

Enquiries to:

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Date Received: 18/02/2013

12 February, 2013

The Committee Secretary
Joint Select Committee
Inquiry into Constitutional Recognition of Local Government
GPO Box 6021
Parliament House
CANBERRA ACT 6021

Dear Sir/Madam,

Re: Constitutional Recognition of Local Government

Singleton Council at its meeting of 4 February, 2013 resolved among other things that:-

- 1. Council support a change in the Australian Constitution to recognise Local Government and the role of the Commonwealth Government in providing financial support for Local Government.*
- 2. This report be included in a submission to the Joint Select Committee into Constitutional Recognition of Local Government.*

Attached please find a copy of the report to Council which includes issues considered to be important by our Council.

Yours faithfully,

Gary Thomson
Acting Assistant General Manager



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2. Constitutional Recognition of Local Government

FILE: 01/0196-3

Author: Gary Thomson

Executive Summary

The purpose of this report is for Council to consider a report on the constitutional recognition of Local Government and to agree to a contribution to assist in developing the case for change to the Australian Constitution.

RECOMMENDED that:

1. Council support a change in the Australian Constitution to recognise local government and the role of the Commonwealth Government in providing financial support for local government.
2. This report be included in a submission to the Joint Select Committee into Constitutional Recognition of Local Government.
3. Council contribute \$4,856.00 to the Local Government and Shires Association of NSW to assist in developing the case for the change to the Australian Constitution.
4. Council develop a proactive educational program for the community on the benefits to the community of a constitutional change at the appropriate time.

Background

Council resolved on 7 March, 2011:

"that Singleton Council 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 a referendum by 2013 to change the Constitution to achieve this recognition."

On 18 December, 2012 Council received a letter from the President of the Local Government and Shires Association (LGSA) and the Shires Association of NSW (a copy of this letter is attached as **Attachment 1**). The letter provided an update on the progress for achieving Constitutional Recognition of Local Government. The letter requested the first of three financial contributions to the LGSA to fund a national advertising campaign. The total of the contributions over three years will be \$14,568.34 plus GST.

A Joint Select Committee Inquiry has been established to assess the recommendations of the expert panel on Constitutional Recognition of Local Government and the viability of holding a referendum in the coming years.

General Manager's Report (Items Requiring Decision) - GM2/13

All Councils are encouraged to make a submission to the Committee which will be reviewed up until 15 February, 2013.

Report

Local government is a democratically elected level of government which is directly accountable to the local communities it serves. Local councils are the voice of their communities and because they are the level of government closest to communities, they are able to identify community needs and find solutions. Councillors and council staff live locally in their communities and have a great understanding of existing and emerging needs of the community.

Local government works in partnership with federal and state governments, as well as with businesses and other service providers, to deliver the most appropriate services to the community. Local government consults with the community in a range of ways to find local answers to local issues and is the most accessible level of government when it comes to community contact with elected leaders and public servants.

The community expects local government to respond to local needs, which is why the range of services provided by local government has increased dramatically. However, providing the increasing range of services expected by the community is often beyond the limited resources of local communities, local ratepayers and therefore most councils. Grants from other levels of government are essential.

The Commonwealth Government has provided direct funding to local government for many years. A recent High Court decision has challenged its power to do so.

The 2009 High Court case of *Pape v Commissioner of Taxation* has found that the Commonwealth does not have power to directly fund areas such as local government. It can only spend money where it has a specific power under the Constitution.

The decision presents a compelling reason to include local government in the Constitution. Without Constitutional recognition, direct Commonwealth funding of local government, through programs such as Roads to Recovery, may be technically invalid. Local government needs certainty and security of funding in order to provide the range and level of services expected by the community.

Our communities use local facilities every day. These include local roads, footpaths and cycle-ways, parks, playing fields, swimming pools and libraries. Essential services are provided including waste collection and in Singleton the provision of safe and healthy water and sewerage systems. Increasingly through meeting of local needs and the devolution of responsibilities from the other tiers of government local government is using increasing amounts of resources on social, community and cultural in addressing the wellbeing of our communities.

Our residents pay for, manage and own these services through their local council and they elect their councillors to ensure local government meets their needs. Each community is unique, with different needs and different capacities and each council is different. But they all share one common goal in getting the best outcome for their local communities.

Councils can't do the job of meeting the community's needs on their own. Local government currently work in partnership with the other two levels of government - the

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Federal Government and the States and Territories - to deliver services and infrastructure at the local level.

Grants from other levels of government are critical. And it is reasonable to expect that some of the taxes paid to the State and the Federal Government will be used to provide services and infrastructure at the local level.

Because most of the tax paid by Australians goes to the Federal Government (more than \$4 out of every \$5 in tax is collected by Federal Government) it is important that the Federal Government can provide funding directly to councils to meet local community needs. The Federal Government has been doing so now for more than 10 years through programs such as the Roads to Recovery program to help maintain local roads. This has allowed many billions of dollars to be invested by councils in local infrastructure and services. It is clear under the existing rate pegging regime much of this infrastructure would not have been provided which would have severely hampered the activities being undertaken in regional Australia in supporting Australia's financial sustainability. This is clearly the case with significant industries such as mining, wine production and tourism relying on sound infrastructure provided by local government.

As indicated previously the recent High Court decision has, however, cast doubt on the Federal Government's ability to provide this direct funding to councils. The Constitution does not mention local government, nor does it provide for the Federal Government to fund councils directly.

What is required to ensure the continuance of the Commonwealth funding is a change to the Constitution to allow the Federal Government to continue to provide direct funding to councils so they can continue to meet community needs. A change to the Constitution won't change the way councils are elected or how they work, or the State Government's ability to make changes to councils if they think that is necessary, but it will help to make sure that communities get the local services to ensure their sustainability.

Local government is one of the oldest forms of government in Australia. It has proven itself to be competent, reliable, innovative, adaptable and flexible in changing policy environments and is committed to progressing national objectives in collaboration with the other levels of government. Its growing role in the Australian community needs to be supported through constitutional reform to provide the capacity for direct funding from the Commonwealth so that it can continue to meet the needs and expectations of local and regional communities

There are obvious benefits to direct funding of local government. These include less bureaucracy, no delays in funding being received, greater local accountability and greater transparency.

Funding Issues

Local government raises its own revenue through rates (local government's only tax), fees and charges. For the past decade, local government has raised around 3 per cent of Australia's total taxation revenue. Although local government generates around 80 per cent of its revenue, funding from the Commonwealth Government through grants is an important source of revenue, particularly for regional and remote communities.

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General purpose funding from the Commonwealth accounts for around 7 per cent of total local government revenue. This funding is in the form of Financial Assistance Grants (FAGs) which assist local government to perform its functions.

General purpose funding from the Commonwealth to local government has diminished over time in real terms, leaving many councils struggling to provide the level of services required by the community and threatening the long-term future of other councils.

In the absence of greater funding from Commonwealth and state governments, local government faces the choice of reducing services, further delaying repair work, or trying to raise more local revenue (from local communities already paying their fair share). Funding certainty is critical to the short and long-term planning of councils, particularly in rural and regional areas where there is a greater reliance on external funding.

In response to community demand, local government has become involved in much wider areas than the traditional property and roads infrastructure, such as recreation, health and welfare, with growing demand for more services. This means local government is currently providing a greater range of services to fill a gap that should be funded by other levels of government.

The Australian Local Government Association has suggested the key issues to be considered by the Joint Select Committee. These are summarised below as a set of statements which reflect Singleton Councils position on the change to the Constitution.

- Singleton Council supports financial recognition of Local Government.
- Singleton Council supports the Federal Government having the power to be able to provide funding directly to Local Government where this is in the national interest.
- Singleton Council needs certainty of funding so that programs like Roads to Recovery can continue.
- Singleton Council supports an amendment to Section 96 of the Constitution so that it would read: "Parliament may grant financial assistance to any state or local government body formed by or under a law of a state or territory".
- Singleton Council believes that bi-partisan support is an essential precondition if a referendum is to have the best chance for success.
- Singleton Council supports the referendum being held at a time which maximises its chance of success.
- Singleton Council supports a publicly funded national education and awareness campaign to inform the public about the Constitution, how to change it, and about the question being asked before the referendum. An informed voter is more likely to cast an informed vote, which is based on facts rather than misinformation.

The Referendum Process

The Constitutional change to allow the Federal Government to directly fund local government is reasonably simple. There is already a section in the Constitution (Section 96) which allows the Federal Government to fund state governments and the section would be changed to add in local government.

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Section 96 would be amended to read:

"Parliament may grant financial assistance to any state or local government body formed by or under a law of a state or territory".

This change would provide the Federal Government with the power to be able to provide funding directly to local government where this was in the national interest.

Importantly, this change to the Constitution would have no impact on how local governments work or on their relationship with state governments.

Since 1901 very few attempts to change the Constitution have been successful. Of the 44 referendums put to the people since 1906, only eight have been successful - the last one in 1977. Since 1977 there have been three referendums, covering six questions, none of which were successful. Before 1977, the referendum to give aboriginal people the vote was successful in 1967, and prior to that a referendum to give power to the Commonwealth to pay social service benefits in 1946.

In order for the referendum to be successful it requires a "double majority" which is a majority of yes votes for a majority of voters and a majority of states.

The fact that there has been no successful referendum since 1977 means that many voters will have no experience or knowledge in voting for a successful referendum. It is reported from studies into why so many referendums in Australia have failed suggest a number of reasons for this:

- A general lack of knowledge among the public about the Constitution or how it can be changed (surveys showing that only 18% of Australians have some understanding of what their Constitution contains, with 47% unaware that Australia had a Constitution);
- the conservative nature of Australian voters;
- the difficulty of obtaining the "double majority" (a majority of voters in a majority of states voting "Yes" and a majority of voters overall voting "Yes") required for a referendum to succeed; and a lack of bipartisan support.

The history of referendums provides some important lessons about the preconditions for success in a future referendum. Firstly, the public must be informed and supportive of the proposition and must be convinced that changing the Constitution will be in their interest. It is also essential for the proposition to have bipartisan support and for the public to see that the proposal is accepted by the major parties.

It is clear to be successful local government must work to educate their communities and financially supporting ALGA as recommended is an efficient and effective way of doing this.

Budget

Council has allocated the appropriate level of funds to support this contribution.

Consultation

The financial contribution forms part of Council budget which was advertised to the community.

Conclusion

It is clear local government is increasingly under pressure to meet the needs of the community in the face of changing needs and ageing infrastructure. In the era of rate pegging existing and expanded Commonwealth funding is essential to meet those needs.

Despite the evolution in the roles of all levels of government since Federation, the nation's framework for the governance of the Australian Federation, the Constitution, has changed little since 1901. Local government is not mentioned in the Constitution, nor has the Constitution been changed to reflect the greater role and responsibility undertaken by local government.

Consequently the Constitution does not reflect how modern Australia is governed and how the different levels of government work together for the community's benefit.

As such Council should use its best endeavours to work towards a successful referendum.

Gary Thomson

Acting Assistant General Manager

Attachments

AT-1 Constitutional Recognition of Local Government -
Contribution of Funds - Local Government and Shires
Association (LGSA)