



Shire of Dalwallinu

"the Wheat Shire"

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14 February 2013

In Reply Please Quote Our Ref:

Submission Number: 208

Our Ref:
CEO:GR/2:O-SUB-5472

Date Received: 15/02/2013

Your Ref:

Mr Glenn Worthington
Secretary
Joint Select Committee on the Constitutional Recognition of Local Government
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Glenn

RE: Inquiry into the Constitutional Recognition of Local Government

Attached you will find a submission from the Shire of Dalwallinu regarding the Constitutional Recognition of Local Government.

Council wishes to confirm that they DO NOT SUPPORT the Recognition of Local Government in the Australian Constitution.

It would be appreciated if you would convey the position of the Shire of Dalwallinu to the Joint Select Committee on the Constitutional Recognition of Local Government.

Yours sincerely

Peter Crispin
Chief Executive Officer

Shire of Dalwallinu

Western Australia

SUBMISSION TO THE HOUSE OF REPRESENTATIVES

JOINT SELECT COMMITTEE

ON

CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT

The purpose of this submission is to explain Council's reasons for supporting the "No Case" and for rejecting the "Yes Case" as presented in "THE CASE FOR CHANGE", sent to Councillors by the Australian Local Government Association (ALGA). The "Yes Case" is misleading and evasive as it does not provide information to Councillors of the inevitable detrimental impact of a new Commonwealth funding power, or the alternate funding option for Local Government available within the Federal System of government. The proponents do not advocate due diligence and caution with respect to the already disproportionate and skewed balance of power moving further to the advantage of the Commonwealth.

No explanation is provided as to why key interpretative words in s96 of the Australian Constitution have been omitted, namely, to grant financial assistance "on such terms and conditions as the Parliament sees fit", and the likely impact on Canberra's control of Local Government. (The proponents use "sees fit" rather than "thinks fit" in the present text.)

This amendment to the Constitution is not in the best interest of Local Government. Local government is better served when it remains within the jurisdiction of the State Government as the present arrangement will provide an essential check and balance against unnecessary Commonwealth intrusion and intervention in Local Government responsibilities.

Motion 7619

Moved Cr SC Carter
Seconded Cr GH Sanderson

That a submission be made to the inquiry of the Joint Select Committee on Constitutional Recognition of Local Government stating Council's reasons for supporting the "No Case" for Constitutional Recognition of Local Government in the Australian Constitution, and rejecting the "Yes Case" in the Australian Local Government pamphlet with the title "The Case For Change".

Carried 8/0

Background

The ALGA letter signed by Mayor Felicity-ann Lewis, President of the Australian Local Government Association (ALGA) dated 22 November 2012 is seeking submissions to the inquiry of a Joint Select Committee on Constitutional Recognition of Local Government, specifically to counter submissions which may oppose Constitutional Recognition.

The Shire of Dalwallinu previously made a submission (No 497) to the Expert Panel on Constitutional Recognition of Local Government with reasons why it did not support Constitutional Recognition. The Final Report at least mentioned one of the Shire's reasons raised in its submission:

...that financial recognition might 'enhance Commonwealth dominance over the States, and future dominance over Local Government'.

At the November Ordinary Council Meeting, Council passed the following two (2) motions;

MOTION 7602

Moved Cr SC Carter
Seconded Cr GH Sanderson

That in the interest of balance and informed choice, WALGA be requested to invite a speaker from the State Government to present the "No Case" for Constitutional Recognition of Local Government at the next round of zone meetings or conferences.

CARRIED 9/0

MOTION 7603

Moved Cr WM Dinnie
Seconded Cr KL Carter

That the Chief Executive Officer write to the Minister for Local Government requesting a State Government response to the Australian Local Government Association document "The Case for Change"

CARRIED 9/0

Comments on the "No Case":

It is already well documented that the Shire of Dalwallinu does not support the Constitutional Recognition of Local Government in the Australian Constitution. Local Government is already recognised within the Western Australian Constitution.

It is essential, in a Federal System of government, that the roles and responsibilities between the States and Commonwealth are divided. The division of power within the Federal System is one of the checks and balances necessary, and historically validated, to reduce the risk of the misuse and abuse of political power; especially financial power with strings attached. While “THE CASE FOR CHANGE” acknowledges most of the tax paid goes to the Federal Government, the proponents do not seek to address the downside of the fiscal imbalance that has extended beyond tipping point.

It is this imbalance that enables the Commonwealth to use its financial muscle to extend its influence well beyond the limits of a sustainable Federal System. It is moving persistently in the direction of a Unitary System where the central government has the power to enable it to use state, regional governments or local government as subordinate administrative arms.

Carmen Lawrence, former WA Labor Premier 1990-1993

“The real problem is the steady loss of state revenue-raising capacity, which has been going on since Federation and was accelerated with the introduction of GST.

All the states are now very dependent on the Commonwealth for funds and are, therefore, under increasing pressure to comply with Commonwealth policy initiatives in areas like education and health, which are strictly state responsibilities. The states run the risk of becoming branch offices of the Commonwealth Government.

Part of the problem is both major parties have shown themselves to be centralists and there has been very serious debate about the downsides of the trend to a single, national government.”

The Sunday Times

May 29, 2011

Decentralised Local Government is close, responsive and more accountable to the needs of local communities; whereas centralised government becomes more remote, less responsive, less accountable, and like all government, not immune from corruption.

Especially at a federal government level in Australia, there’s been a level of denial on both sides of politics and in senior levels of the public service for a long period of time that somehow the federal government is better, that it doesn’t have corruption risks and corruption problems.

Professor A.J. Brown

The World Today with Eleanor Hall

Thursday, December 20, 2012

Continuing scandals involving corruption at a federal level raise serious questions about why politicians on both sides of politics will not follow the states and establish a national anti-corruption commission.

Bob Bottom

The Weekend Australian

December 29-30, 2012

Questions need to be raised as to what are the real intentions of the drivers of the “Yes Case” when their political rhetoric preaches localism, empowerment, embracing the principle of subsidiarity, and reform as the entrée to regional cooperation and governance. Is the intention the amalgamation of Local Governments into Regional Government based on boundaries similar to the Federal Government agency, Regional Development Australia?

Comments on the “Yes Case”

ALGA’s position on the Federal System is explained in the publication *Federalism and Regionalism in Australia – New Approaches, New Institutions?* Paul Bell, former President of ALGA, is the author of Chapter 11: *How Local Government Can Save Australia’s Federal System* where he raises the question: “So, how can we in local government address our lack of solid, regional governance arrangements?” However, the pertinent question that is unsubstantiated is where is ALGA’s evidence that regional governance arrangements can save Australia’s Federal System when the cause of the illness is untreated – namely the increasing shift in the balance of power and influence from the States to the Commonwealth?

The content of the ALGA letter by the current ALGA President highlights further questions and uncertainty as to the true intentions and consequences of Constitutional Recognition in the Australian Constitution. These questions need to be answered satisfactorily by the proponents of constitutional change. The ALGA letter directs Councils to reinforce their submissions with a number of requests; for instance:

Reinforce that your council supports an amendment to Section 96 of the Constitution so that it would read: “Parliament may grant financial assistance to any state **or local government body formed by or under a law of a state or territory**”;

An examination of the ALGA campaign pamphlet “THE CASE FOR CHANGE”, and other documents produced by the proponents, reveals significant word and punctuation differences in the proposed amendment to s96. This inconsistency alone raises concern about the validity and credibility of the “Yes Case”.

In the version of s96 in “THE CASE FOR CHANGE” there is a full stop after the word “territory” suggesting there are no other relevant words in the present s96 or the proposed amendment to s96. This is untrue and must raise the question as to why the important words “on such terms and conditions as the Parliament sees fit” have been excluded.

The “Expert Panel on Constitutional Recognition of Local Government Final Report December 2011” reads:

the Parliament may grant financial assistance to any State *or to any local government body formed by State or Territory Legislation* on such terms and conditions as the Parliament sees fit.

Furthermore, the Western Australian Local Government Association (WALGA) publication, "COUNCILLOR *direct*" Issue #49" has another version:

The Expert Panel proposed an amendment to s96 of the Australian Constitution as follows (proposed new words in italics):

"The Parliament may grant financial assistance to any State or to any Local Government body formed by State or Territory Legislation on such terms and conditions as the Parliament sees fit."

Local Government is an administrative arm of State Government and the expectation is that the due process of decision making has procedural integrity, such as full disclosure of important information. Information on the consequences of Council decisions is essential, whereas non-disclosure is reprehensible, particularly on a referendum where it is prudent to be vigilant. Could supporting the "Yes Case" expose Councillors to accusations of negligence because they have not acted in the best interests of their community?

For example the Expert Panel Final Report states in the section on "State and Territory attitudes":

The Tasmanian Government did not provide a formal comment on the constitutional recognition of local government as it 'did not wish to comment on any proposals until such time as a final form of amendment is available for review'.³⁷ The basis for this position is the potential for unintended consequences since 'even minor changes to the Australian Constitution can have significant consequences for the nature of our Federation or how the Constitution is interpreted'.³⁸ ...

Questions need to be raised when it is claimed in "THE CASE FOR CHANGE" that:

Local government, in seeking recognition, does not seek to break or change the relationship between itself and the State and Territory Governments.

This claim is unbelievable when checked against the intention of Constitutional Recognition described in the final report of the Systemic Sustainability Study for Local Government in Western Australia with the title THE JOURNEY: SUSTAINABILITY INTO THE FUTURE:

... There is no acknowledged role for Local Government in the Constitution, and the Commonwealth Government has only been able to influence Local Government through its 'grants' powers. ...

This WALGA document is the key document for change and alleged reform for Local Government in Western Australia by a proponent of the "Yes Case". WALGA argues in favour of Constitutional Recognition to provide the Commonwealth Government with additional power to influence Local Government.

Subsequently the decision on the *Pape Case* and the *Williams Case* challenged the constitutionality of the Commonwealth to make direct payments to Local Government without a specific head of power. "THE CASE FOR CHANGE", advocates direct funding to Local Government, but fails to inform councillors of the consequences and risks associated with a new power in the Australian Constitution to enable the Commonwealth to grant financial assistance on such terms and conditions as the as the Parliament sees (thinks) fit.

Valid reasons are not provided by the proponents as to why s96 grants to Local Government should not be funded through State Governments. This arrangement is more likely to ensure that Local Government remains a decentralised administrative body of State Government, rather than a centralised regional administrative body of the Commonwealth Government. It would in part retain a constitutional barrier to the unnecessary growth of Commonwealth power and intervention into local community issues.

Strategic Implications:

- 1) Possible detrimental effect upon the Federal System of Government by increasing the power of the Commonwealth to the detriment of the States.
- 2) Increase in Commonwealth power over Local Government because it will enable the Commonwealth Parliament to grant financial assistance "**on such terms and conditions as the Parliament sees fit**". There will be potential for the Commonwealth to influence Local Government through grant powers into larger Local Governments or Regional Governments. For example, in "BUDGET: STRONGER REGIONS, STRONGER NATION", The Honourable Simon Crean MP, Minister for Regional Australia, Regional Development and Local Government, Minister for Arts on 8 May 2012 stated:

Our goal is to ensure regionalism becomes a fundamental part of Australia's governance.

- 3) Jurisdictional uncertainty and confusion over powers and responsibilities if Local Government is recognised in the both the State and Australian Constitutions.

Sustainability Implications

Environment:

Increase of Commonwealth influence over Local Government on environmental matters as they have the power to legislate on environmental and climate change issues. (See the comments on national interest in economic section).

Economic:

Increase of Commonwealth influence on economic matters. The ALGA letter requests:

... 'that your council supports the Federal Government having the power to be able to provide funding directly to local government where this is in the national interest;'

How will 'the national interest' be defined, especially if it has an expansionist definition, and will it change the boundaries of responsibilities between Local, State and the Federal Government?

Social (Community Consultation):

The Dalwallinu Shire Council has raised the issue at community meetings where motions have been passed that oppose Constitutional Recognition.

Financial Implications:

The Shire has no specific budget allocation. However, the Western Australian Local Government Association has \$1.1m of public funds to campaign for the "Yes Case", but no budget allocation for the "No Case".

Conclusion:

The Shire of Dalwallinu does not support the "Yes Case" as documented by the Australian Local Government Association in the pamphlet titled "THE CASE FOR CHANGE", or the recognition of Local Government in the Australian Constitution, for the following reasons:

1. Local Government is already recognised within the Western Australian Constitution. Dual recognition will cause jurisdictional uncertainty and a likely further shift in the balance of power and influence from the States to the Commonwealth.
2. The "Yes Case" is misleading and evasive. The intention of the referendum amendment is to provide the Commonwealth Parliament the power to intervene and influence Local Government matters. At the very least the Commonwealth Parliament will maintain its fiscal dominance to achieve its regional governance goals.
3. The "No Case" offers the most appropriate response for the constitutional protection of the Federal System, where power is divided between the States and the Commonwealth, to ensure neither level achieves a monopoly of power. The "Yes Case" will facilitate an expansion of Commonwealth power to the detriment of State Governments.
4. It is reasonable to suggest that some influential proponents of the "Yes Case" have a goal to ensure regionalism becomes a fundamental part of Australia's governance. A new funding power is likely to drive the amalgamation of Local Government, irrespective of whether it is voluntary or compulsory.
5. Australian voters have been vigilant in rejecting Constitutional Recognition of Local Government in previous referendums in 1974 and 1988.