

Minority Report by the Australian Labor Party

Introduction

1.1 Labor Senators support the passage of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the bill).

Conduct of the inquiry

1.2 Labor supported the reference of the bill to the committee for inquiry and report.

1.3 However, Labor Senators who participated in the inquiry feel compelled to express our concern about its conduct.

1.4 Many witnesses appeared to be under the misapprehension that the committee could adjudicate on local government amalgamations legislated by the Queensland Parliament. This misapprehension was fostered by government Senators.

1.5 Additionally, much of the questioning by government Senators sought in vain to foster uncertainty in witnesses' minds about Labor's support for the bill.

1.6 Labor Senators commend witnesses who rejected repeated attempts by government Senators to elicit responses to contrived lines of questioning.

1.7 It is most regrettable that government Senators repeatedly invited witnesses to respond to partisan propositions unrelated to the bill.

1.8 Labor Senators also regret the belligerent questioning by government Senators of expert witnesses who questioned the constitutional validity of the bill and its impact on the independence of the AEC. Witnesses are entitled to give evidence free from hectoring by government Senators who dispute their own interpretation of the impact of legislation.

1.9 Labor Senators are disappointed that despite three full hearing days, witnesses from the Department of Finance and Public Administration and the AEC only appeared for a short period at the conclusion of the final hearing day.

1.10 This restricted appearance denied the committee the opportunity to seek detailed information about the development of the bill and the conduct of proposed plebiscites.

1.11 The timing of the appearance also denied the committee the opportunity to seek additional information from answers to questions on notice.

1.12 Labor Senators regret the failure of the Department of Finance and Administration, the Department of Prime Minister and Cabinet and the Queensland Government to lodge written submissions.

Local government amalgamations in Queensland

Amalgamations

1.13 For many months Federal Labor has expressed opposition to forced local government amalgamations in Queensland.

1.14 In Townsville on 17 May this year the Leader of the Opposition, Mr Kevin Rudd, confirmed he had spoken to Premier Beattie about means other than amalgamation to achieve local government efficiencies.

1.15 At that time Mr Rudd also advocated local ballots ahead of any amalgamations:

I said to Mr Beattie it would be good if he reviewed his approach to this amalgamations process and put forward other ways in which economic and financial efficiencies can be achieved.

My view, broadly, is that local voice and local choice is critical when it comes to the future of local government across Australia, as well as here in Queensland.

My other view is this. If we're going to come up with any amalgamation proposals, the important way forward is then to test them through the democratic process of a local referendum. I think that's a further second test which should be applied.¹

1.16 Labor Senators note that Mr Rudd's support for local ballots preceded by many months the Prime Minister, John Howard's support for plebiscites and the government's introduction of the bill.

1.17 Labor Senators acknowledge evidence of efforts to protect the position of local government employees following legislated amalgamations.

1.18 Government Senators displayed an inconsistent attitude to job security by adopting feigned concern for the future of local government employees while attacking union-led efforts to secure their members' future job security.

1 Mr Kevin Rudd MP, Leader of the Opposition, *Doorstop Interview*, 17 May 2007, see: www.alp.org.au/media/0507/dsiloo170.php (accessed 7 September 2007).

Plebiscites

1.19 Labor Senators support the right of local communities to have their say on proposed local government amalgamations.

1.20 Accordingly, Labor Senators do not support measures that restrict the right of councils to conduct local ballots.

1.21 Labor Senators welcome legislation before the Queensland Parliament repealing provisions that imposed penalties related to participation in local ballots.

1.22 Additionally, Labor Senators note the gazettal of a Queensland regulation on 31 August 2007 expiring regulations that gave effect to these penalties.

1.23 Labor Senators note that arrangements for the conduct of plebiscites on local government amalgamations in Queensland have not been determined by the Australian Electoral Commission (AEC). In relation to the timing of the plebiscites, we note evidence from the AEC that:

...we would be very reluctant to tie up considerable AEC resources in the next few weeks given that it is quite possible that the Prime Minister may call the election after APEC; and

...we are not even considering the possibility of having an attendance ballot in conjunction with the federal poll.²

1.24 We trust that Professor Brian Costar's concerns about the impact of the bill on the independence of the AEC will not be realised.

1.25 Labor Senators regret the failure of the government to detail funding implications associated with the conduct of these plebiscites.

1.26 While the AEC indicated that funding for these plebiscites is likely to be provided by the Department of Transport and Regional Services, the government provided the committee with no conclusive advice.

Constitutionality of the bill

1.27 Labor Senators note concerns expressed by Professor Gerard Carney and Associate Professor Graeme Orr about the constitutionality of the bill.

1.28 It is regrettable the government failed to respond to our request for the provision of legal advice supporting the constitutional validity of the measures contained in the bill.

2 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, pp. 60–61.

Constitutional recognition of local government

1.29 Labor Senators welcome widespread support from witnesses for Labor's plan to deliver constitutional recognition for local government.

1.30 Constitutional recognition of local government is a long standing Labor commitment.

1.31 Labor Senators note that two previous attempts by Labor governments to recognise local government in the Australian Constitution have been stymied by opposition from the Coalition parties.

1.32 The Coalition's 1988 campaign against constitutional recognition of local government was led by the then Leader of the Opposition, Mr John Howard.

1.33 Launching the 'no' case on 23 June 1988, Mr Howard said his opposition to constitutional recognition was based on 'a strongly held view that it will distort the natural order and Constitutional balance of our federal structure'.³

1.34 Mr Howard said 'Australians will not take a leap in the dark by giving Canberra a chance to interfere in local government and to by-pass state governments'.⁴

1.35 Last year, on 7 September 2006, government Senators, including Senators Fifield, Ian Macdonald and Joyce, opposed a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia.

1.36 On 17 October 2006, government Members in the House of Representatives, including the National Party's Mr Bruce Scott, opposed constitutional recognition.

1.37 The relevant Hansard voting records can be found in Appendices A and B.

1.38 An incoming Rudd Labor Government will establish a Council of Australian Local Governments. One of the new council's first tasks will be the development of a plan to realise the goal of constitutional recognition.

1.39 The Coalition's interest in local government in Queensland on the eve of a federal election year can be contrasted with its mute acceptance of the Kennett Government's forced local government amalgamations in Victoria. During the course of the hearings on this bill Senator Joyce reminded witnesses that this decision of a state Coalition government cost 11,000 jobs, many in rural and regional areas.

3 Mr John Howard MP, then Leader of the Opposition, Address to the National Press Club, Canberra, 23 June 1988.

4 Mr John Howard MP, then Leader of the Opposition, Address to the National Press Club, Canberra, 23 June 1988.

1.40 Equally, the reliance on the external affairs power to give effect to key provisions of the bill can be contrasted with the Coalition's longstanding lack of enthusiasm for the use of this power.

Plebiscites

1.41 Labor Senators note that the bill makes no reference to plebiscites on local government amalgamations.

1.42 While welcoming the bill, Labor Senators note the government's double-standards on support for the right of citizens to express a view on matters of public controversy.

1.43 Indigenous citizens in the Northern Territory were not invited by the Howard Government to participate in a plebiscite ahead of the recent direct Commonwealth intervention in their affairs.

1.44 Nor were millions of Australian workers invited to express a view before their employment conditions were made subject to the Howard Government's extreme WorkChoices legislation.

1.45 Consistent with our support for the right of communities to express a view on matters of significant public controversy, Labor Senators support the right of communities to express a view on the imposition of nuclear power plants and waste dumps.

1.46 Regrettably, the Howard Government has not revealed to the Australian people the likely location of the 25 nuclear power plants forecast by Mr Howard's nuclear advisory group. Nor has the government supported the right of citizens to express a view on the location of nuclear waste dumps in their communities.

1.47 Labor Senators note that earlier this year the Liberal Party and the Greens joined together in the Victorian Parliament to reject a Labor bill that would have provided for a plebiscite to obtain the views of Victorians on the construction of nuclear power plants in that state.

Scrutiny of other legislation

1.48 The three days of public hearings into this bill stand in contrast to the rushed treatment of other more extensive and complex legislation, including the following bills which were subject to only a one day public hearing in Canberra:

Northern Territory National Emergency Response Bill 2007 and related bills

- a package of five bills that provided the framework and funding for the Commonwealth's emergency intervention in the Northern Territory

Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006

- related to the siting of a radioactive waste dump in the Northern Territory, the bill repealed provisions which made it mandatory for land councils to consult and receive consent from traditional owners about the intended uses of their land

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

- provided for the earlier closure of the electoral roll;
- reduced the amount of time a voter has to change their existing details on the electoral roll;
- introduced a new proof of identity requirement for people enrolling or updating their enrolment;
- established a proof of identity requirement for provisional voting;
- increased a number of the disclosure thresholds to above \$10,000;
- increased the size and scope of the tax-deductibility of political donations; and
- further restricted the electoral rights of prisoners.

[Labor Senators note that on 30 August 2007 the High Court upheld a challenge to these additional restrictions on the electoral rights of prisoners]

Telstra (Transition to Full Private Ownership) Bill 2005 and related bills

- repealed provisions that required the Commonwealth to retain 50.1% of equity in Telstra, thus enabling the corporation to become fully privately owned

Commonwealth Radioactive Waste Management Bill 2005

- provided the Commonwealth with the power to site a radioactive waste dump in the Northern Territory

Acknowledgements

1.49 Labor Senators thank all those who contributed to the committee's inquiry, including those who lodged written submissions and gave evidence at public hearings in Noosa, Emerald and Cairns.

1.50 Labor Senators acknowledge the outstanding service provided by the committee secretariat and Hansard staff during the course of this inquiry.

Recommendation

1.51 Labor Senators recommend the bill be passed.

**Senator Michael Forshaw
Deputy Chair**

Senator Claire Moore

Senator Jan McLucas

Senator Joseph Ludwig

APPENDIX A: COALITION OPPOSITION TO CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT – SENATE

7 September 2006

ADMINISTRATION—ROLE OF LOCAL GOVERNMENT

The Minister for Justice and Customs (Senator Ellison), at the request of the Minister for the Environment and Heritage (Senator Ian Campbell) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That the Senate—

(a) recognises that local government is part of the governance of Australia, serving communities through locally-elected councils;

(b) values the rich diversity of councils around Australia, reflecting the varied communities they serve;

(c) acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;

(d) acknowledges the importance of cooperating and consulting with local government on the priorities of their local communities;

(e) acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and

(f) commends local government elected officials who give their time to serve their communities.

Senator Carr, by leave, moved the following amendment:

Omit paragraph (a), substitute:

supports a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia;

Statements by leave: Senators Carr, Bartlett and Ian Macdonald, the Leader of the Australian Democrats (Senator Allison) and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to the motion.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 34

Senators—

Allison	Faulkner	McEwen	Siewert
Bartlett	Forshaw	McLucas	Stephens
Bishop	Hogg	Milne	Sterle
Brown, Bob	Hurley	Moore	Stott Despoja
Campbell, G	Hutchins	Murray	Webber
Carr	Kirk	Nettle	Wong
Conroy	Ludwig	O'Brien	Wortley
Crossin	Lundy	Polley	
Evans	Marshall	Ray	

NOES, 38

Senators—

Abetz	Eggleston	<u>Joyce</u>	Payne
Adams	Ellison	Kemp	Ronaldson
Barnett	Ferguson	Lightfoot	Santoro
Bernardi	Ferris (Teller)	<u>Macdonald, Ian</u>	Scullion
Boswell	Fielding	Macdonald, Sandy	Troeth
Brandis	Fierravanti-Wells	Mason	Trood
Calvert	<u>Fifield</u>	McGauran	Vanstone
Campbell, I	Heffernan	Nash	Watson
Chapman	Humphries	Parry	
Coonan	Johnston	Patterson	

Question negatived.

Main question put and passed.

[Emphasis added].

**APPENDIX B: COALITION OPPOSITION TO CONSTITUTIONAL
RECOGNITION OF LOCAL GOVERNMENT – HOUSE OF
REPRESENTATIVES**

17 October 2006

**LOCAL GOVERNMENT—MOTION BY MR LLOYD (MINISTER FOR
LOCAL GOVERNMENT, TERRITORIES AND ROADS)—RESUMPTION OF
DEBATE**

The order of the day having been read for the resumption of the debate on the motion of Mr Lloyd (Minister for Local Government, Territories and Roads)—That this House:

- (1) recognises that local government is part of the governance of Australia, serving communities through locally elected councils;
- (2) values the rich diversity of councils around Australia, reflecting the varied communities they serve;
- (3) acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;
- (4) acknowledges the importance of cooperating with and consulting with local government on the priorities of their local communities;
- (5) acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and
- (6) commends local government elected officials who give their time to serve their communities—

And on the amendment moved thereto by Mr Albanese, viz.—That paragraph (1) be omitted and the following paragraph substituted:

"(1) supports a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia"—

Debate resumed.

Mr Albanese, by leave, again addressed the House.

Question—That the words proposed to be omitted stand part of the question—put.

The House divided (the Deputy Speaker, Mr Causley, in the Chair)—

AYES

Mr Anderson	Mr Farmer	Ms Ley	Mr Secker	
Mr Andrews	Mr Fawcett	Mr Lindsay	Mr Slipper	
Fran Bailey	Mr M. D. Ferguson		Mr Lloyd	Mr A. D. H. Smith
Mr Baker	Mr Forrest	Mr McArthur*	Mr Somlyay	
Mr Baldwin	Ms Gambaro	Mr Macfarlane	Dr Southcott	
Mr Barresi	Mrs Gash	Mr McGauran	Dr Stone	
Mr Bartlett	Mr Georgiou	Mrs Markus	Mr C. P. Thompson	
Mr Billson	Mr Haase	Mrs May	Mr Ticehurst	
Mrs B. K. Bishop		Mr Hardgrave	Mr Nairn	Mr Tollner
Ms J. Bishop		Mr Hartsuyker	Dr Nelson	Mr Truss
Mr Broadbent		Mr Henry	Mr Neville*	Mr Tuckey
Mr Brough	Mr Hunt	Mr Pearce	Mr Turnbull	
Mr Cadman	Dr Jensen	Mr Prosser	Mr M. A. J. Vaile	
Mr Ciobo	Mr Johnson	Mr Pyne	Mrs D. S. Vale	
Mr Cobb	Mr Jull	Mr Randall	Mr Vasta	
Mr Downer	Mr Katter	Mr Richardson	Mr Wakelin	
Mrs Draper	Mr Keenan	Mr Robb	Dr Washer	
Mr Dutton	Mrs D. M. Kelly		Mr Ruddock	Mr Windsor
Mrs Elson	Jackie Kelly	Mr Schultz	Mr Wood	
Mr Entsch	Mr Laming	Mr Scott	[Emphasis added].	

NOES

Mr Adams Ms K. M. Ellis Ms Hoare Mr Price
Mr Albanese Mr Emerson Mrs Irwin Mr Quick
Mr Beazley Mr L. D. T. Ferguson Mr Jenkins Mr Ripoll
Mr Bevis Mr M. J. Ferguson Ms King Ms Roxon
Ms Bird Mr Fitzgibbon Dr Lawrence Mr Rudd
Mr Bowen Mr Garrett Ms Livermore Mr Sawford
Ms A. E. Burke Mr Georganas Mr McClelland Mr Sercombe
Mr A. S. Burke Ms George Mr McMullan Mr S. F. Smith
Mr Byrne Mr Gibbons Mr Melham Mr Snowdon
Ms Corcoran Ms Gillard Mr Murphy Mr Swan
Mr Crean Mr Griffin Mr B. P. O'Connor Mr Tanner
Mr Danby* Ms Hall* Mr G. M. O'Connor Mr K. J. Thomson
Mrs Elliot Mr Hatton Ms Owens Ms Vamvakinou
Ms A. L. Ellis Mr Hayes Ms Plibersek Mr Wilkie

*Tellers

And so it was resolved in the affirmative.

Debate continued.

Question—That the motion be agreed to—put and passed.