



Submission To  
Joint Select Committee On  
Constitutional Recognition Of Local Government

By

Mr Ken Fraser

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Constitutional recognition of “local government”. Do we need it and do we want it?

The Preliminary Report raises a number of issues causing, myself at least, some concern which are addressed below. Comments on Constitutional recognition of “local government” are included in Recommendations.

Issues of concerns raised include:

- Resolution of Appointment;
- Preliminary Report – Addressing the uncertainty;
- Recommendations; and

Resolution of Appointment

The appointment of Committee members, as determined by the government, appears to indicate that the Committee has been “stacked” by those who support Constitutional recognition of local government and smacks of cronyism in order to obtain the intended and desired result – recommendation for a referendum. This could also be said for the Expert Panel, and any other committee or panel appointed by the government for that matter.

Apart from others on the Committee who may support recognising local government in the Constitution, which I find difficulty believing to the contrary, it is interesting and of no surprise to note that the Chair of the Committee and two other Committee members have served on local councils. Also of note is that two other Committee members were members of the Expert Panel.

The inclusion of these members on the Committee indicates, as with the Expert Panel, that there is only a limited amount of transparency with the Committee, and the Committee as a whole is not truly independent and can not, or will not, therefore offer any substantial or solid argument to the negative, as a level of bias, probably considerable, has been brought to the table influencing any determinations and decisions reached for recommendations to be made for inclusion in the final report.

## Preliminary Report – Addressing the uncertainty

1. 1.6 and 1.7 discuss direct funding from the Commonwealth government to local government and that this “has been common practice for the past two decades.” This is in direct contravention of the 1974 referendum on this very issue, which rejected such a proposal – see comments below, Recommendation 1- Amendment Proposal. No wonder there has been a High Court challenge with others possibly in the pipeline.
2. 1.11 discusses the “urgency of addressing the present situation...” The only urgency would appear to be one of “close the door” on any future High Court challenge for a legitimate reason, that is, the Commonwealth government is acting illegally – refer 1974 referendum results. As for Commonwealth funding to local government being impacted even in the absence of a pending High Court challenge, what exactly is meant by “impacted” and how could this occur without such a challenge being mounted? This is not mentioned. Without an explanation of “impacted” (type, how, source etc) and without such a challenge the Commonwealth government would simply carry on as normal, as they have done for the past two decades – with ignore and continue funding. This appears to be yet another example of attempting to justify the reasons and so-called necessity for Constitutional recognition of local government with political jargon.

## Recommendations

### Recommendation 1 – Amendment Proposal

1. I advise that I do not support the amendment proposal for financial or any other type of Constitutional recognition of local government now, and will not at any time in the future, as this will only unleash a rampaging burdensome monster on society creating more mayhem, financial hardship and debt.
2. 1.20 discusses the commencement of negotiations between Commonwealth and State governments with lobbying by ALGA and its membership for State and Territory government support for the proposal. Given the submissions already made this would appear to be a total waste of time, effort and funds, which will be provided by the tax/ratepayer, yet again, as their decisions are already a foregone conclusion.
3. 1.21 details “the importance and urgency” and the “need to ensure a successful referendum outcome”. How can a successful outcome be “ensured” unless the end result is manipulated in a particular manner to “ensure” a fixed successful result. Given the number of private submissions to the Expert Panel opposing this proposal a successful outcome can not be ensured, despite using eloquent terms such as “a ‘corrective’ referendum” (1.27) in an effort to hoodwink the public.

### Recommendation 2 – Timing of the Referendum

1. 1.25 and 1.26 provide brief details of the successful 1946 referendum, with 1.27 stating that Australia faces a similar problem requiring “a ‘corrective’ referendum” in order to “return Australia’s legal framework to the status quo that existed” prior to the two High Court cases. This is not the case as the High Court cases have merely highlighted that the Commonwealth is acting illegally – outside the highest law of the land (the Constitution which overrides all other laws) which has put the Commonwealth government, local councils and their representative associations into a nose spin.

What the Preliminary Report has forgotten to mention is that the Australian people in 1946 recognised that accepting the referendum proposal for the National Pharmaceutical Benefits

Scheme, would be of huge and long lasting benefit for the people of Australia, and has been so. The same can not be said for this current undertaking for Constitutional recognition of local government, which will be of benefit to no one except local government itself, and possibly the representative associations. All this will achieve is the creation of an additional level of government, more levels of bureaucracy, red tape and confusion with increased and expanded powers for both the Commonwealth and local governments.

There is no benefit for Australia in this proposal.

2. 1.29 states "...there is ample time to build community support and ensure that the necessary legislation and arrangements are in place." The "necessary legislation and arrangements" to be in place are not mentioned and needs clarification. Are these to do with holding the referendum, or is it legislation and arrangement to be in place that would enable direct funding to be provided to local councils irrespective of the referendum result.?
3. 1.31 details the reason for holding the referendum in conjunction with the next federal election, citing the reason for success of New South Wales referenda, these being held in conjunction with State elections. Unfortunately, this involves State issues, not national issues, and certainly not a most contentious one such as this. A clever tactic that might succeed at the State level but federally - highly questionable as I believe that the majority of the Australian public are now more alert than the Commonwealth government, and others, would like to believe.

### Recommendation 3

1. 1.37 discusses the recommendation by the Expert Panel for a non-partisan Referendum Panel to be established prior to any referendum to develop an overarching communications strategy, including educational material. Here we have yet another Panel being recommended. A more logical, viable and less costly option would be to engage the services of the Australian Electoral Commission, which most likely already has a considerable amount of the necessary requirements in place for this type of task, not to mention the personnel. Establishing yet another panel will simply cause unnecessary delays and add to the cost of the proceedings.

### Comments

The Committee will be well aware of the previous two attempts by the Commonwealth governments of the day, both Labor, again, to have local councils recognised Constitutionally as local government. These were:

- The 1974 referendum to give the Commonwealth powers to borrow money for, and to make financial assistance grants directly to, any local government body. This was defeated.

Despite this not being approved, the Commonwealth government of the day (Labor) ignored and dismissed the WILL of the People, and funded local government anyway, as did successive Commonwealth governments. As a result of "the Self Inquiry" (1984-85), and under a Labor government, the Local Government (Financial Assistance) Act 1986 was introduced, this Act was subsequently reviewed in 1994 and the Local Government (Financial Assistance) Act 1995 came into effect July 1995. So, notwithstanding the 1974 referendum the Commonwealth government did, and still does, what it does best – what it wants, regardless.

- The 1988 referendum: Question 3 from the referendum was: A Proposed Law; 'To alter the Constitution to recognise local government.' Do you approve of this alteration?

The **specific** (federal Referendum) proposal was:

(3) Constitution Alteration (Local Government) 1988... 119A, "Each state shall provide for the **establishment and continuance** of a system of local government, with local government bodies elected in accordance with the laws of the state, and empowered to administer, **and make by-laws for**, their respective areas **in accordance** with the laws of the state" (emphasis added).

This was also not approved but yet again, the Commonwealth government of the day ignored and dismissed the WILL of the People, and the following year introduced the infamous Local Government Act 1989 – again, a Labor government.

All for the sake of Constitutional recognition of local government. And here have another Labor government, yet again, pushing the same tired old rusty wobbly wheel barrow full of mud. It hasn't even had a quick rinse or any spit and polish but, you can still see the holes.

The original intended purpose of local councils was to provide and administer services for roads, rubbish, parks and gardens, libraries and other limited functions for the local municipality. However, since the introduction of the Local Government Act 1989, local councils have run amok unrestrained, act with impunity and, with the support and blessings of Commonwealth and State governments, believe that they are above the law and unaccountable or answerable to no one. Local councils are now continually assuming or adopting more and more responsibilities outside their original charter, with the approval and assistance, sometimes insistence, of State governments, and probably sometimes the Commonwealth government - a development that appears to be a deliberate course of action by both levels of government, with the indirect involvement of local councils themselves via their representative associations through COAG, to force the expansion of local councils with continual unjustified empire building and the unnecessary ever increasing staff numbers, at considerable cost to the tax/ratepayer, in order to justify and reinforce their argument for their existence, requirement within society and the need for Constitutional recognition.

In view of the above one can, or should, understand the reasons for public trust in government waning with a rising level of cynicism and scepticism regarding transparency and deceit of governments. This causes one to wonder whether the action for the two High Court cases mentioned, or one at least, was deliberately initiated and undertaken with the decision handed down designed to create a particular situation of uncertainty in order for the Commonwealth government to justify initiating action to Constitutionally rectify that uncertainty by holding a referendum in an attempt to have local councils recognised as local government in the Constitution through direct funding. This would effectively kill two birds with the one stone – local government would have Constitutional recognition and the Commonwealth government could then legally continue with direct funding of local government.

The current situation regarding local councils is becoming intolerable and Constitutional recognition will only further reinforce and increase the current undesirable conduct and behaviour of local councils, causing the growing discontent and disgust throughout society as a whole with local councils become more intense.

As a consequence, notwithstanding, and contrary to, popular beliefs held amongst a number of circles throughout society, local councils have become a lumbering burdensome dinosaur lurching, stumbling, tripping, slipping, sliding and bumbling from one wasteful and costly disaster to another and, having outlived their usefulness and original purpose, are now outdated. There is a growing consensus throughout society in general that local councils have evolved into corporatised organizations that can be likened to, and considered as wasteful, arrogant, dictatorial, self-serving, self-interested, self-

indulgent, greedy, power crazy, insensitive, hypocritical, control freak parasites obsessed, with an insatiable appetite and lust, for more of the same, and which continually display intimidating, threatening and bullying attitudes, behaviour and tactics – a scourge on society and a blight on the nation, an anathema.

Meanwhile we, the tax/ratepayer continue to be forced to endure continual excessive rate increases on an annual basis with little, if any, increase to services in return. For information, the shire of Baw Baw in Victoria last year experienced an unjustifiable 11% rate hike with some farmers now experiencing annual rates totalling anything from \$10,000 per annum to \$50,000 per annum. Also, another situation that arose last year was the Municipal Association of Victoria last year advising Victorian local councils that there was a shortfall of \$453 million in the defined benefits superannuation with \$396.9 million payable by councils and due on 1 July 2013 Councils have been called on to fund the shortfall on four occasions - but last year's shortfall of with set a record and prompted many councils to lobby the Government to amend legislation<sup>1</sup>. All this whilst local councils experience a continual mounting debt through gross mismanagement and maladministration within local councils. This situation is only exacerbated by either insufficient funding being provided by the Commonwealth government to State governments, for local government or State governments not passing on the correct proportionate amount as determined by the Victorian Grants Commission. Unfortunately, an aspect with this is that the Local Government (Financial Assistance) Act 1995 provides that the grants are untied which means that, for Victoria at least, the Victoria Grants Commission can not direct councils how to spend the funds allocated. This is problematic in that the complete lack of control of public funds can lead to wasteful spending, a shortfall of funds or worse still, financial cover-ups, or rorts, cleverly hidden and disguised to pass scrutiny and audit. This is one aspect that requires immediate attention by the Commonwealth and State governments in order to rectify the situation, and not by a referendum for Constitutional recognition of local government – that won't fix the problem. As previously stated above, no wonder there have been High Court challenges.

And the Commonwealth and State governments, local councils and their representative associations along with others want Australians to give Constitutional recognition to “local government”?

Should the referendum succeed, the following must be considered. Will amending Section 96 of the Constitution give local government Constitutional recognition, as the wording of the proposed amendment is quite specific and relates only to Parliament granting “financial assistance to any State or to any local government body formed by State or Territory legislation...”. It does not specifically ask for local government to be recognized in the Constitution. Therefore, wouldn't an additional question be required to enable local government to be recognized in the Constitution, and not simply by means of financial assistance, which could lead to further High Court challenges to the legitimacy of local government. The Committee's response to this would be interesting.

### Referendum Proposal for Alternative System of Local Government

For a referendum on *true* local government, the following suggestions are presented, in brief:

1. Initiate a referendum for the Constitution, S128, to be amended to include citizen's initiated referendums.
2. Abolish all and municipalities, local councils and by-laws, and introduce a system of true local government, where the Commonwealth electoral seat is the local government electorate, administered by a locally democratically elected committee for that seat, consisting of residents representing each ward within the electorate with the democratically elected committee being responsible directly to the people and reporting to the Commonwealth elected representative

for that seat on matters affecting that electorate – a system of citizen’s initiative and participation and direct democracy to control the affairs of their own electorate. Being responsible directly to the people will ensure a much higher level of openness, transparency and accountability. This of course would include the issue of direct funding.

3. Abolish all Local Government Acts to be replaced by a Memorandum of Understand and Agreement for all committees and democratically elected members.
4. Return local government to the original role as it was initially intended by revising all functions and transfer all assumed and adopted State government responsibilities back to those governments, where they belong.

This would result in:

1. Open, honest, fair, transparent, accountable and responsible local government with the inclusion of the electorate in a responsible decision making process.
2. Each democratically elected committee having control over and a greater say and input into the affairs of their electorate would result in a more responsible, efficient and effective system of administration with a fair, transparent and responsible decision making process without the multiple layers of bureaucratic bungling red tape or being dictated to and controlled by political party policy, as is currently the case.
3. A significant reduction in the number of those hanging off the local council gravy train with enormous cost savings for not only both Commonwealth and State governments but also the tax/ratepayer, and there would be no need for any representative associations for local government, realising additional cost savings.

## Reference

- 1 Extract from Super Review article ‘Super taskforce to investigate defined benefit wage cap’

End of Submission