

Mr Russell Chafer
Secretary
House of Representatives
Standing Committee on Economics, Finance and Public Administration
Parliament House
Canberra ACT 2600

Dear Mr Chafer *Russell*

I refer to your letter of 7 March 2003 requesting a submission on the issues discussed at the briefing on 5 March 2003 between Mr David Hawker MP and Ms Anna Burke MP of the Committee, and officers of DOTARS.

As requested, the attached submission provides information on consideration of local government as a level in its own right, infrastructure issues, and structural reform of local government.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mike Mrdak', is written over a horizontal line.

Mike Mrdak
First Assistant Secretary
Territories and Local Government Division

9 May 2003

House of representatives Standing Committee on
Economics, Finance and Public Administration

Submission No:387.....

Date Received:14/5/03.....

Secretary:

BACKGROUND

On 7 March 2003, the Secretary of the House of Representatives, Standing Committee on Economics, Finance and Public Administration, Inquiry into Cost shifting and Local Government wrote to the Department of Transport and Regional Services seeking information on the topics detailed below.

THE NEED FOR LOCAL GOVERNMENT TO BE CONSIDERED AS A SEPARATE LEVEL OF GOVERNMENT IN ITS OWN RIGHT

Lack of consistent recognition of Local Government as a separate sphere of government is a key issue identified by Local Government. Opportunities that are seen by Local Government to arise from "recognition" include increased status, participation in decision-making forums, and direct access to Commonwealth taxation revenue. If measured against these criteria, the Commonwealth has already gone a considerable way in recognising Local Government as a separate sphere of government.

Since 2001, Local Government has had full membership in the key inter-governmental forum in Australia, the Council of Australian Governments (COAG). The Commonwealth is also increasingly establishing a direct relationship with Local Government, for example, in addressing environmental issues. Local Government is a full member of a number of Ministerial Councils such as the Ministerial Council of Aboriginal and Torres Strait Islander Affairs and has observer status on other Councils.

The Commonwealth provides substantial untied funding to Local Government in the form of financial assistance grants—\$1.449 billion in 2002–03. Under the Roads to Recovery programme, the Commonwealth provides \$1.2 billion over five financial years as grants for local roads that are paid directly to Local Government.

The provision of substantial Commonwealth funding and the representation of Local Government on COAG and relevant Ministerial councils is clear recognition by the Commonwealth that Local Government is an essential sphere in Australia's system of government.

In the past, Local Government has argued for formal constitutional recognition. Local Government is not recognised in the Australian Constitution. Constitutional responsibility for Local Government lies with States and Territories, which provide the legal framework for council operations. A detailed discussion on constitutional recognition is provided below.

Constitutional recognition

Since 1973, the issue of constitutional recognition of Local Government has generated significant public debate and has been addressed at various forums including 5 constitutional conventions from 1973 to 1998. It has also been the subject of 3 reports produced by the Advisory Council for Inter-Governmental Relations (ACIR) and was a focus of the Constitutional Commission (1985 to 1988). In 1974 and 1988, constitutional recognition of Local Government was considered in referenda to alter the Constitution of Australia. Neither was successful.

A detailed chronology of the debate is at **Attachment A**.

A number of approaches to amending the Constitution have been considered. The main options can be summarised as:

- Substantive change: eg. a clear enunciation of the powers and responsibilities of Local Government (this could include provisions concerning dismissal);
- Formal recognition: eg. recognising the existence of Local Government while leaving it to the States to define its functions (essentially the approach taken in the 1988 referendum); and
- Incidental recognition: eg. a reference to Local Government as an incident of some other provision such as a financial provision (the approach taken in the 1974 referendum.)

The complexity of the issues, coupled with the need for a referendum, suggest that the minimum requirements for achieving constitutional recognition are:

- clear agreement on what Local Government aims to achieve through constitutional recognition;
- convincing arguments that constitutional recognition is the most appropriate way to achieve those aims;
- an agreed form of amendment and a clear understanding of its implications for Local Government, other governments and rate payers; and
- clear support from the community and the States.

Arguments for:

- Formal acknowledgment and proclamation of the function and value of Local Government as an integral part of Australian public administration;
- Local Government is the democratically elected political unit closest to the people and is an essential part of the fabric of democratic government;
- Local Government provides a significant range of municipal services receiving a stipulated amount of federal revenues through the States;
- Local Government is an established and integral part of the structure of government in Australia deserving endorsement in the Constitution; and
- Raising the status and prestige of Local Government would formally recognise its role as a partner in Australia's three spheres of government.

Arguments against:

- Local Government recognition would serve little or no purpose because it is dependent on, and subordinate to, legislation established by the States;
- Each of the State Governments have delegated responsibility to Local Government for the exercise of whatever powers the State legislatures choose, and competition between the States and Local Government is undesirable;
- The perceived need for Local Government to increase its status and prestige from constitutional recognition is not sufficient to warrant changing the Australian Constitution;
- Recognition in the Constitution may lead to consequential interpretations of power beyond what was intended as a result of High Court judgments;

- A declaratory statement inserted into the Constitution would serve little purpose and risks redundancy or over simplification due to the very rigid requirements for changing the Australian Constitution;
- Altering the Australian Constitution in the form proposed by the insertion of section 108A (as proposed by the 1985 Constitutional Convention) would be inconsistent with the character of the Constitution;
- The appropriate place for the recognition of Local Government as a third sphere of Government is in each of the State Constitutions;
- The objectives sought by Local Government may be achievable without necessarily having to alter the Australian Constitution; and
- Significant cost of referendum.

Implications of recognition

The implications of Constitutional recognition of Local Government relate to the distribution of powers between the States and the Commonwealth. The method adopted in the Constitution of Australia for the federal distribution of legislative power is to enumerate specific powers for the Commonwealth Parliament, allowing the residual to settle with the State legislatures. The Commonwealth has powers which were determined at Federation by the States as necessary or appropriate for the Commonwealth to possess. These powers, in almost all instances, concern matters which involve two or more States or can be identified as having a clear national interest in some other respect.

The powers of the States are neither enumerated nor regulated in the Commonwealth Constitution but are residual. Local Government is empowered under the residual powers of the States to legislate.

While at times in some States there is disagreement over the extent of involvement of State governments in the operation of Local Government there is no evidence that Local Government is at risk of being abolished as a form of public administration.

INFRASTRUCTURE ISSUES

The extent of Commonwealth and State support for Local Government infrastructure

Chapter 5 of the 2000–01 and Chapter 4 of 2001–02 Local Government National Reports addressed the issue of the responsibilities of Local Government for key infrastructure.

The Bureau of Transport and Regional Economics Working Paper No 44 *Spending on local roads* shows that in 1997–98, Local Government spent \$2,713 million on local roads (see Table 1 below). It shows that \$1,930 million was raised by councils from their own funds, \$365 million was provided by the Federal Government through local roads FAGs, \$293 million was provided by State Governments and \$125 million was provided by the private sector (mainly new estate developer contributions).

Table 1 Local road funding by sphere of government, 1997–98 (\$m)

	NSW	Vic	Qld	WA	SA	Tas	Total	Total %
Council ¹	503	353	580	296	131	67	1 930	71%
Federal	112	80	72	60	20	21	365	13%
State	181	14	40	58	0	0	293	11%
Private sector	36	40	38	11	n/a	n/a	125	5%
Total	832	486	730	425	151	88	2 713	100%

Note:

1. Funding from all sources of council funds including rates and untied grants from other spheres of Government.

Source: Bureau of Transport and Regional Economics 2001, *Spending on local roads*, working paper 44, p.13, Tables 2.3 and 2.4.

While there has been no comprehensive survey of council spending on local roads since the release of the 1997–98 data in the BTRE working paper, the evidence available in some States shows councils have increased their own-source spending on local roads since then (eg in Western Australia).

The Bureau of Transport and Regional Economic Paper *State Spending on Roads* (yet to be published) shows that in 1997–98 States were spending an additional \$252 million directly on council roads. This suggests that total spending by all levels of government on council roads was slightly less than \$3 billion in 1997–98.

Table 2 State spending on roads by purpose, 1996–97 to 2000–01 (\$m)

Purpose	1996–97	1997–98	1998–99	1999–00	2000–01	Total
State roads	3 206	3 535	3 645	3 957	4 028	18 371
Council roads	251	252	323	292	234	1 352
Grants to councils	313	309	362	347	336	1 668
Total	3 771	4 096	4 330	4 596	4 598	21 391

Note Figures may not add to totals due to rounding.

Source BTRE Survey of State Government Spending on Roads Table 2.5.

Table 2 shows that State direct spending on council roads fell by \$18 million from \$252 million in 1997–98 to \$234 million in 2000–01. Meanwhile Federal spending on local roads under FAGs increased by \$80 million from \$365 million in 1997–98 to \$445 million in 2002–03. In addition, in 2002–03, \$200 million is available under Roads to Recovery.

The BTRE Report *State Spending on Local Roads* shows marked variation in the amount States contribute to funding of council roads, with little State financial support for local roads available to councils in South Australia, Tasmania and the Northern Territory (see Table 3).

Table 3 State spending on roads by purpose and jurisdiction 2000–01 (\$m)

Jurisdiction	Spending on State roads	Direct spending on council roads	Grants to councils	Total
New South Wales	1 454	19	187	1 660
Victoria	552	130 ^a	22	703
Queensland	1 064	0	63	1 126
South Australia	217	8	1	226
Western Australia	578	78	62	718
Tasmania	66	0	1	66
Northern Territory	78	0	neg	79
ACT	19	0	0	19
Total	4 028	234	336	4 598

neg Less than \$0.5 million.

a. Most of the State Government expenditure on Council managed roads occurs on declared Main Roads that are generally managed by Councils but funded by the State Government. In 2000–01, VicRoads incurred direct expenditure of \$56m on Main Roads and \$4m on Unclassified (local) roads. A further \$70m was paid by VicRoads as reimbursements to Councils for spending on declared Main Roads that are managed by Councils.

Note: Figures may not add to totals due to rounding.

Source: BTRE Survey of State Government Spending on Roads table 2.7.

Assembling this data in Table 4 and assuming councils have at least maintained their spending on local roads, total spending by all levels of government on local roads could be about \$3,270 million per annum.

Table 4: Estimated expenditure by all levels of government on local roads

Reference year	Funding source	Amount \$m
1997–98	Council own source spending on local roads	1,930
1997–98	Private sector (mostly developer contributions)	125
2000–01	State spending directly on council roads	234
2000–01	State grants to council for local roads	336
2002–03	Local Road FAGs	445
2002–03	Roads to Recovery	200
	Total all sources	3,270

The Australian Local Government Association in its submission to the Federal Road Funding Inquiry in 1997¹ argued that there was a gap between local road needs and local road expenditure by councils of about \$1 billion per annum. This estimate was drawn from data collected from councils in all States. Taking into account Roads to Recovery funding, total State direct spending on local roads and the increase in FAGs for local roads, this suggested a gap would now be closer to \$490 million per annum.

Using a different methodology and more up to date information, the recently released *Roads to Recovery Report* identified an annual local road deficit of about \$630 million and put the value of our local roads at about \$75 billion. The deficit was derived by extrapolating from local road deficits identified in recent State reports in Western Australia, Victoria, New South Wales and South Australia by local road length to estimate a deficit for Australia. The \$630 million per annum estimate predates the impact of Roads to Recovery funding.

If the local roads asset is to be maintained, total expenditure on local roads would need to be \$3.7 billion per year. Taking into account the \$300 million contribution from Roads to Recovery in 2003–04, current spending is about \$3.37 billion, leaving a local road deficit of approximately \$330 million or a shortfall of about 10 per cent per annum. This shortfall could be met by additional expenditure and/or by improving the efficiency of local road construction and maintenance.

Tying of Financial Assistance Grants for local roads

Up until 1991–92, Federal grants for local roads were tied and paid through the States.

During 1990 and 1991, a number of Special Premiers' Conferences were held to reform intergovernmental arrangements with the aim of reducing overlap and duplication of service delivery. As part of this process, there was a commitment to a substantial reduction in the proportion of tied grants to the States as a share of total Federal grants. The purpose of this was to increase State budgetary flexibility. As a result, a portion of Federal grants to the States for roads were untied including the grants paid through the States to Local Government for local roads. These grants were then paid as a component of financial assistance grants for Local Government.

As discussed above, it is estimated that councils spend \$1,930 million of their "own-source" money on roads. If they were obliged to spend the \$445 million in local road FAGs on roads, they could retain funding flexibility by reducing their "own-source" spending. At the individual council level, some councils may have more pressing needs than roads and tying local road funding may restrict their flexibility.

There would be additional costs to councils and the Commonwealth to monitor the expenditure to ensure the local roads FAGs funding was spent on roads.

Alternative road/infrastructure funding models to local road grants

Concerns have been raised with the Committee about the current interstate local roads FAGs percentage splits in the Act. These percentage splits were set in place in 1990 following a Special Premiers Conference. It is important to note that the interstate

¹ Submission to the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform Inquiry into Federal Road Funding, ALGA (1997)

local roads FAGs splits in the Act are fixed and there is no mechanism for review to reflect changes in circumstances.

An alternative distribution to the existing interstate distribution of local road FAGs could be determined by a national audit of the condition of the local road system.

In 1973, the Commonwealth Bureau of Roads Report on Roads in Australia examined the needs of the whole roads system. This was, however, a resource intensive exercise and no repeat of the exercise has been undertaken or planned.

Another alternative is to assess relative needs on the basis of depreciation of council road assets. However, depreciation methods vary from council to council and may not match road conditions. In addition, highly degraded roads may be the result of neglect by previous council administrations. This approach might then have the effect of rewarding councils that neglect local road maintenance.

The Commonwealth Grants Commission may be able to use existing Local Government Grants Commission data to develop a funding model based on infrastructure needs. However, it is likely that the comparability of the data between States would be a limiting factor.

The Commonwealth distributes Roads to Recovery funding between States using population, road lengths and historical factors. Another alternative would be to develop a simple formula based on relevant factors such as population and road lengths.

STRUCTURAL REFORM OF THE SECTOR AND POSSIBLE COST SAVINGS

Local Government structural reform embraces a number of initiatives including cooperative service provision, resource sharing, joint service delivery enterprises, boundary change and amalgamations. The paper *Models for voluntary structural reform* prepared by the NSW Local Government and Shires Associations discusses the range of structural reform options and their benefits and disadvantages.

In the 1990s, the Federal Government provided almost \$1.3 million under the Local Government Development Programme to facilitate structural reform in South Australia, New South Wales, Western Australia and Tasmania.

The often-cited advantages of structural reform include larger councils having a more secure and adequate financial base, enabling them to better plan and to contribute to economic development. Larger councils may also be more effective community advocates, and interact more effectively with government and business. Small rural councils in Australia's inland face a multitude of challenges including depopulation, low rates, deteriorating infrastructure and demand for better services. Merging can bring greater financial strength and stability to these rural councils. Structural reform delivers economies of scale and allows councils to employ a wider range of professionals, so they can offer a wider range and higher quality of service.

Between 1991 and 2001, there were state-wide council mergers in South Australia, Victoria and Tasmania, which led to significant reductions in the number of councils (see Table 5 below).

Table 5 Local Government numbers 1910–2001

State	Councils 1910 ²	Councils 1991 ²	Per cent change 1910–1991	Councils Sept 2001 ³	Per cent change 1991–2001
NSW	324	176	-45.7	172	-2.3
Vic	206	210	1.9	79	-62.4
Qld	164	134	-18.3	125	-6.7
WA	147	138	-6.1	142	2.9
SA	175	122	-30.3	68	-44.3
Tas	51	46	-9.8	29	-37.0
NT	n/a	n/a	n/a	36	n/a
Total	1 067	826	-22.6	615¹	-25.5

Note:

1. The September 2001 total Council number does not include the 36 NT Councils.

Sources:

2. Sproats 1996, p. 5.

3. National Office of Local Government from information provided by State Local Government associations and individual councils (for consistency, only councils established under State Local Government specific legislation are included. Local Government bodies in receipt of Federal Government financial assistance grants that are established under separate State legislation or declared by the Federal Minister are excluded).

The Report of the SA Local Government Boundary Reform Board of September 1998 noted that voluntary structural reform had delivered "recurrent savings conservatively estimated by councils involved in the process of \$19.4 million per annum" (p.iii).

In 1997–98, Local Government outlays in South Australia were \$690 million, suggesting these savings equated to about 3 per cent of Local Government expenditure. Community support for the amalgamations in South Australia strengthened from 41 per cent before the mergers to 55 per cent afterwards (Australian Centre for Quality Management and Organisational Research, 1997 *Community Survey on Local Government Structures, Tasmania* p58–9).

Generally council amalgamations are less practical for large councils in sparsely settled areas, such as north-western New South Wales, Western Queensland, rural parts of the Northern Territory and areas east of the wheat belt in Western Australia. The distances involved in fulfilling council duties generally make such mergers uneconomic.

The areas that are usually recognised as having the potential to undertake major structural reform are:

- Western Australia, eg inner Perth and councils on the sheep/wheatbelt;
- Queensland, eg councils in a semi-circle west of Brisbane from Warwick to Bundaberg; and
- New South Wales, eg inner Sydney, the remaining “doughnut councils” and the Northern Tablelands in a semi-circle from Scone to Glen Innes.

There are considerable differences between States in the distribution of councils by population size (Table 6). For instance, the median population of councils is less than 5,000 in Western Australia and Queensland but over 36,000 in Victoria.

Table 6 Selected characteristics of the distribution of population of local governing bodies¹ by State, 2001–02

State	Number of bodies	Population of local governing bodies					
		Minimum	First quartile ²	Median ³	Third quartile ⁴	Maximum	Average size
NSW	175	58	4 734	13 849	54 459	261 260	37 325
Vic	79	250	16 157	36 780	106 572	193 582	61 129
Qld	157	105	892	3 189	12 302	899 604	22 967
WA	142	141	1 013	2 727	11 433	178 380	13 449
SA	74	76	2 531	8 110	19 205	147 962	20 303
Tas	29	940	5 640	10 941	20 043	62 682	16 216
NT	66	0	271	498	1 036	74 002	2 998
All States	722	0	1 531	6 490	26 256	899 604	26 381

Notes:

1 Includes all local governing bodies that received financial assistance grant funding in 2001–02.

2 The first quartile is the population size at which 25 per cent of councils have smaller populations and 75 per cent have larger populations.

3 The median is the population size at which 50 per cent of councils have smaller populations and 50 per cent have larger populations.

4 The third quartile is the population size at which 75 per cent of councils have smaller populations and 25 per cent have larger populations.

Source: 2001–02 National Report Table 1.5 p5

Western Australia

The number of councils in WA has remained virtually unchanged since 1910. “... there had been five inquiries into Local Government in Western Australia. Each urged fewer councils, with the Mathea Local Government Assessment Committee urging a cut from

144 to 89 councils. The sixth and most recent report, the [1996] Western Australian Government's Structural Reform Advisory Committee (SRAC) Report, noted that, while there was 'scope for some rationalisation of boundaries, there is no justification for a wholesale government-driven agenda of Local Government amalgamations' (1999–2000 National Report, p44).

The SRAC urged major structural reform in the 40 per cent of councils in WA with less than 1,500 people. The SRAC suggested that councils review their viability, operations, and options for structural reform where they failed to meet more than one of three viability tests:

- where administration expenditure is more than 10 per cent of expenditure;
- where debt service is more than 33 per cent of rate income; and
- where financial assistance grants are more than 50 per cent of total income.

The SRAC compared the administration costs of 84 councils in the wheat belt and south-west of the State grouped into 26 units with six medium to large country councils. It also benchmarked savings for metropolitan councils. It identified notional annual savings from this exercise of \$8.5 million to \$21.4 million per annum in rural areas and a further \$15.8 million to \$53 million in urban areas (ie up to \$74.4 million in total).

The \$74.4 million in savings equates to 5.2 per cent of \$1,437 million that Western Australian Local Government spent in 2000–01.

Western Australia's *Local Government Act 1995* enables communities affected by a proposed merger to petition the Minister for referenda. If at least 50 per cent of affected electors vote and a majority vote against a merger, the merger proposal is defeated.

New South Wales

The NSW Local Government and Shires Associations noted that "As a guide, the experience in other States and from studies in NSW indicates that a Net Present Value of savings amounting to 10 per cent of the total operating budget of the former councils, may be achieved after allowing for the costs of amalgamation." (Source: *Models for voluntary structural reform* p. 24). Savings projections made by councils on individual council mergers in NSW were:

- Armidale-Dumaresq: \$3 million over 20 years ²
- Pristine Waters: \$1.2 million over 10 years ³
- City of Canada Bay: \$17 million over 20 years ⁴
- Conargo Shire: \$211,000 pa (15 per cent of council revenue) ⁵
- Richmond Valley Council: \$5 million over 20 years ⁶

² 1999–2000 National Report p43,

³ 1999–2000 National Report p43

⁴ 1999–2000 National Report p43

⁵ 2000–01 National Report p61

⁶ DOTARS personal communication 25/10/02

Attachment A

CHRONOLOGY OF DEBATE ON CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT**1973 — Constitutional Convention, Sydney**

The position of Local Government under the Commonwealth Constitution was discussed at the first Constitutional Convention held in Sydney in 1973. The Australian Council of Local Government Associations (ACLGA), (now Australian Local Government Association or ALGA), submitted to the Convention that the Commonwealth should:

- be empowered to grant financial assistance to Local Government either directly or through the States;
- enable a share of national tax revenue to be transferred to councils as general purpose assistance; and
- support a system of Local Government indebtedness similar to the States.

In 1974 the Federal Government submitted four proposals to a referendum. One of the questions considered was the *Constitution Alteration (Local Government Bodies) Bill 1974* which proposed the insertion of the following two provisions in the Constitution:

51(ivA.) The borrowing of money by the Commonwealth for Local Government bodies:

96A. The Parliament may grant financial assistance to any Local Government body on such terms and conditions as the Parliament thinks fit.

The referendum proposal was unsuccessful, receiving just 46.8 per cent of the national vote (*Final Report of the Constitutional Commission*, June 1988).

1976 — Constitutional Convention, Hobart

A Constitutional Convention held in Hobart in 1976 unanimously passed a resolution that:

...this Convention, recognising the fundamental role of Local Government in the system of government in Australia, and being desirous that the fulfilment of that role should be effectively facilitated —

- (a) Invites the States to consider formal recognition of Local Government in State Constitutions;
- (b) Invites the Prime Minister to raise at the next Premiers' Conference the question of the relationships which should exist between Federal, State and Local Government; and
- (c) Requests Standing Committee 'A' to study further and report upon the best means of recognition of Local Government by the Commonwealth.

A Convention held in 1978 considered the report of Standing Committee 'A' noting a resolution that the focus of the debate move from recognition of Local Government in the Commonwealth Constitution to recognition in each of the State Constitutions.

1980 — Advisory Council for Inter-governmental Relations

In the early 1980's the Advisory Council for Inter-governmental Relations (ACIR) published two reports on constitutional recognition: *Constitutional Recognition of Local Government*; and *Report 7, Responsibilities and Resources of Australian Local Government*.

ACIR, in the paper *Constitutional Recognition of Local Government*, 1980, suggested that the two major reasons put forward by Local Government in support of recognition: ongoing financial security; and improved status and recognition of Local Government could be addressed separately without altering the Constitution.

Security of financial assistance to Local Government could be accomplished through the financial assistance grants. This method of funding for Local Government is now an integral part of inter-government financial arrangements and is not an obligation arising from the Constitution.

In response to raising the status and prestige of Local Government by affirming its role as a third sphere of government ACIR considered that this objective could be achieved not simply as a consequence of Constitutional recognition, but in association with a wider acceptance of Local Government's position by the Commonwealth, the States and the broader community.

In 1984 ACIR published *Report 7, Responsibilities and Resources of Australian Local Government* providing an examination of the relationships that should exist between Federal, State and Local Government. In this report ACIR discussed the conditions under which Local Government operate as a provider of valuable services to the community in a system of three spheres of government. In 1984 ACIR made many recommendations intended to initiate and establish ongoing structural support for reforms in Local Government (51 recommendations in all). None of the recommendations made by ACIR at this time supported recognition of Local Government in the Constitution but instead proposed a network of initiatives that would provide Local Government with the stimulus and capacity for reform in the context of changing needs.

In 1985 ACIR reversed its position publishing its findings in *Report 8, Implications of Constitutional Recognition for Australian Local Government*. ACIR argued that recognition of Local Government in the Constitution would bring benefits to the public and to the overall operation of all spheres of government.

In this report, ACIR discussed Local Government as the form of public administration that is closer to the people than the States and one that operates as a fundamental part of the State's machinery for governing. In its conclusions, the report noted that as an elected body, Local Government is more responsive and is more directly accountable to the public than the bureaucracy of the State.

The reversal of ACIR's position in *Report 8* was based on consideration of a report published by the *Structure of Government Sub-Committee — Australian Constitutional Convention (1973 – 1985)*, responses and reactions to its own Report 7, and continuing developments in Local Government.

In particular the findings of the Structure of Government Sub-Committee were that Local Government had evolved to provide a wide range of services at the local level, had accepted a significant devolution of responsibilities from the States and that it required a direct and secure source of revenue. On the basis of these findings the Sub-Committee recommended that Local Government ought to be recognised on a formal basis by the States and by the Commonwealth.

1985 — Constitutional Convention, Brisbane

In 1985 a Constitutional Convention held in Brisbane also considered the report of the Structure of Government Sub-Committee and adopted a proposal recommending that the Constitution be amended to recognise Local Government. Both ACIR and the Structure of Government Sub-Committee included in their respective recommendations a substantive endorsement of the proposal by ACLGA to alter the Constitution by the insertion of a new section, 108A, in the following terms:

S.108A — Subject to such terms and conditions as the Parliament of a State or the Northern Territory or in respect of any other Territory the Parliament of the Commonwealth may from time to time determine every State and Territory of the Commonwealth shall provide by law for the establishment and continuance of Local Government bodies elected in accordance with such laws and charged with the peace order and good government of the local area for which they are elected. Each such Local Government body shall have the power to make by-laws for the peace order and good government of its area to the extent and in accordance with the laws prescribed by the respective Parliaments in that behalf.

1985 – 1988 — Constitutional Commission

In December 1985, the Federal Government established a Constitutional Commission to carry out a fundamental review of the Australian Constitution. Five Advisory Committees were established to assist the Commission in the review. The terms of reference for the Commission were:

To inquire into and report on the revision of the Australian Constitution to:

- (a) adequately reflect Australia's status as an independent nation and a Federal Parliamentary democracy;
- (b) provide the most suitable framework for the economic, social and political development of Australia as a federation;
- (c) recognise an appropriate division of responsibilities between the Commonwealth, the States, self-governing Territories and Local Government; and
- (d) ensure that democratic rights are guaranteed.

1987 — Distribution of Powers Advisory Committee

In June 1987 the Distribution of Powers Advisory Committee recommended to the Constitutional Commission that the Commonwealth Constitution not be altered on the basis of the proposed addition of section 108A.

In the opinion of the Committee, Local Government recognition was based on two positions with respect to constitutional recognition:

- recognition in the form of the proposed section 108A, as supported by the majority of submissions; and
- recognition in the form of a new Chapter in the Constitution expressing functions of Local Government and a process of democratic elections.

The Advisory Committee recommended against recognition noting that it was uncertain as to how the High Court would interpret the proposed section 108A. The Committee noted that constitutional provisions could be adopted as a declaratory statement only and expressed in non-justiciable terms (ACIR discussion paper No.3, p.9). Recognition of Local Government in this way would eliminate the potential difficulties arising from judicial interpretation of the Constitution. The Advisory Committee's view was that inserting such a provision in the Constitution would be unique and would not be worthwhile.

The Committee remarked that Local Government owes its existence and derives its powers and responsibilities from the States and is legally and in practice a subordinate form of government. The Committee believed that while the proposed addition of section 108A into the Constitution would not fundamentally alter that situation it could encourage unhealthy competition between Local Government and the States.

The Committee noted that the arguments put by Local Government bodies for constitutional recognition seemed to be based on a perceived need to increase the status of Local Government, a factor which the Committee believed was not sufficient to warrant a change to the Constitution.

1987 — Trade and National Economic Advisory Committee

In its report to the Constitutional Commission, the Trade and National Economic Advisory Committee on Local Government recognition reported that Local Government operated within a limited tax regime, particularly the case with regard to a rapidly increasing role of Local Government in the provision of human, social, recreation and environmental services. The Committee expressed a strong consensus that the level of rate exemptions in favour of both Federal and State governments, and their instrumentalities, was a severe detriment to the finances of many municipalities.

The Committee also reported that the nature and scope of the tax base for Local Government basically involved policy decisions at an inter-governmental level, but this in itself was insufficient justification to change the Constitution. It also noted that particular types of taxes, with the exception of customs duties, should not be exclusively allocated to specific levels of government.

The Committee recommended that the Constitution of Australia be altered to include an appropriate recognition of Local Government but did not cite specifically the form such recognition should take.

1987 — Australian Council of Local Government Associations (ACLGA)

ACLGA made a preliminary submission to the Distribution of Powers Advisory Committee supporting recognition in the form of the proposed section 108A. ACLGA later broadened the scope of any proposed change to the Constitution to provide for the existence of Local Government, the expression of particular responsibilities and functions, and the protection of democratically elected councils from dismissal except for just cause.

ACLGA considered that changing the Constitution to recognise Local Government was justified by the major political and economic changes that had occurred since Federation, including the growing mismatch between responsibilities and resources, and the rapid expansion of services provided by Local Government.

The Council also suggested that the Constitution provide for the establishment of a new tripartite body, representing the three spheres of government, to advise on the allocation of responsibilities and resources and to assign taxing powers between the Commonwealth, State and Local Governments.

1988 — Final Report of the Constitutional Commission

On the basis of the reports of the Advisory Committees and submissions received, the Commission concluded in its final report that Local Government should be recognised as a third sphere of government in the Australian Constitution. The Commission noted that:

- Local Government was in existence before Federation and it had grown markedly in scope and importance since then;
- Local Government had a legitimate right to be recognised and consulted in the allocation of responsibilities and resources within the public sector;
- in the recognition of Local Government, the functions of each sphere of government be clarified for loan funding and financial assistance to be directed in the most efficient and effective way; and
- recognition would give Local Government the necessary status as a third sphere of government and the necessary standing to enable it to carry out its duties in the light of Constitutional endorsement.

The Commission made its findings independent of the possibility of a 'perceived threat to the continued existence of Local Government' and was not satisfied that the issues raised by the Distribution of Powers Advisory Committee should outweigh the arguments in support of recognition. More relevant to its conclusion was that recognition would give Local Government the necessary status and profile as a third sphere of government to enable it to carry out its functions in the light of Constitutional endorsement.

The Constitutional Commission recommended that a new section, 119A, be inserted in the Constitution in the following terms:

119A. Each State shall provide for the establishment and continuance of Local Government bodies elected in accordance with its laws and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State.

1988 — Referendum

One of the four questions proposed in the referendum of 3 September 1988, considered altering the Constitution of Australia to recognise Local Government as the third sphere of government in Australia. The proposal was to insert the proposed Section 119A, into the Constitution in the terms drafted above.

The proposal was not successful, achieving a favourable vote of just 33.62 per cent.

1995 Commonwealth-Local Government Accord

Local Government has continued its support for recognition in the Australian Constitution. In 1995 the Government signed the *Commonwealth-Local Government Accord*. The Accord was counter signed by the then President of ALGA.

The Accord strengthened the role of Local Government as a partner in the development and delivery of programmes initiated at the national level and included a commitment by the Commonwealth to support the recognition of Local Government in the Australian Constitution.

1998 — Constitutional Convention

The focus of the Constitutional Convention held in February 1998 was the question of a change to a republican form of government. However, the Convention did consider including a reference to Local Government in a Preamble of an amended Constitution should a republic be supported by a referendum. A motion put to the Convention to include recognition of Local Government in such a Preamble was not supported by a majority of delegates.

A Preamble to the Constitution would be included as an introductory statement of values to help understand the Constitution, not to be used as a mechanism for further interpretation.

The Convention's Working Group for 'Process and Procedures for ongoing debate on Constitutional Reform' resolved that in the event that a republican system of government be decided by referendum, the Commonwealth Government should convene a further Constitutional Convention.

The agenda of such a Convention would be to review the operation and effectiveness of any republican system of government introduced by a constitutional referendum and to address other matters, including the role of the three tiers of government.