



Members ~ Namoi Catchment Management Authority, Narrabri Shire Council, Gunnedah Shire Council, Liverpool Plains Shire Council, Tamworth Regional Council, Uralla Shire Council and Walcha Shire Council

Working together to increase the sustainability and effectiveness of Local Government

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SUBMISSION TO
THE AUSTRALIAN PARLIAMENT JOINT STANDING COMMITTEE
FOR RECOGNITION
OF
LOCAL GOVERNMENT
IN THE
AUSTRALIAN CONSTITUTION.



*While the road ahead maybe long and difficult,
it is filled with opportunity at every turn*

OPENING COMMENTS

Local Government is an integral part of the Australian three tier system of government and effectively operates in partnership with Federal and State Governments to deliver services, facilities and infrastructure to the local community.

Local Government has been serving the local community since 1840 and while each local council may operate differently based on local needs and circumstances, all councils operate within a similar legislative framework and share the common objective of always endeavouring to achieve the best possible outcome for the community.

Local councils are democratically elected by and are directly accountable to the local community. As the voice and advocate of the local community, local councils are better positioned and more responsive to the needs of community than other levels of government. As an outcome, local councils have the capacity to find solutions to the needs of the community, if not directly from their own resources, then acting as an advocate to other levels of government to secure and upgrade the local delivery of State and Federal Government services and infrastructure.

Since the establishment of the first local council in 1840, the structure, role, function and capacity of local government to provide services and infrastructure has expanded exponentially. All Australians, whether they are domiciled within, are a visitor to, or undertake business within a particular local government area make use of local council services, facilities and infrastructure.

Local government is established and controlled under state and territory legislation and the structure, powers and functions of local government are determined by the states and territories. Notwithstanding it is recognised as a legitimate and equally important tier of government, local government is not recognised in the Australian Constitution.

As the legitimate third tier of government, local government deserves to be recognised in the Constitution for many reasons, if not only to modernise the Constitution and correctly recognise how local government, as an equally important tier of government with the other two levels of government, fits into the Constitution as the national blueprint of how the Federation is established, how it operates and provides the guidelines for shaping the Nation.

Namoi Councils fully support the recognition of Local Government in the Australian Constitution and agree with the Australian Local Government Association case for promoting change and Constitutional recognition of Local Government.

CONSTITUTIONAL RECOGNITION

Namoi Councils hold the pragmatic view that at the very least, financial recognition of Local Government in the Constitution represents the best option for success at a Referendum and long term, will make a practical difference to governance of Australia.

Namoi Councils believe that financial recognition has the broad “*in principle*” support of the body politic in all three levels of government in Australia, subject to the precise wording of the referendum proposal being agreed upon.

Financial recognition of Local Government is a realistic option and has the greatest appeal and best chance for success among the electorate at large in a Constitutional Referendum.

In the opinion of Namoi Councils, financial recognition of Local Government in the Constitution of Australia will achieve practical, substantive and enduring improvement, not only to Local Government, but also to State and Federal Government.

Namoi Councils fully concur with the conclusion reached by the *Expert Panel on Constitutional Recognition of Local Government* that amendment of section 96 of the Constitution is the most feasible and appropriate solution to the problem of constitutional recognition and the Federal Parliament providing direct financial assistance to Local Government.

Such an amendment would recognise Local Government in the Constitution and ensure the continuation of Commonwealth funding which has become critical to the long term financial sustainability of Local Government.

Amendment to section 96 of the Constitution as proposed by the Expert Panel (proposed new words in ***italics***) is fully supported by Namoi Councils:

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

Namoi Councils is aware there is cautious concern by a number of State Governments that the risk to amendment of section 96 of the Constitution is the failure to expressly recognise the role of the States and Territories to regulate and control local government.

Namoi Councils would also support amendment of section 96 of Constitution to allay this concern and thereby remove any potential impasse for the referendum proposal. The amendment would expressly recognise the role performed by the States and Territories in *regulating* and *forming* local government bodies and make it patently clear that Local Government is regulated and controlled by State Government.

Consequently, Namoi Councils would also support the following amendment to section 96 (proposed new words in **italics**):

The Parliament may grant financial assistance to any State, **or to any local government body having powers and functions and formed in accordance with State or Territory Legislation**, on such terms and conditions as the Parliament sees fit.

Recent High Court decisions in *Pape v Federal Commissioner of Taxation* (2009) 238 CLR 1 and in *Williams v Commonwealth of Australia* (2012) 288 ALR 410 make it highly problematic for, and cast serious doubt over the capacity of, the Federal Government to provide direct financial assistance and funding to local government.

In each case, the High Court held that expenditure by the Commonwealth must be supported by a specific source of federal constitutional power and that Federal Government executive power may only extend to such matters as are supported by legislation.

In supporting the financial recognition of local government through the amendment of section 96 of the Constitution, Namoi Councils argue from a legal perspective that it is both timely and necessary to legally validate the financial arrangements and funding provided directly to Local Government by successive Federal Governments.

Removal of the problematic nature of direct Federal funding of local government without express legislative powers will without doubt enhance the overall governance of Australia, strengthen the position of local government and constitutionally recognise local government as one of the three tiers of government under the Australian Federal System.

CONCLUSION

In supporting recognition of Local Government in the Australian Constitution Namoi Councils, along with other supporters of this reform, is not seeking to destabilise or alter the existing relationship between State and Local Government.

Namoi Councils accept, with only minor reservation, that State and Territory Governments should continue to hold the power and authority to establish, control and regulate democratically elected Local Government within the respective States and Territories.

It is strongly argued that financial recognition of Local Government by way of amendment of section 96 of the Australian Constitution will modernise the Australian Federal System, recognise the current financial arrangements existing between Federal and Local Governments and enhance the quality of governance in all three levels of Government, thereby better serving the Australian people and the communities they reside within.

Cr Col Murray
CHAIRPERSON
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