



## Dissenting report – Senator David Bushby, Mr Mark Coulton MP, Senator David Fawcett, Mr Steve Irons MP, Mrs Jane Prentice MP

The Coalition members of the Committee note that the Coalition has committed to support the appropriate financial recognition of local government in the Australian Constitution, provided that change is limited to removing the question of constitutional validity in relation to direct Commonwealth funding of local government. Nonetheless, that support has always been conditional on the government proposing a specific change, something it has so far failed to do.

The Government formed the Expert Panel on Constitutional Recognition of Local Government ('the Expert Panel') to identify options for the constitutional recognition of local government and to report on the level of support for such recognition among stakeholders and in the general community.

The Expert Panel's final report stated that:

*The majority of panel members support a referendum in 2013 subject to two conditions: first, that the Commonwealth negotiate with the States to achieve their support for the financial recognition option; and second, that the Commonwealth adopt steps suggested by ALGA necessary to achieve informed and positive public engagement with the issue, as set out in the section of this report on the concerns about a failed referendum (see page 16). Steps include allocating substantial resources to a major public awareness campaign and making changes to the referendum process<sup>1</sup>.*

As such, the Expert Panel was supportive of a 2013 referendum on financial recognition of Local Government, through a change to S.96 of the Constitution,

---

<sup>1</sup> Expert Panel on Constitutional Recognition of Local Government, Final Report, December 2011, p.2

provided two conditions were met. The first condition was negotiation with the States to achieve their support for the Government's proposed question and, the second, to take steps as recommended by ALGA to achieve informed and positive public engagement with the issue.

The Expert Panel's final report was delivered in December of 2011, almost two years prior to the latest possible date for the next Federal election. As at that date, the Government had plenty of time to ensure it took the blueprint for a referendum on financial recognition of local government, as provided by the Expert Panel, put it in place and proceed to put the question to Australians who have had the benefit of a full public education campaign on the issues.

We are now 10 months from the latest date for that election, yet the Government has failed to take action that could have been taken to meet either of the two conditions imposed by the Expert Panel, (neither of which have been met).

As such, the prospects of a referendum held in conjunction with this year's Federal election raise serious risks that it would be held in an environment where potential consensus of stakeholders (including the States) has not been met and where the opportunity to fully inform the voting public through public education and other avenues has not been fully realised.

Coalition members of the Committee are strongly of the view that the meeting of both of the Expert Panel's conditions are vital before any referendum on this issue (or any other constitutional change) should be put to the people.

Australia is a Federation of states and, as the evidence attests, the support of State governments can make or break referenda. If State governments are largely opposed to change, history proves it is very difficult for referenda to pass.

In the view of Coalition members, the recommendation by the Expert Panel that the Government negotiate to achieve the States' support for financial recognition, is an essential precursor to the Committee being able to make a recommendation on the likelihood of the referendum being supported by the Australian people. This view was reinforced by a number of witnesses that for the referendum to be successful, States either had to actively support the measure or at least "run dead" on the issue.

Evidence received at the hearing suggested that the Government position was that negotiation could not occur with the States until a proposal was developed. Coalition members of the Committee reject this position and consider that the Government, has failed to make best use of the time since December 2011 by failing to undertake such negotiations and that this delay has potentially undermined the prospect of a full and informed referendum proposition being put in 2013.

In any event, the Expert Panel put forward a proposed set of words in its Final Report in December 2011 and this could and should have formed a starting point

for such negotiations at that time. ALGA has since further refined these words in an attempt to allay concerns voiced by some States. Yet the Government has again failed to use these words as a starting point.

Despite these delays, either of these sets of words should now form a starting point for the Minister to immediately initiate negotiations with the States. The Minister must conclude these negotiations prior to the publishing of the final report of this committee such that final recommendations can be made cognisant of the position of the States.

Coalition members of the Committee are also strongly supportive of the Expert Panel's second condition and consider that decisions made by Australians in relation to potential changes to the Constitution should always be made on as fully informed a basis as possible.

Where a proposed change is worthy of support, a well informed public will be more likely to support it and, if a proposed change has potential pitfalls, a well informed public will be more likely to identify those problems and vote accordingly.

The desirability of the public being well informed regarding potential Constitutional change is even more important given that all Australian citizens are required to vote in a referendum. As such, it is not just those who have taken an active interest in the question, but those who are notably disinterested, who are required to make the decision.

Coalition members therefore consider that prior to a change to the Constitution being put to the people, Parliament should take all reasonable steps to maximise the likelihood that all voting Australians understand the question and have an opportunity to consider the 'yes' and 'no' arguments before making their decision.

This position is consistent with the evidence of many submitters, not least the Australian Local Government Association, which now holds grave concerns that the potential for success of a referendum has been severely harmed by the failure of the Government to take steps to meet the Expert Panel's two conditions and otherwise to advance the public education on the issues.

Their position is encapsulated by a statement of Ms McPherson of the Victorian Local Governance Association:

*Ms McPherson: ...So for us, we think that the only way to secure a successful vote is to have the public understand this issue in a way that is meaningful for them-what is the impact for them directly as ratepayers and as citizens? And if that campaign has not commenced then we are concerned about the timing<sup>2</sup>.*

---

<sup>2</sup> Committee Hansard, 16 January 2013, p33

The Constitutional experts who appeared at the hearing also provided support for the position that inaction by the Government has introduced risks (although their consequent conclusions differed). For example, Professor Williams stated:

*But it is a risky course-I certainly agree with that-and not the most desirable course either. The most desirable course would be that by this point, more work would have been done over the past months to actually build the level of public recognition, to get the support on board. It is dreadfully late and that itself is a major problem.*<sup>3</sup>

And Professor Brown:

*Mrs Prentice: I just want to go further with AJ on the need to run a hard campaign soon and who should be running it. How long do you think we need? Do we need 18 months?*

*Prof. Brown: That is a very good question, and I think the answer is that you need more than six months.*<sup>4</sup>

Despite the real concerns expressed by stakeholders regarding the impact of the Government's inaction on public understanding and, hence, timing of a referendum, the Chair's Preliminary Report concludes strongly that a referendum should be held in 2013 and that it should be held in conjunction with the Federal election due this year.

Coalition members of the Committee remain to be convinced that the time left between the date of this report and the latest possible election date is sufficient to be able to do the proposed constitutional change justice by ensuring a fully informed decision is made. If the election is held any sooner than the last possible date, the challenge only increases.

These challenges are highlighted by the excessively rushed process this Committee has agreed to put in place, which include the perverse outcomes of holding a hearing and the delivery of a preliminary report prior to the closing date for submissions!

The findings of the Expert Panel, evidence contained in submissions and also from some witnesses at the hearing, all highlight that the processes that need to be followed in order for Australians to be in a position to fully and carefully consider a referendum question, take time to implement properly.

Rushing these processes amounts to cutting corners and increases the likelihood of outcomes that do not accurately reflect those that would be experienced if the processes had been fully rolled out.

---

<sup>3</sup> Committee Hansard, 16 January 2013, p12

<sup>4</sup> Committee Hansard, 16 January 2013, p16

Coalition members note, however, that the Chair’s Preliminary Report recommends action be taken immediately to put in place the necessary steps to hold the referendum in conjunction with the 2013 Federal election.

As such, Coalition members reserve their position on the matters recommended in the Chair’s Preliminary Report, pending the outcomes of any response by the Government to those recommendations and the delivery of the final report of this Committee in March 2013.

Senator David Bushby

Mr Mark Coulton MP

Senator David Fawcett

Mr Steve Irons MP

Mrs Jane Prentice MP