

## **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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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

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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.

future funding arrangements and the possible impact on the powers, capacities and function of the Territory Parliament.<sup>5</sup>

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.<sup>6</sup>

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 referendum<sup>7</sup>; 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

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

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.

absence of clear evidence that existing funding arrangements are deficient and there may be options for refining funding arrangements between different levels of government that do not require amendments to the Constitution'.<sup>8</sup>

- 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.<sup>9</sup>
- 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...<sup>10</sup>
- 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.

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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.<sup>11</sup>

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.

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...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.<sup>12</sup>

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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:

- 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.
- 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.
- ALGA supports the recommendation by the [report of the Inquiry into the Machinery of Referendums] **to remove the legislative limit on spending.**
- 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.<sup>13</sup>

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.<sup>14</sup>

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

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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.<sup>16</sup>
- 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.

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<sup>16</sup> 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.<sup>17</sup>
- 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.<sup>18</sup>
- 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.<sup>19</sup>
- 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.<sup>20</sup>
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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.'<sup>21</sup>

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.<sup>22</sup>

## 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.

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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.