

**Civic Centre & Postal Address**

511 Burwood Hwy, Wantirna South VIC 3152

e [knoxcc@knox.vic.gov.au](mailto:knoxcc@knox.vic.gov.au) w [www.knox.vic.gov.au](http://www.knox.vic.gov.au)



15 February 2013

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

Enquiries to: Rhys Thomas

DW Doc No: 3778527

Submission Number: 214  
Date Received: 15/02/2013

**By email to [jsclg@aph.gov.au](mailto:jsclg@aph.gov.au)**

Dear Mr Worthington

**Constitutional Recognition of Local Government**

Thank you for the opportunity to make a submission to the Joint Select Committee on the Constitutional Recognition of Local Government.

In making a submission, let me first point out that Knox City Council supports the constitutional recognition of local government, particularly in relation to ensuring the Commonwealth's capacity to provide funding directly to local government and the acknowledgement of local government in the Constitution's preamble.

More specifically, on 27 April 2011, Council resolved:

That Council:

1. Declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support the referendum by 2013 to change the Constitution to achieve this recognition.
2. Endorse the Mayor signing the "Constitutional Declaration of Councils" at the 2011 Australian Local Government Association National Conference.
3. Write to the Prime Minister, the Leader of the Opposition and local Federal Members of Parliament advising of Council's support for constitutional recognition of local government.

The basis for this position is contained in the attached extract from the Minutes of Council's 27 April 2011 meeting, and is attached as part of this submission.

...../2

This attachment was also submitted by Council to the former Expert Panel on the Constitutional Recognition of Local Government in 2011. Since that time, the Expert Panel's final report identified a number of important pre-conditions which it felt were necessary for a successful referendum to succeed. These included the need for bipartisan support, the need for the Federal Government to negotiate directly with the state governments on the proposal for financial recognition of local government, the need for a publicly funded education campaign on the Constitution and the proposed change, and the need to reform Commonwealth laws to allow for the public funding of the 'Yes' case.

It is the view of the Australian Local Government Association that these preconditions have not yet been met, and there is no indication that they will be met in time to allow a successful referendum in conjunction with the Federal election set for 14 September 2013. Knox City Council shares this view, and urges that the Commonwealth Government continue to progress the cause of Constitutional Recognition of Local Government, but not proceed with a referendum until the pre-conditions above have been satisfied.

If you require any further information in relation to this submission, please contact Mr Rhys Thomas, Manager Governance on .

Yours sincerely

  
**Graeme Emonson**  
*Chief Executive Officer*

Attach



## 10.1 CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

**SUMMARY:**            *Manager – Governance (Rodney McKail)*

*This matter was deferred at the March 2011 Ordinary Meeting of Council until this meeting to enable sufficient time for Council to debate this important matter. This report seeks support from Council for a program developed by the Australian Local Government Association to seek recognition of local government within the Australian Constitution.*

### RECOMMENDATION

That Council

1. Declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support the referendum by 2013 to change the Constitution to achieve this recognition.
2. Endorse the Mayor signing the “Constitutional Declaration of Councils” at the 2011 Australian Local Government Association National Conference.
3. Write to the Prime Minister, the Leader of the Opposition and local Federal Members of Parliament advising of Council’s support for constitutional recognition of local government.

### 1. INTRODUCTION

For some years now, the Australian Local Government Association (ALGA) has been pursuing the recognition of local government in the Australian Constitution.

Historically, at the time of forming the Australian Constitution, local government was not prominent. Most State Governments have now recognised the system of local government in Australia.

ALGA has devoted considerable resources over the past three years to developing the case for constitutional reform. That need was highlighted by a decision of the High Court in *Pape v Federal Commissioner of Taxation* in 2009. In that case the High Court set out the limitations of the Australian Government’s powers and, in doing so, clearly indicated that the Australian Government does not have the power to fund local government directly under the current provisions of the Australian Constitution.

## Constitutional Recognition of Local Government (cont'd)

Following the 2010 Federal Election, Prime Minister Gillard committed to holding a dual referendum on the constitutional recognition of local government and the recognition of Indigenous Australians. It is anticipated that the referendum will mostly likely be held in conjunction with the 2013 Federal Election.

The ALGA are seeking support from all local government authorities to ensure:

1. The referendum is held in conjunction with the 2013 Federal Election.
2. That the type of recognition sought meets local government requirements.
3. There is a positive result in the referendum itself.

The ALGA are asking all Councils to pass a resolution in early 2011 endorsing the position that a referendum be held in 2013 to change the Constitution, in particular to allow direct funding of local government bodies by the Commonwealth Government and also to include local government in any new Preamble to the Constitution if one is proposed. The ALGA are proposing that a "Constitutional Declaration of Councils" be submitted for signature by Council representatives at the conclusion of the 2011 National General Assembly of Local Government on 22 June 2011. It is their objective that all Councils will be in a position to sign the declaration supporting financial recognition at that time.

As part of this campaign, it is also proposed by the ALGA that Councils write to the Prime Minister, the Leader of the Opposition and local Federal Members of Parliament advising of their support for recognition in this way.

## 2. DISCUSSION

There have been two previous attempts to recognise local government in the Australian Constitution through referendum – 1974 and 1988. Both attempts were unsuccessful – 47% to 53% against in 1974 and 34% to 66% against in 1988.

The case for recognition is:

- Local government is the level of government closest to the community and should be constitutionally recognised.
- Councils deliver the nation's priorities at the grassroots community level, caring for an ageing population, planning communities, supporting early childhood development, responding to environmental challenges and providing vital infrastructure to ensure the economy performs.

## 10.1 Constitutional Recognition of Local Government (cont'd)

- Concern that under the current arrangement there is some doubt or certainly limitations of the Australian Government's powers to fund local government directly for services that it provides.

The President of the Australian Local Government Association, Cr Genia McCaffery, has written to the Mayor seeking support by way of the resolution above. This will also enable the Mayor on attending the 2011 National General Assembly to sign the proposed constitutional declaration for Councils.

The ALGA in supporting changes to the Constitution have a clear preference for a pragmatic and simple change to the Constitution which would allow direct funding to continue. This approach would appear to be the most practical to garner the necessary public support.

The ALGA have now dedicated a website which provides support material for the community, Councils and Councillors in raising awareness of the issue of constitutional change and to help build the support necessary for a successful referendum. The website is [www.councilreferendum.com.au](http://www.councilreferendum.com.au). The website includes a range of materials such as the result of market research undertaken by the ALGA and a number of fact sheets which highlight the importance of local government to local communities.

### **3. CONSULTATION**

This matter has been in the public domain for a number of years now. In 2008, Council undertook consultation with the local community on the question of constitutional recognition of local government. This was done by way of a link on Council's web page. Various media releases were also published to inform the community of the consultation process.

There was little direct feedback received from the community at this time. Council subsequently supported the notion of the change at a Constitutional Summit that was held in Melbourne in 2008.

### **4. ENVIRONMENTAL/AMENITY ISSUES**

There are no direct environmental/amenity implications.

### **5. FINANCIAL & ECONOMIC IMPLICATIONS**

Constitutional recognition provides the opportunity for Councils across Australia to advocate to other levels of government for greater funding equity with a stronger voice.

### **6. SOCIAL IMPLICATIONS**

Constitutional recognition may strengthen Council's role in delivering the nation's priorities at the grass roots community level – caring for an ageing population, planning communities, supporting early childhood

development, responding to environmental challenges and providing vital infrastructure to ensure the economy performs.

**7. RELEVANCE TO COUNCIL PLAN**

The Council Plan contains objectives for Knox to advocate to other levels of government on issues of community concern and benefit. Knox City Council has a strong reputation for its capability in the advocacy role.

Constitutional recognition provides for local government to grow the opportunity for strengthening of its voice in advocacy.

**8. CONCLUSION**

Whilst previous attempts to achieve recognition of local government within the Australian Constitution have been unsuccessful the opportunity now presents itself to reconsider the proposal and support the ALGA and other Councils across Australia to support a push for a referendum to be undertaken in conjunction with the 2013 Federal Election.

**9. CONFIDENTIALITY**

There are no confidential issues associated with this report.

**COUNCIL RESOLUTION**

MOVED: CR. COOPER

SECONDED: CR. COSSARI

That Council

1. Declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support the referendum by 2013 to change the Constitution to achieve this recognition.
2. Endorse the Mayor signing the "Constitutional Declaration of Councils" at the 2011 Australian Local Government Association National Conference.
3. Write to the Prime Minister, the Leader of the Opposition and local Federal Members of Parliament advising of Council's support for constitutional recognition of local government.

10.1 Constitutional Recognition of Local Government (cont'd)

**PROCEDURAL MOTION**

MOVED: CR. VAN DE VREEDE

SECONDED: CR. COSSARI

That Council grant Councillor Pearce an extension of time to speak under Clause 47 of the Meeting Procedure and Use of Common Seal Local Law 2008.

CARRIED

A Division was called by Councillor Pearce

For the Motion: Councillor Van de Vreede, Councillor  
McMillan, Councillor Cossari,  
Councillor Mortimore, Councillor  
Cooper

Against the motion: Councillor Pearce, Councillor Gill

CARRIED:5:2