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OUR REF ORDINARY MEETING DMCK/BD

14 December 2012

Mr Glenn Worthington  
Secretary  
Joint Select Committee on the Constitutional Recognition of Local Government  
P O Box 6021  
Parliament House  
CANBERRA ACT 2601  
(via email to [jsclg@aph.gov.au](mailto:jsclg@aph.gov.au))

### **Submission on Constitutional Recognition of Local Government**

Dear Sir

Please find detailed below, Mackay Regional Council's submission on the Constitutional Recognition of Local Government for Local Government.

- Council supports financial recognition as per Council's resolution dated 12 December 2012.
- 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;
- Council needs certainty of funding so that programs like Roads to Recovery can continue;
- 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";
- Bi-partisan support is an essential precondition if a referendum is to have the best chance of success;
- Council supports the referendum being held at a time which maximises its chance of success;
- Council supports a publicly funded national education and awareness campaign to inform the public about the Constitution, how to change it, and about the question being asked before the referendum. An informed voter is

more likely to cast an informed vote, which is based on facts rather than misinformation.

To reinforce its submission, Council makes the following additional points which have been highlighted by the Australian Local Government Association. These are as follows:

### **Serving The Community**

Every Australian is touched by local government and everyone makes use of a council program, service or facility. In their daily activities people use council-built roads, council paths, council parks and enjoy council pools and playing fields. But there is much more that local councils do to support the community that people may not realise is a council service—stormwater; waste and recycling; planning and building standards; climate change adaptation measures; environment conservation; libraries, art galleries and museums; social and welfare services such as childcare, youth services and aged care; public health services such as food inspection, animal licensing, immunisation and public toilet facilities; caravan parks and camping grounds—are among the services provided by local councils.

There are more than 560 councils across Australia, but no two are the same. Each council is different because it responds to the unique needs of its community, but every council shares a common goal—to achieve the best possible outcomes for its community.

After fires and floods, the local council is there to restore and rebuild the community. The council works for its residents every day of the year.

### **Elected By The Community**

Local government is a democratically elected level of government which is directly accountable to the local communities it serves.

Local councils are the voice of their communities and because they are the level of government closest to communities, they are able to identify community needs and find solutions. Councillors and council staff live locally in their communities. The elected councillors and staff are generally the closest point of contact between the people and government.

Local government works in partnership with federal and state governments, as well as with businesses and other service providers, to deliver the most appropriate services to the community.

Local government consults with the community in a range of ways—liaison groups, stakeholder engagement, public forums and working groups—to find local answers to local issues and is the most accessible level of government when it comes to community contact with elected leaders and public servants.

## **How Local Government Is Formed**

Local government is established under state and territory government laws. The structure, powers and functions of local government are determined by state and territory governments and this will not change. However, local government's place and role as the third sphere of government needs to be included in the Constitution, which sets out how the Federation works.

## **Meeting The Needs Of A Modern Society - Local Governments Expanding Role Since Federation**

Council services have widened from roads, water and sewerage to include areas such as planning, environmental management, recreation, regional development and human services. Local government today provides around 150 services to its community, using only 3% of taxation revenue, raised through fees and charges and the only local government tax—property rates. It is the lowest-taxing level of government and unlike federal or state taxes, property rates go back in to the facilities and services used by the community. Australians can see where their rates are going.

The community expects local government to respond to local needs, which is why the range of services provided by local government has increased dramatically. However, providing the increasing range of services expected by the community is often beyond the limited resources of local communities, local ratepayers and therefore most councils. Grants from other levels of government are essential.

As the third sphere of government, local government works in partnership with the Commonwealth and state and territory governments. Through its membership of the Council of Australian Government (COAG), local government is closely consulted on national policies and is increasingly called upon as a partner in the delivery of Commonwealth initiatives.

Yet despite the evolution in the roles of all levels of government since Federation, the nation's framework for the governance of the Australian Federation, the Constitution, has changed little since 1901. Local government is not mentioned in the Constitution, nor has the Constitution been changed to reflect the greater role and responsibility undertaken by local government.

Consequently the Constitution does not reflect how modern Australia is governed and how the different levels of government work together for the community's benefit.

## **What Has Re-ignited The Need For The Recognition Of Local Government?**

Two recent High Court decisions known as the Pape Case and the Williams Case delivered in the space of three years, have handed down judgements that challenge the Commonwealth's ability to fund activities that it believes are in the national interest. These decisions have important ramifications for local government, as both cases have rejected the Commonwealth's position that it has the capacity to spend money on whatever subject it wishes, for example continued funding for programs like Roads to Recovery.

Legal advice from leading authorities confirms that these High Court decisions have created great uncertainty about the validity of Commonwealth programs that provide funds directly to local government. Such programs, including the \$3.5 billion Roads to Recovery program, may be vulnerable to further challenge in the High Court. This threatens the financial sustainability of councils and the wellbeing of communities across Australia and could mean reducing or discontinuing vital services to local communities.

These recent High Court decisions have provided weight and urgency to the need for a change to the Constitution to allow direct federal funding of local government—what is known as financial recognition. The purpose of amending the Constitution would be to resolve the uncertainty surrounding the Commonwealth's ability to continue to provide direct funding. The only way to ensure the continuation of general direct funding is through change to the Constitution by way of a referendum.

This will secure the Commonwealth's ability to continue to provide direct funding to councils to maintain local roads, infrastructure, services and facilities.

The 2010 agreement between the Labor Government, the Greens and independents, included a commitment to hold a referendum on the recognition of local government by the end of 2013.

### **Capacity To Continue To Provide Your Local Services**

Of the estimated 250 taxes in Australia, local government has only one tax—the rates levied on property. This accounts for only 3% of Australia's total taxation revenue. The States raise 15% and the Commonwealth Government raises 82% of taxation revenue. Funding from the Commonwealth accounts for around 7% of local government revenue but this funding is vital to providing local services. In relative terms the funding from the Federal Government has been falling in recent years at a time when many councils are struggling to provide the level of services required by the community.

Without greater funding from the other levels of government, there is a real risk that local governments will be forced to reduce services and delay repair work. Trying to raise more revenue through property rates is not an option for many councils and most State Government budgets are already stretched.

As the Commonwealth collects the majority of taxes in Australia, Commonwealth funding is vital to support council services.

An independent report by PricewaterhouseCoopers in 2006 estimated that the impact of under-funding of local government was a \$14.5 billion backlog in repairing ageing local community infrastructure such as roads, swimming pools, libraries and town halls.

While the report made recommendations on how councils could become more efficient it also highlighted the need for local government to seek additional funding from other levels of government.

## **Direct Funding To Councils Benefits You and Your Community**

The Federal Government provides some funds each year to States and Territories with the requirement that they pass these funds on to councils. But this money is not enough to meet community needs. The Federal Government has therefore increasingly chosen to fund local government directly. Over the past decade, federal governments from both sides of politics have demonstrated their preference to use direct funding through initiatives such as the Roads to Recovery Program and the Regional and Local Community Infrastructure Program.

It is clear the Federal Government wants to support local communities directly and it has decided that providing funding directly to local governments represents the most efficient way of assisting local communities.

An important reason why the Federal Government has chosen to provide direct funding to local government is that councils are able to respond quickly and effectively to local issues. For example local government played a critical role in delivering 3,300 small community infrastructure projects to local communities across Australia during the Global Financial Crisis.

There are obvious benefits to direct funding—less bureaucracy, no delays in funding being received, greater local accountability and greater transparency.

In conclusion, Council asks for your strong consideration of this submission. A change to the Constitution to allow the Federal Government to continue to provide direct funding to Councils is essential, to ensure that Councils continue to meet community needs. It helps to make sure that communities get the local services and infrastructure they need and desire. In reality, Federal Government has the money, State Government has the power and Local Government has all the problems.

It is also important to note that Local Government in seeking recognition, does not seek to break or change the relationship between itself and the State and Territory Governments.

Yours faithfully

**Dan McKinlay**

*Acting Chief Executive Officer*