



Cootamundra Shire Council



ABN 47 475 920 639
Wallendoon Street
PO Box 420
Cootamundra NSW 2590
Phone 02 6940 2100
Fax 02 6940 2127
Email mail@cootamundra.nsw.gov.au
Web www.cootamundra.nsw.gov.au



REC-121126-KJT-093531.doc

Mr Glenn Worthington
Secretary
Joint Select Committee on the Constitutional Reform of Local Government
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Sir

RE: *Constitutional Recognition for Local Government*

Council has considered this matter on numerous occasions over the past five years and has over that time solidified its position as being in favour of a minimal variation to the Constitution by way of a simple amendment to Section 96 to allow direct funding from the Commonwealth to local government. That is, simply inserting 'and local government' after the word 'State' in Section 96.

Council is heartened that the Australian Government has agreed to hold a referendum with the next Federal election seeking changes to the Constitution to recognise local government.

Council also expressed the view that a referendum to recognise Aboriginal people as the first Australians in the Constitution is well overdue but understands the recent decision to postpone this issue.

Council is aware that whilst a positive response to both of these propositions seems self-evident and should be simple, it requires a majority of voters in a majority of states to vote yes, and a majority of the overall vote to be yes for any referendum to be successful.

Council is also very aware that Australian voters are extremely conservative and have rejected the inclusion of local government in the Constitution twice before, in 1974 and 1988. In 1974 this included changes to Section 96 to allow direct funding and in 1988 as a more general statement that local government should exist.

Council considers it unfortunate that those who oppose any referendum adopt the 'if you don't know vote no' attitude and this position has won the day in both previous attempts at constitutional recognition of local government.

With this in mind Council has been undertaking a gradually increasing education program to ensure its citizens understand the importance of local government to the community and the importance of a yes vote at the proposed referendum.

Ultimately Council believes the reason constitutional recognition is important is very simple; local government cannot continue to function at the present level without continued Commonwealth funding.

In 1975 the Commonwealth introduced the system of payments to Local Government known as Federal Assistance Grants (FAGs). In Cootamundra's case FAGs provide 16-17% of Councils total income. Unfortunately, these funds are required to be directed through state governments and cannot be forwarded direct to local government.

Council believes the FAGs system would be greatly simplified and the funds available more equitably distributed if these funds could be distributed directly from the Commonwealth to local government.

In 2001 the Australian Government introduced the Roads to Recovery Program (R2R) to allow the Commonwealth to directly fund local government road works. In Cootamundra's case the latest R2R round is providing \$329,113 per year from 2009/10 until 2013/14.

With these funds Council has already completed the widening of 6.7 kilometres of rural roads and will widen and reseal a further 4.0 kilometres of rural roads over the next two years. This year R2R funds are being used to reconstruct and seal a further 1.9 kilometres of town streets and reconstruct and widen two flood causeways. In the context of a small rural council such as Cootamundra this funding is vitally important and Council has factored these ongoing works into its workforce planning and 10 year forward plans.

Additionally, following the Global Financial Crisis in 2008 the Australian Government directly provided Cootamundra with \$693,000 in Regional and Local Community Infrastructure Program (RLCIP) funding, all of which was used to provide much needed community infrastructure and allowed Council to leverage private and community funding towards many of the projects undertaken.

This RLCIP funding allowed 18 separate projects to be completed. For example, a new main street toilet block, theatre seating for the local Arts Centre, air-conditioning and solar electrical and hot water systems for the Cootamundra Sports Stadium, sealing of a major sporting facility carpark and new lighting for the Cootamundra Australian Rules football ground. Again, without direct Commonwealth funding Council would not have been in a position to fund any of these projects in the foreseeable future.

Council was concerned when the legality of both R2R and RLCIP funding was challenged, albeit indirectly, in the High Court in 2009 in the case of Pape v Commissioner of Taxation (Pape) which found that the Commonwealth does not have power to directly fund local government and may only spend money where it has a specific power under the Constitution.

This concern was reinforced again by the recent decision of the High Court of Australia in Williams v Commonwealth 2011 (Williams). This decision added to Council's concern significantly when the Court reaffirmed its narrow view of the executive power of the Commonwealth under Section 61 of the Constitution, reiterating the decision in the Pape case by holding that all Commonwealth programs require legislation to be made within the powers of the Commonwealth as specified in the Constitution.

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 R2R and RLCIP may be declared technically invalid and forced to cease.

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.

Council believes that the changes to the Constitution being sought by local government are simply a mechanism to legalise the system which already exists and to ensure local government remains a viable part of the Australian three tiered governmental system.

Should you require further information or wish to discuss the matter please contact the undersigned on

Yours faithfully

Ken Trethewey
General Manager

26 November 2012