendum] the High Court found that the Commonwealth was not able to directly fund a pharmaceutical benefits scheme. The Labor government, led by Chifley, went to the people, supported by Menzies, to say that we needed this High Court problem fixed because the Commonwealth needed to be able to directly fund these types of schemes. The status quo needed to be restored so that the sort of

12 Dissenting Report, *Preliminary Report of the Joint Select Committee on Constitutional Recognition of Local Government*, January 2013, p. 19.

13 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 11.

14 Mayor Tony McGrady, Mount Isa Council, *Proof Committee Hansard*, 20 February 2013, p. 13.

schemes people supported could continue. The people voted ‘yes’ to that particular scheme. It went to the people with the clear support of both sides of politics. It is an example, and the only clear example of this kind, where Australians said, ‘We are prepared to vote yes to restore programs that we value...’¹⁵

- 4.19 The frequently invoked conservative character of Australian voters on constitutional matters supports the notion that a corrective referendum will have the greatest chance of success. As Professor Williams further pointed out, there is a danger in delaying a referendum that emphasises uncertainty, as voters will rightly ask why an urgent problem was not dealt with expediently:

if you really want to run this as fixing a problem, if it is left too long the urgency and rationale for it dissipates. Even though this has been left dreadfully late and for a long period of time—and in fact this committee is months past when it should have been running—I think it is going to be much harder to say we need to fix this, because people and opponents will rightly say that it cannot be that big a problem because it has been left for so long.¹⁶

- 4.20 As time goes by, the urgency gives way to the increasing possibility that the High Court resolves the uncertainty by ruling against the direct funding of local government. This issue is at stake now, and should be dealt with as soon as possible.

Momentum for change

- 4.21 Representatives of individual local governments showed great enthusiasm for campaigning for the referendum, and repeatedly referred to the strengths of 2013. They also demonstrated that they are ready to build support and momentum in their communities:

This year we will have 18 open consultation meetings with the public. When as mayor I am out doing public functions, I am selling it and telling people that that is what we need to do to ensure that, if we have a referendum, we have their support to guarantee that local government is recognised as a third tier and to guarantee some funding through Roads to Recovery, as an

15 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 11.

16 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 12.

example. It seems to be gathering a bit of momentum within our community.¹⁷

With strong local leadership at the mayoral and councillor level, the community will get behind the council straightaway, particularly if we use the sorts of techniques Cootamundra have been using and provide clear examples of the direct impact on day-to-day lives that federal funding has for the quality of life for people in the LGA. Using social media, the campaign would swing into gear very quickly and the community would understand that. It is a highly informed community and the pressure, to be frank, would be on the state and, to a lesser extent, the federal member to choose whether to embrace the council taking the lead on the recognition issue and whether they wanted to run counter to that—which would be a risk in itself. I think there is enough time and enough will and that it is way too important for us not to proceed with a referendum.¹⁸

- 4.22 Mayor Peter Besseling, of the Port Macquarie-Hastings Council, suggested that, if Parliamentary approval for a referendum is secured, local government will be able to build support throughout Australia, in a matter of months:

I think if we have a parliament that has the will to do this, we should move straightaway. Obviously, the committee is going to have a large say in whether the parliament has the will to do that or not.

I agree that the timing is not too much of a problem, particularly with modern communications. It is a difficult thing to get parliament to agree to something, but I think the word ‘momentum’ was mentioned earlier. I think we can build on that momentum. Where there is a will there is a way. Once it gets through parliament, we can move that through fairly quickly, so seven months would give enough time for it to be done at the next federal election.¹⁹

- 4.23 Mayor Tim Laurence, of Darebin City Council, stated that his council will campaign in a 2013 referendum, even if it is opposed by the Victorian Government:

17 Mayor Doug Phillips, Cootamundra Shire Council, *Proof Committee Hansard*, 20 February 2013, p. 8.

18 Mr Andrew Crankanthorp, City of Wagga Wagga, *Proof Committee Hansard*, 20 February 2013, p. 10.

19 Mayor Peter Besseling, Port Macquarie-Hastings Council, *Proof Committee Hansard*, 20 February 2013, p. 10.

Yes, absolutely, because this is about delivering real services to real people, not about the power or jurisdictions of three levels of government....

If your voice is credible and your message is talking about real things, you can beat larger people if the community feel the larger people are simply defending their power patches.²⁰

- 4.24 Mayor Laurence further emphasised the power of local government to lead and convince Australian voters to support the referendum, despite state government opposition:

the question is: does the collective voice or actions of councils counteract a negative message from a state government? I am involved in marketing so that comes down to dollars, credibility of the person making the message and the repetition of the message. It is a pretty simple equation. If the national parliament is united in delivering efficiency and having that conversation, then I think state government conversations might be seen just as power plays.²¹

- 4.25 As pointed out by Mr Greg McLean OAM, of the Australian Services Union (ASU), it is not only elected councillors who will campaign for the recognition of local government, demonstrated at a recent conference he attended:

I was there to talk about constitutional recognition of local government. I was highly surprised that when we went to panel discussions neither of my colleagues got any questions but the questions went on for about an hour or an hour and a half for me. Basically I was answering questions on local government constitutional recognition, because the women who are there were elected councillors, employees and others involved in local government and they were concerned about funding and programs and what was really taking place. That was an issue that had great concern to them. I was quite surprised about the amount of interest in it and I am quite surprised the amount of interest that is out there in local government land about constitutional recognition and the security of funding that that would provide.²²

20 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 24.

21 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 22.

22 Mr Greg McLean OAM, Australian Services Union, *Proof Committee Hansard*, 20 February 2013, p. 36.

The risks of delay

- 4.26 The Committee is encouraged that bipartisan support exists for financial recognition at a national political level. However, there is no guarantee about this situation persisting beyond the current Parliament. Cr Bell contrasted the existing bipartisan support with the 1988 referendum:

I went through this the last time as a councillor and there was not bipartisan support at the federal level. That is the most important thing, and I believe we have that until the end of this electoral term. No-one can promise me anything after that. I know the political background of some places, and I do not think you will get the same bipartisan support for a long, long time. If we lost this campaign, you say it will be another 30 years before you get another referendum up. If we do not take this opportunity now with bipartisan support, it is another 30 years before you will get bipartisan support.²³

- 4.27 Mr McLean of the ASU stated:

Insofar as dates and how it should proceed, we are firm supporter that it should be done as soon as possible. We would prefer it to be done at the time of the election held later this year simply because there is an urgency on it. While I have read that some have said that we might need to put it off another four years or another number of years, my concern is that the stars are maybe the best they will be aligned for a long, long time. ... We just do not know what is around the corner. So we would prefer to move on that as a matter of some priority.²⁴

- 4.28 Mr Ken Trethewey, of Cootamundra Shire Council stated:

If the ducks cannot be lined up, we would [support a delayed referendum], but then we would also question whether they will be lined up next time around? If there is a rationale for the opposition, then the rationale does not really change.²⁵

23 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

24 Mr Greg McLean OAM, Australian Services Union, *Proof Committee Hansard*, 20 February 2013, p. 36.

25 Mr Ken Trethewey, Cootamundra Shire Council, *Proof Committee Hansard*, 20 February 2013, p. 9.

4.29 Mayor Tim Laurence emphasised the important link between the Commonwealth Government committing to holding the referendum and continuing to support local government:

Since 1974 the communities we are servicing have changed dramatically, and the services we are giving have changed. I just do not see how it would be in the federal government's interest to delay any longer. I have mentioned only roads and age care, but there are many other issues, a whole series of social issues that the community wants us to act on regarding homelessness, drugs and alcohol. Local governments are in a position to assist the federal government in enacting programs in those areas.

I think delay is very dangerous, especially when public cynicism about government increases.²⁶

4.30 Mr Andrew Crankanthorp, of the City of Wagga Wagga, put the case very simply and convincingly: 'I think there is enough time and enough will and that *it is way too important for us not to proceed with a referendum.*'²⁷

Major finding

4.31 Based on the evidence to the inquiry:

- n there is a strong case for recognition;
- n lessons from the history of referenda support a 2013 referendum;
- n the prospects for success are good, due to existing bipartisan support at the federal level and the readiness of ALGA and local governments to campaign in support of change;
- n the prospects for success will rely on the strong commitment and campaigning by ALGA and its member bodies; and
- n the prospects for success will be greatly improved by the support of state governments.

26 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 21.

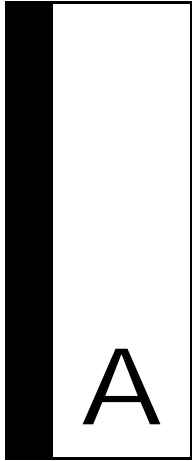
27 Mr Andrew Crankanthorp, City of Wagga Wagga, *Proof Committee Hansard*, 20 February 2013, p. 10.

Recommendation

Taking the major finding into consideration, the Committee recommends that a referendum on the financial recognition of local government be put to Australian voters at the 2013 federal election.

Michelle Rowland MP

Chair



Appendix A – Submissions

- 01 Local Government Association Tasmania
- 02 District Council of Robe
- 03 District Council of Grant
- 04 Port Augusta City Council
- 05 Cootamundra Shire Council
 - 05.1 Cootamundra Shire Council
- 06 Serpentine Jarrahdale Shire
- 07 The Flinders Ranges Council
- 08 Sunshine Coast Regional Council
- 09 Cairns Regional Council
- 10 District Council of Yorke Peninsula
- 11 City of Victor Harbor
- 12 City of Norwood Payneham & St Peters
- 13 City of Burnside
- 14 City of Mount Gambier
- 15 Central Goldfields Shire Council
- 16 City of West Torrens
- 17 City of Prospect
- 18 District Council of Barunga West
- 19 Western Downs Regional Council
- 20 Shire of Derby/West Kimberley
- 21 District Council of Yankalilla
- 22 District Council of Franklin Harbour
- 23 Berri Barmera Council

- 24 The City of Unley
- 25 District Council of Coober Pedy
- 26 The Barossa Council
- 27 The Shire of Donnybrook Balingup
- 28 District Council of Loxton Waikerie
- 29 Kingborough Council
- 30 Logan City Council
- 31 Etheridge Shire Council
- 32 The Whyalla City Council
- 33 The Rural City of Murray Bridge
- 34 Moreland City Council
- 35 Renmark Paringa Council
- 36 Lachlan Shire Council
- 37 District Council of Karoonda East Murray
- 38 City of Adelaide
- 39 Kingston District Council
- 40 City of Onkaparinga
- 41 Wujal Wujal Aboriginal Shire Council
- 42 City of Port Adelaide Enfield
- 43 Hawkesbury City Council
- 44 Tatiara District Council
- 45 South Gippsland Shire Council
- 46 Mornington Peninsula Shire Council
- 47 Broken Hill City Council
- 48 Mr Les Mallett
- 49 Ararat Rural City Council
- 50 Port Macquarie-Hastings Council
- 51 Queanbeyan City Council
- 52 Diamantina Shire Council
- 53 Glenelg Shire
- 54 Manly Council
- 55 Marrickville Council
- 56 Wollondilly Shire Council
- 57 District Council of Mount Remarkable

-
- 58 Ms Sylvia Lee
 - 59 District Council of Lower Eyre Peninsula
 - 60 Mid Murray Council
 - 61 Carrathool Shire Council
 - 62 Ku-ring-gai Council
 - 63 Gilbert + Tobin Centre of Public Law
 - 64 City of Palmerston
 - 65 Mackay Regional Council
 - 66 Ballina Shire Council
 - 67 Bundaberg Regional Council
 - 68 Tablelands Regional Council
 - 69 Nambucca Shire Council
 - 70 Gold Coast City Council
 - 71 Lockhart Shire Council
 - 72 District Council of Mount Barker
 - 73 Moreton Bay Regional Council
 - 74 Hornsby Shire Council
 - 75 City of Wagga Wagga
 - 76 City of Mitcham
 - 77 City of Port Lincoln
 - 78 The District Council of Ceduna
 - 79 Mosman Council
 - 80 City of Darebin
 - 81 Shire of Nannup
 - 82 Goondiwindi Regional Council
 - 83 Campbelltown City Council
 - 84 Murray Shire Council
 - 85 Liverpool Plains Shire Council
 - 86 Swan Hill Rural City Council
 - 87 Gundagai Shire Council
 - 88 Gosford City Council
 - 89 Australian Local Government Association
 - 89.1 Australian Local Government Association
 - 89.2 Australian Local Government Association

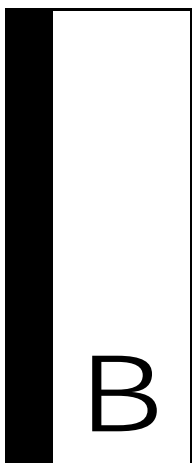
- 89.3 Australian Local Government Association
- 90 Local Government Association of Queensland
 - 91 Burnie City Council
 - 92 Alexandrina Council
 - 93 City of Salisbury
 - 94 City of Marion
 - 95 City of Perth
 - 96 City of Greater Geelong
 - 97 Cassowary Coast Regional Council
 - 98 East Gippsland Shire Council
 - 99 Longreach Regional Council
 - 100 Banyule City Council
 - 101 Lane Cove Council
 - 102 Burdekin Shire Council
 - 103 Prof Anne Twomey
 - 104 Blacktown City Council
 - 105 North Burnett Regional Council
 - 106 Yarriambiack Shire Council
 - 107 Nillumbik Shire Council
 - 108 Corowa Shire
 - 109 Shoalhaven City Council
 - 110 Wellington Shire Council
 - 111 Horsham Rural City Council
 - 112 Albury City Council
 - 113 Greater Taree City Council
 - 114 City of Monash
 - 115 City of Rockingham
 - 116 Temora Shire Council
 - 117 Fraser Coast Regional Council
 - 118 City of Boroondara
 - 119 Sutherland Shire Council
 - 120 Shire of Wagin
 - 121 Light Regional Council
 - 122 Warrumbungle Shire Council

-
- 123 Brimbank City Council
 - 124 City of Greater Bendigo
 - 125 Naracoorte Lucindale Council
 - 126 City of Whittlesea
 - 127 Redland City Council
 - 128 Banana Shire Council
 - 129 Australian Electoral Commission
 - 129.1 Australian Electoral Commission
 - 129.2 Australian Electoral Commission
 - 130 Law Council of Australia
 - 131 Premier of Western Australia
 - 132 Cr Alfred Walker
 - 133 City of Kwinana
 - 134 Shire of Irwin
 - 135 Kempsey Shire Council
 - 136 Penrith City Council
 - 137 Brisbane City Council
 - 138 Adelaide Hills Council
 - 139 Local Government Association of NSW and Shires Association of NSW
 - 140 Charters Towers Regional Council
 - 141 Local Government Association of South Australia
 - 142 Byron Shire Council
 - 143 Townsville City Council
 - 144 Dr Asmi Wood
 - 145 Professor AJ Brown
 - 146 Mr Fergus Thomson
 - 147 Leeton Shire Council
 - 148 Manningham City Council
 - 149 Whitehorse Ratepayers and Residents Association
 - 150 Benalla Rural City
 - 151 Mr Kelvin Granger
 - 152 Annunziata Vella and Saviour Vella
 - 153 Dr Ian Tiley

- 154 Narrandera Shire Council
- 155 Auburn City Council
- 156 Hobsons Bay City Council
- 157 Upper Lachlan Shire Council
- 158 Meander Valley Council
- 159 Central Highlands Regional Council
- 160 Local Government Association of the Northern Territory
- 161 Greater Shepparton City Council
- 162 Walcha Council
- 163 Wentworth Shire Council
- 164 Shire of Broome
- 165 Lithgow City Council
- 166 City of Bayswater
- 167 Victorian Government
- 168 Strathfield Council
- 169 Namoi Councils
- 170 Shire of Halls Creek
- 171 Mr Zachary Casper
- 172 Southern Downs Regional Council
- 173 Tamworth Regional Council
- 174 ACT Government
- 175 Ms Maryrose Portelli
- 176 Maroondah City Council
- 177 Tweed Shire Council
- 178 Mr Tony Fennell
- 179 Dr Gabrielle Appleby
- 180 Tenterfield Shire Council
- 181 Ms Jean Shew
- 182 Vic Sturgeon
- 183 Ms Carol Prendergast
- 184 Mr Garry Moon
- 185 Mr Paul Rumpf
- 186 Ms Helen Dodds
- 187 Mr Kent Mathews

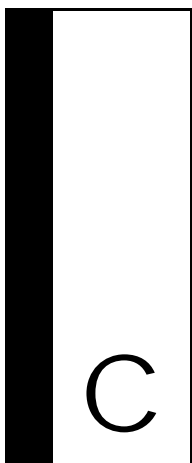
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- 188 Bankstown City Council
- 189 Artley Pickup
- 190 Mr Gary Oraniuk
- 191 Ms Bev Pattenden
- 192 Mr Stephen Boothby
- 193 Mr Adrian Hicks
- 194 Department of Regional Australia, Local Government, Arts and Sport and Attorney-General's Department
- 194.1 Department of Regional Australia, Local Government, Arts and Sport
- 195 Maribyrnong City Council
- 196 Ms Robyn Creighton
- 197 Lake Macquarie City Council
- 198 Ms Wendy Bitans
- 199 Whitehorse City Council
- 200 Mr Alan Manson
- 201 Mr John Doecke
- 202 Miss Mandy Crerar
- 203 Mr Ross Herman
- 204 Mr John Rowe
- 205 Australian Services Union
- 206 Gladstone Regional Council
- 207 Mr Peter Britt
- 208 Shire of Dalwallinu
- 209 Mr Simon Shields
- 210 Mr Anthony Moore
- 211 City of Sydney Council
- 212 Mr Ken Fraser
- 213 Warringah Council
- 214 Knox City Council
- 215 Mr Joe Cotroneo
- 216 Ms Kathleen Patterson
- 217 Mr David Sparrius
- 218 Confidential

- 219 Mr Andrew McGlashan
- 220 Victorian Local Governance Association
- 221 Ms Julie Head
- 222 Ms Sonya Doecke
- 223 Mr Mohsen Ibrahim
- 224 Mr Ivan Saxton
- 225 Ms Marg Smyrnis
- 226 Mr Arnold Pfitzner
- 227 Mr Don Auchterlonie
- 228 Mr Ken Grundy
- 229 South Burnett Regional Council
- 230 Mr Bob Bissett
- 231 Hunter's Hill Council
- 232 Junee Shire Council
- 233 Northern Territory Government
- 234 Toowoomba Regional Council
- 235 Willoughby City Council
- 236 Greater Dandenong
- 237 Cowra Shire Council
- 238 City of Moonee Valley
- 239 Urana Shire Council
- 240 Lismore City Council
- 241 Singleton Council
- 242 The Foundation for National Renewal
- 243 West Wimmera Shire Council
- 244 Les Lobsey
- 245 City of Stonnington
- 246 South Australian Government
- 247 Town of Walkerville
- 248 Cr Milton Dick
- 249 Queensland Government
- 250 Glen Innes Severn Council
- 251 City of Playford
- 252 City of Melton



Appendix B – Exhibits

- 1 Australian Local Government Association
Letter re: Advice on legislative fix
- 2 Australian Local Government Association
Advice re Pape v Commissioner of Taxation and Direct Federal Funding of Local Government
- 3 Australian Local Government Association
Letter re: advice Commonwealth of Australia and Direct Funding of Local Governemnt
- 4 Australian Local Government Association
Draft Bill prepared for ALGA



Appendix C – Hearings and witnesses

Wednesday 16 January 2013 – Sydney

Public hearing

Individuals

Prof Anne Twomey
Prof George Williams
Prof Alexander Jonathan Brown

Attorney-General's Department

Mr James Faulkner, General Counsel (Constitutional), Office of
Constitutional Law
Mr Jeff Murphy, Principal Legal Officer, Office of Constitutional Law

Australian Electoral Commission

Ms Marie Neilson, Assistant Commissioner Elections
Ms Gabrielle Paten, Director Electoral Policy and Reform
Mr Tom Rogers, Deputy Commissioner

Australian Local Government Association

Mr Adrian Beresford-Wylie, Chief Executive
Mayor Troy Pickard, Vice President
Mr John Pritchard, Executive Director, Policy and Research
Cr Keith Rhoades, Vice President

Department of Premier and Cabinet, South Australian Government

Mr Mick Petrovski, Director, Office for State/Local Government Relations

Department of Regional Australia, Local Government, Arts and Sport

Mrs Robyn Fleming, First Assistant Secretary, Local Government,
Territories and Regional Programs

Dr Matasha McConchie, Assistant Secretary, Local Government and Territories

Law Council of Australia

Ms Maureen Peatman, Chair of Legal Practice Section

Local Government Association of Queensland

Cr Margaret De Wit, President

Mr Craig Johnstone, Media Executive

Local Government Association of South Australia

Mr Chris Russell, Acting Chief Executive Officer,

The Hon John Trainer, Vice-President

Victorian Local Governance Association

Mr Toby Archer, Director, Policy

Ms Maree McPherson, Chief Executive Officer

Wednesday 20 February 2013 – Sydney

Public hearing

Individuals

Mr Ronald Williams

Attorney-General's Department

Mr James Faulkner, SC, General Counsel (Constitutional), Office of Constitutional Law

Australian Electoral Commission

Ms Marie Neilson, Assistant Commissioner Elections

Ms Gabrielle Paten, Acting State Manager, New South Wales

Mr Tom Rogers, Deputy Commissioner

Australian Local Government Association

Mr Adrian Beresford-Wylie, Chief Executive

Mayor Felicity-ann Lewis, President

Mayor Troy Pickard, Vice-President

Cr Keith Rhoades, Vice-President

Australian Services Union

Mr Greg, McLean OAM, Assistant National Secretary

Central Highlands Regional Council

Cr Paul Bell, Councillor

City of Darebin

Mr Rasiah Dev, Chief Executive Officer

Cr Tim Laurence, Mayor

City of Wagga Wagga

Mr Andrew Crakanthorp, Director Planning

Mr Craig Richardson, Director Corporate Services

Cootamundra Shire Council

Cr Douglas Phillips, Mayor

Mr Ken Trethewey, General Manager

Department of Regional Australia, Local Government, Arts and Sport

Mrs Robyn Fleming, First Assistant Secretary, Local Government, Territories and Regional Programs

Dr Matasha McConchie, Assistant Secretary, Local Government and Territories

Kingborough Council

Dr Graham Bury, Mayor

Longreach Regional Council

Cr Joe Owens, Mayor

Mr Mark Watt, Chief Executive Officer

Mid Murray Council

Cr David Burgess, Mayor

Moreton Bay Regional Council

Mr Daryl Hitzman, Chief Executive Officer

Mount Isa City Council

Hon Tony McGrady, Mayor

Naracoorte Lucindale Council

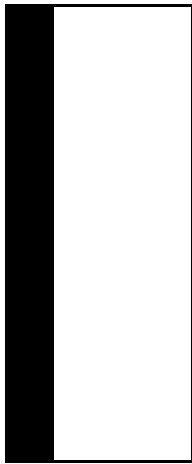
Cr Erika Vickery, Mayor

Port Macquarie-Hastings Council

Cr Peter Besseling, Mayor

United Services Union

Mr Paul Reid, Training Officer



Dissenting report – Senator David Bushby, Senator David Fawcett and Mr Steve Irons MP

Introduction

The Government has demonstrated an extraordinary lack of action to put in place the pre-conditions for success highlighted by the Export Panel and other stakeholders, such as the Australian Local Government Association (ALGA).

As a direct consequence, the time remaining between now and 14 September 2013 is likely to be insufficient to put in place the necessary mechanics, education campaigns and other measures highlighted by expert witnesses as necessary to ensure an informed outcome for the referendum question. Coalition members are of the opinion that the referendum should only be considered once the pre-conditions identified by the Expert Panel have actually been met.

The Coalition acknowledges the constitutional uncertainty recent High Court cases have created with respect to direct funding of local government programs by the Commonwealth.

The Coalition is committed to restoring funding certainty to local government programs and has indicated support for the appropriate limited financial recognition of local government in the Australian Constitution as a way to achieve this.

Coalition members of the Committee also note the evidence received by the Committee highlighting that program-specific funding (which is currently

provided directly to local government) may still be provided (in full) via existing avenues that are constitutionally valid.

Coalition members consider that the existence of valid, alternative funding pathways to address the funding uncertainty introduced by the recent High Court cases reduces the imperative to pursue constitutional change in the face of the fact pre-conditions for success highlighted by the Export Panel and other stakeholders such as ALGA have not yet been met.

The Coalition members are mindful of the Committee TOR which called for an assessment of the “likelihood of success” of a referendum. They remain of the view that the recommendation of the main report to proceed with a 2013 referendum, despite the pre-conditions for success not being established, places at risk many millions of tax-payer dollars.

This risk, together with the risk of lack of informed and positive public engagement with the issue, appear to be unnecessary given the alternate pathways to ensure ongoing local government program funding should the direct model, in fact, be successfully challenged in the courts prior to the referendum question being put.

Lack of Action by the Government

Coalition support for action to address funding issues through constitutional change has been provided subject to consideration of the specific change to be proposed by the Government and to that change being limited to removing the question of constitutional validity in relation to direct Commonwealth funding of local government. Similarly, it was offered in the expectation that the Government would approach the consideration of any such referendum question on the basis that all practical and reasonable steps were taken to ensure the Australian population made its decision on a fully informed basis.

The Government formed the Expert Panel on Constitutional Recognition of Local Government (‘the Expert Panel’) to identify options for the constitutional recognition of local government and to report on the level of support for such recognition among stakeholders and in the general community.

The Expert Panel's final report stated that:

The majority of panel members support a referendum in 2013 subject to two conditions: first, that the Commonwealth negotiate with the States to achieve their support for the financial recognition option; and second, that the Commonwealth adopt steps suggested by ALGA necessary to achieve informed and positive public engagement with the issue, as set out in the section of this report on the concerns about a failed referendum (see page 16). Steps include allocating substantial resources to a major public awareness campaign and making changes to the referendum process¹.

As such, the Expert Panel was supportive of a 2013 referendum on financial recognition of local government, through a change to S.96 of the Constitution, provided two conditions were met. The first condition was negotiation with the states to achieve their support for the Government's proposed question and, the second, to take steps as recommended by ALGA to achieve informed and positive public engagement with the issue.

The Expert Panel's final report was delivered in December of 2011, almost two years prior to the latest possible date for the next Federal election. As at that date, the Government had plenty of time to ensure it took the blueprint for a referendum on financial recognition of local government, as provided by the Expert Panel, put it in place and proceed to put the question to a voting public equipped with the benefit of a full public education campaign on the issues.

As noted in the majority decision *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 learned from the history of constitutional referenda* ("the Final Report"), we now have the benefit of a nominated election date; 14 September 2013.

This date is some 10 weeks earlier than the latest possible date the election could have been held.

¹ Expert Panel on Constitutional Recognition of Local Government, Final Report, December 2011, p.2

At the first hearing of this Committee, reservations were expressed by ALGA with regard to timing, were a referendum to be held in conjunction with the 2013 general election. They noted that they did not consider the question should be put to the people before a number of pre-conditions had been met.

These pre-conditions reflected the conditions recommended by the Expert Panel in their report.

Coalition members note the supplementary submission by ALGA, received after the second hearing, in which ALGA indicate they will actively support a 2013 referendum, but accept wholly the argument put by ALGA in earlier evidence of the advisability of first meeting their stated pre-conditions.

As at the date of the first hearing in mid-January 2013, evidence was received that even given the latest possible date for an election, being late November 2013, the prospect of meeting those pre-conditions in time to hold the referendum at the same time as the election were not high.

Given the nominated date for the election and the time that has since elapsed, the prospects of those pre-conditions being fully met by 14 September of this year, has only reduced.

As such, the prospect of a referendum held in conjunction with this year's Federal election raises serious risks that it would be held in an environment where potential consensus of stakeholders (including the states) has not been met and where the opportunity to fully inform the voting public through public education and other avenues has not been fully realised.

Lack of engagement with the states

Coalition members of the Committee are strongly of the view that the meeting of both of the Expert Panel's conditions are vital before any referendum on this issue be put to the people.

Australia is a Federation of states and, as the evidence attests, the support of state governments can make or break referenda. If State governments are largely opposed to change, history proves it is very difficult for referenda to pass.

In the view of Coalition members, the recommendation by the Expert Panel that the Government negotiate to achieve the states' support for financial recognition, is an essential precursor to the Committee being able to make a recommendation on the likelihood of the referendum being supported by the Australian people. This view was reinforced by a number of witnesses that for the referendum to be successful, States either had to actively support the measure or at least "run dead" on the issue.

Evidence received by the Committee suggested that the Government position was that negotiation could not occur with the States until a proposal was developed. Coalition members of the Committee reject this position and consider that the Government has failed to make best use of the time since December 2011 by failing to undertake such negotiations and that this delay has potentially undermined the prospect of a full and informed referendum proposition being put in 2013.

In any event, the Expert Panel put forward a proposed set of words in its Final Report in December 2011 and this could and should have formed a starting point for such negotiations at that time. ALGA further refined those words in an attempt to allay concerns voiced by some states. Yet the Government again failed to use the refined words as a starting point.

We are now around 6 months from the nominated date for the election, yet the Government continues to fail to expeditiously take action open to it, to meet either of the two conditions recommended by the Expert Panel.

This observation is made by Coalition members of the Committee, despite our acknowledgment that the Committee was informed at the second hearing (20 February 2013) that the Minister had written to each of the state and territory governments requesting their views on the referendum question (as recommended in the majority finding of this Committee's preliminary report).

The Committee's Preliminary Report was tabled on 24 January of this year. Evidence received at the second hearing stated the Minister did not write to state

and territory governments until sometime around mid-February, around three weeks later, with a request for responses by 4 March 2013.

Given the importance the Expert Panel and all members of this Committee have placed upon the need to understand the views of the states (and in respect to prospects of success, to negotiate for their support), this delay, on top of the prior delays, is inexplicable.

The Minister would have known, at least on 30 January 2013, of the nominated day for the election. The task of seeking views of state and territory governments is not onerous, nor highly politically contentious. The three week delay in getting these letters out, in the face of such short timelines and the work needed to be done to conduct a meaningful referendum, raises questions about the Government's commitment to meeting the pre-conditions set by the Expert Panel (and ALGA).

If the Government proceeds to hold the referendum together with the 2013 election, it would be open for one to conclude that it is setting the question up to fail.

Coalition members recommended in their Dissenting Report to the Preliminary Report that the Minister immediately initiate negotiations with the states and that the Minister must conclude those negotiations prior to the publishing of the final report of this Committee. Unfortunately, the lackadaisical approach by the Minister has the consequence that the final recommendations contained in the majority report have been made without the benefit of knowledge of the position of the States.

In the view of Coalition members, it is not possible to draw any meaningful conclusions regarding the prospect of success of the referendum in the absence of firm knowledge of the position of each of the States on the proposed question.

Despite the inexplicable delays by the Minister in seeking to meaningfully engage with the states on this issue, State governments are known to have made previous statements and comments (including in submissions to this inquiry) that are, to some degree, indicative of their thoughts on the referendum question.

Despite broad acceptance by states of the principle of recognition to clarify the Commonwealth/local government financial status, known comments by all states include (at least to some extent) qualifications based on concerns regarding the potential impact of constitutional change. In some states, this has manifested as a reluctance to absolutely commit pending engagement on the actual question and, in others, a stronger rejection unless all concerns can be addressed.

Their concerns seem mostly to relate to the potential impact of proposed constitutional change on state governments' relationships with local governments. For example, one state who forwarded correspondence that was not able, due to timing, to be accepted as a submission, was concerned that the proposed amendment might later be found by the High Court to give rise to an implied constitutional obligation on the states to maintain particular systems of local government.

Evidence received (particularly by constitutional experts at the first hearing) suggested that such concerns may hold some basis.

If the concerns of some state governments *are* justified, the acceptance of the proposed constitutional change could have an impact that extended further than intended.

This would be of concern to Coalition members. As mentioned, the Coalition's support of appropriate financial recognition of local government in the Australian Constitution is limited to removing the question of constitutional validity in relation to direct Commonwealth funding of local government.

No Coalition undertaking has been provided to support change that extends (directly or indirectly) any further than this and, from the perspective of the Coalition members of this Committee, change that extended further would fundamentally impact the likelihood of their support for that change.

The abject failure of the Government to implement detailed engagement with all the states and territories to address and negotiate through any concerns they may hold, makes it very difficult for Coalition members to properly and thoroughly assess any unintended impact of the proposed change.

Lack of informed and positive public engagement

Coalition members of the Committee remain strongly supportive of the Expert Panel's second condition and consider that decisions made by Australians in relation to potential changes to the Constitution should always be made on as fully informed a basis as possible.

Where a proposed change is worthy of support, a well informed public will be more likely to support it and, if a proposed change has potential pitfalls, a well informed public will be more likely to identify those problems and vote accordingly.

Past experience in referenda in this country has clearly proven that Australians tend to vote 'no' if they do not fully understand the issues behind the question.

As noted in our earlier Dissenting Report, the desirability of the public being well informed regarding potential Constitutional change is even more important given that all Australian citizens are required to vote in a referendum. As such, it is not just those who have taken an active interest in the question, but those who are notably disinterested, who are required to make the decision.

Coalition members therefore continue to consider that prior to a change to the Constitution being put to the people, Parliament should take all reasonable steps to maximise the likelihood that all voting Australians understand the question and have an opportunity to thoroughly consider the 'yes' and 'no' arguments before making their decision.

The Constitutional experts who appeared at the hearing provided support for the conclusion that inaction by the Government has amplified risks (although their consequent conclusions differed). For example, Professor Williams stated at the hearing in mid-January:

But it is a risky course-I certainly agree with that-and not the most desirable course either. The most desirable course would be that by this point, more work would have been done over the past months to actually build the level of public recognition, to get the support on board. It is dreadfully late and that itself is a major problem.²

² Committee Hansard, 16 January 2013, p12

Some seven weeks later, with a little over six months left before the nominated election date, little work has been done to address what Professor Williams described as a ‘major problem’.

And Professor Brown:

Mrs Prentice: I just want to go further with AJ on the need to run a hard campaign soon and who should be running it. How long do you think we need? Do we need 18 months?

Prof. Brown: That is a very good question, and I think the answer is that you need more than six months.³

Again, the Government has yet to draw together the threads required to even commence the legislative program required to implement a referendum at this year’s election, nevertheless, commence the ‘hard campaign’. If the evidence suggests we need more than six months for the ‘hard campaign’, time has run out.

In our Dissenting Report to the Preliminary Report, Coalition members expressed sympathy with the concerns of stakeholders regarding the impact of the Government’s inaction on public understanding and, hence, timing of a referendum.

Coalition members of the Committee remain to be convinced that the time left between the date of this report and the latest possible election date is sufficient to be able to do the proposed constitutional change justice by ensuring a fully informed decision is made. The nomination of an election date, combined with the relative inaction by the Government since the Preliminary Report, serves only to reinforce the challenge.

The findings of the Expert Panel, evidence contained in submissions and also from some witnesses at the hearing, all highlighted that the processes that need to be followed in order for Australians to be in a position to fully and carefully consider a referendum question, take time to implement properly.

³ Committee Hansard, 16 January 2013, p16

Lack of action – impact on processes

In addition to concerns regarding the ‘hard campaigning’ on the issues pertaining to the referendum, the short timelines also now present challenges for the actual administration of the referendum.

Officers appearing before the Committee from various Departments and the Australian Electoral Commission (AEC), all indicated, as you would rightly expect, that they would work with whatever timeline the Government requested. But it was clear from their answers that this would come at a cost.

For example, the AEC made it clear that the guidelines for information–advertising campaigns they work under sets out a preferred campaign period of 27 weeks. This period would not start until the referendum mechanics legislation was in place. Given that there is around 27 weeks between the date of this report and the nominated election date, there is no prospect of those guidelines being met.

At the first hearing, the AEC stated that there would be consequences.

Senator BUSHBY: Absolutely. Presumably, the 27 weeks is worked out not just because it complies with the guidelines but also because it delivers the best outcomes, in your view?

Mr Rogers (AEC): That is correct. Again, part of what we need to do is also to market test. I think we have put in the submission that, if we are able to go through the process and do market testing, the quality of the advertising that we conduct is likely to have a better outcome. The more we truncate that process, the more likely it is that the quality of the campaign itself will suffer. That could—and I am only saying ‘could’—have an impact on something like formality, say, at the voting day itself. We are just conscious of that as we put forward that time frame.

Senator BUSHBY: So the further that it is truncated there is an increasing risk, presumably?

Mr Rogers: I think what we have said in the submission is that, like every other project, less notice means more cost and quality potentially goes down.

Senator BUSHBY: The South Australian representative earlier said that the Public Service will always deliver what they are told but sometimes it might come at a cost, and in this case that may well be higher actual cost in terms of dollars—

Mr Rogers: Correct.

Senator BUSHBY: but also an increase risk in terms of the impartiality and some of the other things that you discuss in your submission.

Mr Rogers: I certainly would not say the impartiality.

Senator BUSHBY: But I think in your submission you did mention impartiality in that you cannot test the impartiality of some of the material you are putting together to the extent that you would like.

Mr Rogers: Yes. ⁴

At the second hearing, the AEC was able to calculate timelines based on the nominated election date. They considered the risks remained:

Mr Rogers: Since our last appearance before the committee, the Prime Minister has indicated that she intends to seek the Governor-General's approval to issue writs on 12 August for a polling day on 14 September. That is well known. On the assumption that the referendum is conducted on the same day, the timetable we set for complementing activities has taken on more certainty. It still remains possible for the two events to be held together on 14 September. The AEC's earlier submission provided some detail of the risks to the quality of the voter information campaign that were also canvassed at the last public hearing. They remain live risks. ⁵

And

Mr Rogers: ... Again, if we had less time we could still conduct the campaign, but there are the risks associated with that that I have outlined previously ⁶.

Rushing these processes has amounted to cutting corners and increases the likelihood of outcomes that do not accurately reflect those that would be experienced if the processes had been fully rolled out as recommended.

⁴ Committee Hansard, 16 January 2013, p51

⁵ Committee Hansard, 20 February 2013, p44

⁶ Committee Hansard, 20 February 2013, p49

Conclusion

Coalition members noted that the Chair's Preliminary Report recommended action be taken immediately to put in place the necessary steps to hold the referendum in conjunction with the 2013 Federal election.

We held concerns that the time was insufficient but remained open to the prospect that such immediate action may address those concerns. However, it is clear that such urgent and immediate action has not occurred and seven weeks has passed with little if any progress.

Coalition members are now of the opinion that the time remaining between now and the nominated election date of 14 September 2013 is insufficient to put in place all the necessary mechanics, formal, informal and partisan education campaigns and to otherwise ensure an informed outcome for the referendum question.

We acknowledge concerns regarding the impact of further High Court cases that may impact on the constitutionality of direct payments to local governments by the Commonwealth and that delays in granting constitutional financial recognition may come at a cost to the many valuable services provided at a local government level.

As noted, the Committee received constitutional evidence that clearly demonstrates that avenues exist for funding currently provided directly to local government, to still be provided in full, even in the face of (potential) judicial findings that direct payments are not constitutional.

The most obvious avenue is through grants through the states, tied on the basis that they must be both passed on in full and subject to use for the programs currently funded (or as directed under future Commonwealth-local government programs).

Coalition members acknowledge that this is a less clean avenue than direct payment, but accept the evidence that options such as this are available and that, accordingly, there is likely to be no potential risk of loss of funding to local government, eventuating from further developments following the *Pape* and *Williams* cases.

As such, we consider there to be little financial risk to local government in delaying the holding of a referendum on financial recognition of local government in the Constitution, until such time as the conditions previously discussed have been met.

As such, **Coalition members of the Committee recommend that a referendum on the issue of financial recognition of local government only be held after the pre-conditions posed by the Expert Panel and those previously promoted by ALGA, have been met.**

Senator David Bushby

Senator David Fawcett

Mr Steve Irons MP



Additional comments – Mr Mark Coulton MP and Mrs Jane Prentice MP

The Coalition has committed to support the appropriate financial recognition of local government in the Australian Constitution.

There have been significant concerns as outlined in the Dissenting Report regarding the Federal Government's failure to adequately fund and plan the referendum in line with the preconditions set out by Australian Local Government Association (ALGA).

The Government formed the Expert Panel on Constitutional Recognition of Local Government ('the Expert Panel') to identify options for the constitutional recognition of local government and to report on the level of support for such recognition among stakeholders and in the general community.

The Expert Panel's final report stated that:

The majority of panel members support a referendum in 2013 subject to two conditions: first, that the Commonwealth negotiate with the States to achieve their support for the financial recognition option; and second, that the Commonwealth adopt steps suggested by ALGA necessary to achieve informed and positive public engagement with the issue, as set out in the section of this report on the concerns about a failed referendum (see page 16). Steps include allocating substantial resources to a major public awareness campaign and making changes to the referendum process¹.

¹ Expert Panel on Constitutional Recognition of Local Government, Final Report, December 2011, p.2

As such, the Expert Panel was supportive of a 2013 referendum on financial recognition of local government through a change to section 96 of the Constitution, provided two conditions were met. The first condition was negotiation with the States to achieve their support for the Government's proposed question and secondly, to take steps as recommended by ALGA to achieve informed and positive public engagement with the issue.

At the first hearing of this Committee, reservations were expressed by ALGA with regard to timing, were a referendum to be held in conjunction with the 2013 general election. They noted that they did not consider the question should be put to the people before a number of preconditions had been met. As of March, three of ALGA's preconditions have not been met, an extremely concerning fact considering the Federal Government has had over two years to deal with the issues. Two of these preconditions are laid out in the Coalition's first Dissenting Report.

The first precondition is the general support of the states. In the view of Coalition members, the recommendation by the Expert Panel that the Government negotiate to achieve the States' support for financial recognition, is an essential precursor to the Committee being able to make a recommendation on the likelihood of the referendum being supported by the Australian people. This view was reinforced by a number of witnesses who indicated that, for the referendum to be successful, States either had to actively support the measure or at least 'run dead' on the issue.

Evidence received by the Committee suggested that the Government position was that negotiation could not occur with the States until a proposal was developed. Coalition members of the Committee reject this position and consider that the Government has failed to make best use of the time since December 2011 by failing to undertake such negotiations and that this delay has potentially undermined the prospect of a full and informed referendum proposition being put in 2013.

As of 6 March it is lamentable that the Minister for Regional Australia, Regional Development and Local Government, the Hon Simon Crean MP, still cannot confirm the views of State support for a referendum.

The second precondition which has not been met is that a viable educational campaign be conducted by the Federal Government. The prospect of a referendum held in conjunction with this year's Federal election raises serious risks where the opportunity to fully inform the voting public through public education and other avenues has not been fully realised.

Where a proposed change is worthy of support, a well-informed public will be more likely to support it and, if a proposed change has potential pitfalls, a well-informed public will be more likely to identify those problems and vote accordingly.

Past experience in referenda in this country has clearly proven that Australians tend to vote 'no' if they do not fully understand the issues behind the question. As noted in our earlier Dissenting Report, the desirability of the public being well informed regarding potential Constitutional change is even more important given that all Australian citizens are required to vote in a referendum. As such, it is not just those who have taken an active interest in the question, but those who are notably disinterested, who are required to make the decision.

Parliament should take all reasonable steps to maximise the likelihood that all voting Australians understand the question and have an opportunity to thoroughly consider the 'yes' and 'no' arguments before making their decision.

The third precondition ignored in the final report by the Gillard Government is that ALGA still does not have any confirmation regarding funding levels to be provided by the Federal Government. The Federal Government needs to match contributions by ALGA to the campaign equivalent to the funding provided to the Indigenous Recognition Referendum.

On 20 February 2013, ALGA gave further evidence to the committee that they recommend we continue with a referendum for the next election. President Felicity-Ann Lewis reiterated that 'ALGA is committed to a referendum on financial recognition of local government in 2013, provided the successful conditions for a referendum have been met'.

As such, we as members of the Committee make two recommendations:

- 1. *That the Minister take immediate and urgent action to remedy the abovementioned outstanding issues; and***
- 2. *That a referendum on the financial recognition of Local Government be put to Australian voters at the 2013 federal election.***

Mr Mark Coulton MP

Mrs Jane Prentice MP