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5 February 2013

Committee Secretary
Joint Standing Committee on Constitutional Recognition of Local Government
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear committee members,

Re: Constitutional Recognition of Local Government.

It is appreciated that the Joint Standing Committee is making a further assessment of the above matter. This organisation made a submission to the Expert Panel of Inquiry last year wherein serious concerns were expressed in relation to sufficient public support on one hand, and, to the wisdom of such a step on the other.

We notice the terms of reference has four points. We offer the following detail for your careful consideration:

To terms of reference point 1.

"The report of the Expert Panel on constitutional recognition of Local Government, including preconditions set by the Expert Panel for the holding of a referendum."

According to the web site for the government Expert Panel it was (Quote) *"tasked with consulting the community on whether Australia's Constitution should be changed to include local government."* (End of quote)

Please consider:

1. Given that the Constitution is the highest law document which holds **two levels of government recognised as government in accordance with the Westminster system of government** the notion of introducing "local government" in the style and manner it presently operates (supposedly as a third tier of "government") is foreign to the Constitutional law operating in Australia.

   It would be inconsistent with Constitutional settings and Australian law standards to provide municipal councils with any sort of legal standing as "government" in the Constitution of this nation. Therefore, the proposal should not be entertained.

2. The Expert Panel provided a Final Report in which it advised the singular change to allow federal financing to municipal councils would be a limited exercise for it considered there was a real need for other constitutional changes to be made with proper public education. In this I note (Quote) *"especially in light of the panel's research finding that financial recognition enjoys no greater public support than other (re)forms."*

   Put another way, the Panel did not consider there was either constitutional value, or sufficient public support, to the S 96 (financial) proposal by itself.

3. The Expert Panel considered whether direct federal financing was likely to be an advantage to municipal councils and it reflected in its Final Report that many thought it would not make any difference.

   Let us be frank .. there is <u>NO guarantee</u> from the S 96 proposition in hand that (overall) more funds will be made available to municipal councils in ensuing years if referendum approval is given, therefore, the referendum exercise would be a huge waste of money.

To terms of reference point 2.

"The level of State and Territory support."

4. Submissions by many municipal bodies, together with their associations, would give rise to the thought there was support for the proposal, but, that has to be balanced by submissions from State governments and other independent bodies - for the idea of municipal councils (incorrectly called governments) becoming another tier of government in the Constitution is a real problem to State affairs.

   To introduce a third level of "government" would increase the complexity of present arrangements on one hand, and it opens the door to federal action towards ultimate removal of States by gradual change to the level of tasking and funding to councils from the federal level – leading to regional councils. These issues have not been adequately ventilated in the public forum at this stage, and a referendum on financials alone would be totally inadequate.

To terms of reference point 3.

"The potential consequences for Local Government, States and Territories of such an amendment."

5. Given public support to the proposal to alter Constitution S 96 at referendum then there would be enormous difficulty in relation to the legal status of all municipal councils across the country. The difficulty arises because "local government" is NOT a proper government from a constitutional perspective.

   In this matter please refer to the determination of the High Court of Australia in **Pape V Commissioner of Taxation [2009] HCA 23 (7 July 2009),** at 56 – 60.
   In that determination the High Court of Australia declared that **three principles** undergird a "government" *per se*. The idea of introducing municipal councils as a their tier of "government" fails at that point for without these three principles in place it is not possible to have "government" based on the system we operate by.

   Let us be frank .. the legal standing of municipal councils is NOT that of "government", and this is demonstrated in many High Court of Australia determinations which identify a municipal council as a body corporate. Therefore, to recognise councils as they stand as "local government" in the Constitution is to unlawfully stand constitutional settings on their head.

6. Given referendum approval of the proposed S 96 there will be consequent legal issues – which will become a lawyerfest, and provide great disruption to courts. If the Parliament wishes to ingratiate the lawyers then this is one way to do so, but it will be done at the expense of the people who try to stand for their legal rights. There will remain an unresolved issue as to claims by councils that they are at last a third tier of "government" – able to tax, when they are not, and still cannot be.

   For lawyers to have a field day at the expense of the public, and for councils to be given constitutional hope that they are a legitimate taxing body (raising public money for public purposes) is a serious miscalculation in the scheme of things in Australia. Therefore, the proposed change to S 96 should not be entertained as a good proposal by the Joint Committee.

To terms of reference point 4.

"Any other matters that the Committee considers may be relevant to a decision on whether to conduct a referendum, and the timing of any referendum."

7. In relation to matters relevant to the conduct of a referendum.
   In 1986 the Imperial Parliament of the United Kingdom of Great Britain passed a law which affected constitutional settings in this country. The Imperial law known as the *Australia Act* 1986 (Imp) holds - at S 1 - that the Parliament of the United Kingdom could not pass law/s which extended to Australia. The operation of the constitutional Crown in Australian affairs was withdrawn, as was the formal setting wherein the Queen of the constitutional Crown was withdrawn from any relationship with the Commonwealth and the States respectively at that time.
   This has to be viewed in the context of applying the Rule of Law for governance as there has not been referendum of the people to alter constitutional settings..

   Further, in 1973 the federal Parliament passed the purported *Royal Styles and Titles Act* 1973 (Cth) wherein the official constitutional Queen of the United Kingdom of Great Britain was purportedly moved aside and a fictional "Queen of Australia" was supposedly put in the place of Her Most Excellent Majesty. That was done without a constitutional referendum of the people of Australia; without Imperial law to change the preamble to the Constitution, and without lawful authority at federal level to pass legislation of that nature.

   Since then, there has been NO constitutionally appointed Governor-General, nor constitutionally appointed State Governors respectively. In law, that means there can be no lawful "Royal Assent"

given to Bills from the House/s due to the fact there is no representative of the constitutional Monarch in place to do so.

Simply put, there is a huge hiatus in the constitutional Rule of Law for our governance in this country. This is a matter the sovereign people have right to expect the representatives they elect to work at to fix the problem, without the members of "Parliament" taking away the constitutional sovereignty of the people, and without due respect for Constitutional Conferences necessary to move to a proper/new position – ultimately, with referendum approval of the people!

Australian Parliaments are constitutionally set up in such a way as to hold Parliament/s accountable to the people, and this is reinforced by the Framers of the Constitution in the Constitution Debates in 1898 (and earlier) - in the Hansard record - where they declared that, upon Federation, the sovereignty of colonial (now State) Parliament/s was withdrawn, for the people were made sovereign over their laws – a matter further reinforced by the correct lawful holding of "court", with a jury of 12 peers judging the law (applying to the matter) and the case ... able to cause that "law" to be held as void.

Therefore, it is entirely inappropriate to hold a referendum on S 96 alone. There are more serious "matters of state" to be dealt with which require the attention of the legislature, and ultimately, referendum approval.

In conclusion, the idea of a (limited!) S 96 referendum on direct federal funding on 14th September 2013 is of no value without a proper address to the overall constitutional issues raised in brief above.

We trust that this submission will be provided to the public in the public interest. And, we thank you for the opportunity to make these points for your thoughtful consideration.

Yours sincerely,

Peter Olney
President
Whitehorse Ratepayers & Residents Association Inc.
And Committee member of Ratepayers Victoria Inc.

CC: The Hon Simon Crean, MP. Minister for Regional Australia, Regional Development and Local Government.
The Hon Jeanette Powell MP. Minister for Local Government - Victoria.
Mr Jack Davis, President, Ratepayers Victoria Inc.
Others .. in the public interest.