

Preliminary report on the majority finding of the Expert Panel on Constitutional Recognition of Local Government: the proposal, timing and likely success of a referendum to amend Section 96 of the Australian Constitution to effect financial recognition of local government

Joint Select Committee on Constitutional Recognition of Local Government

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Foreword

The idea of recognising local government in the Constitution has been around for many decades. It has been a long-standing feature of the platform of most local government bodies. It is now an idea whose time has come for a very specific reason. Recent cases in the High Court have created considerable uncertainty about the Commonwealth's power to provide funding directly to local government. A constitutional remedy to this uncertainty requires the financial recognition of local government in the Constitution. The relevance to Australian communities of this matter at this point in time is certainty for the Commonwealth funding of vital services that are delivered by local governments across Australia. A successful referendum would return Australia to the widely understood status quo that existed before those recent High Court cases, and ensure the needs of communities are met through the continuation of important programs like Roads to Recovery.

The Joint Select Committee on Constitutional Recognition of Local Government was appointed in late 2012 to build on the work of the Expert Panel on Constitutional Recognition of Local Government. The Panel's report recommended that the Committee be established and made suggestions about the kind of work the Committee should undertake.

The Parliament has directed the Committee to inquire into 'financial recognition of local government', which is the majority finding of the Expert Panel. The Committee's terms of reference include assessing the likelihood of success for such recognition through a referendum, the consequences of recognition for local, state and territory governments, as well as whether and when a referendum should be put.

The Committee has built on the considerable work of the Expert Panel, including the comprehensive consultation that the Panel conducted. The Panel suggested that holding a referendum was a viable option for 2013, and evidence to the Committee has confirmed this. The Committee has recommended a referendum be held at the same time as the 2013 Federal Election.


The Committee has sought stakeholders' views on the particular wording proposed by the Expert Panel, and is confident that the recommended wording will remedy the uncertainty surrounding Commonwealth direct funding of local government. At the same time, state and territory governments may not be immediately comfortable with the wording. The Commonwealth should now proceed to negotiate with state and territory governments to secure their support for the wording. The local government sector must now also redouble its negotiation and lobbying efforts to secure state and territory government support for a referendum. This issue needs to be resolved as soon as possible, and stakeholders must take this opportunity to create the right conditions for reform.

There are a number of preparatory activities that the Expert Panel recommended, and the Committee has recommended that a number of these commence immediately. These activities will need to begin in the coming weeks, and will help to build public support for the referendum proposal.

This process – from the Expert Panel, to this Parliamentary Committee, and now to the Government – has been designed to ensure that stakeholders are included and listened to, and to elicit broad bipartisan support for a referendum. The Committee has continued the methodical consultation and discussion begun by the Expert Panel, and will continue in this vein as it prepares its final report, which will be tabled later this year. While this formal process has taken place, the Minister for Regional Australia, Regional Development and Local Government and local government bodies have been working in the background to build consensus and support for a referendum. This work will now take prominence as support for a referendum is secured, and as a national conversation about this issue takes place.

I thank all Members and Senators for their work on this inquiry, and commend this preliminary report to the Parliament.

Ms Michelle Rowland MP
Chair



Membership of the Committee

Chair Ms Michelle Rowland MP

Deputy Chair Senator David Bushby

Members Mr Mark Coulton MP

Senator Trish Crossin
(until 29 November 2012)

Senator David Fawcett

Mr Steve Irons MP

Ms Kirsten Livermore MP

Mrs Jane Prentice MP

Senator Lee Rhiannon

Senator the Hon Lisa Singh
(from 29 November 2012)


Senator Glenn Sterle

Mr Tony Windsor MP

Mr Tony Zappia MP

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Resolution of appointment

- (1) a Joint Select Committee on Constitutional Recognition of Local Government be appointed to inquire into and report on the majority finding (financial recognition) of the Expert Panel on Constitutional Recognition of Local Government including by amending section 96 of the Constitution, and in conducting its inquiry, the Committee will assess the likelihood of success of a referendum on financial recognition, and will take into account the following matters:
 - (a) 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;
 - (b) the level of State and Territory support;
 - (c) the potential consequences for Local Government, States and Territories of such an amendment; and
 - (d) 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;
- (2) the Committee consist of twelve members, three Members of the House of Representatives to be nominated by the Government Whip or Whips, three Members of the House of Representatives to be nominated by the Opposition Whip or Whips, and one non-aligned Member, two Senators to be nominated by the Leader of the Government in the Senate, two Senators to be nominated by the Leader of the Opposition in the Senate and one Senator to be nominated by any minority group or groups or independent Senator or independent Senators;
- (3) every nomination of a member of the Committee be notified in writing to the President of the Senate and the Speaker of the House of Representatives;

- (4) the members of the Committee hold office as a Joint Select Committee until presentation of the Committee's report or the House of Representatives is dissolved or expires by effluxion of time, whichever is the earlier;
- (5) the Committee elect:
 - (a) a Government Member as Chair; and
 - (b) an Opposition Member as its Deputy Chair who shall act as Chair of the Committee at any time when the Chair is not present at a meeting of the Committee, and at any time when the Chair and Deputy Chair are not present at a meeting of the Committee the members present shall elect another member to act as Chair at that meeting;
- (6) in the event of an equally divided vote, the Chair, or the Deputy Chair when acting as Chair, has a casting vote;
- (7) three members of the Committee constitute a quorum of the Committee provided that in a deliberative meeting the quorum shall include one Government Member of either House, and one non Government Member of either House;
- (8) the Committee has power to appoint subcommittees consisting of three or more of its members and to refer to any subcommittee any matter which the Committee is empowered to examine;
- (9) the Committee appoint the Chair of each subcommittee who shall have a casting vote only and at any time when the Chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as Chair at that meeting;
- (10) two members of a subcommittee constitute the quorum of that subcommittee, provided that in a deliberative meeting the quorum shall include one Government Member of either House and one non Government Member of either House;
- (11) members of the Committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum;
- (12) the Committee or any subcommittee:

- (a) has power to call for witnesses to attend and for documents to be produced;
 - (b) may conduct proceedings at any place it sees fit; and
 - (c) has power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives;
- (13) the Committee may report from time to time but that it present a preliminary report no later than December 2012 if possible, and a final report no later than February 2013; and
- (14) the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.



List of recommendations

Recommendation 1

The Committee recommends that a referendum on financial recognition of local government be held in 2013.

Given the importance of securing state and territory support, the Committee further recommends that, in addition to the efforts of the local government sector, Commonwealth Government Ministers, particularly the Minister for Regional Australia, Regional Development and Local Government, the Attorney-General and the Special Minister for State, immediately commence negotiations with state and territory governments to secure their support for the referendum proposal.

Recommendation 2

The Committee recommends that the referendum propose an amendment to Section 96 of the Constitution:

...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 thinks fit.

Recommendation 3

The Committee recommends that a referendum on financial recognition of local government be held at the same time as the 2013 federal election.

Recommendation 4

The Committee recommends that the Commonwealth Government begin all necessary preparatory activities to ensure a successful outcome for a referendum on financial recognition in 2013. The preparatory activities include:

- the Australian Electoral Commission begin the necessary preparatory activities for a referendum in 2013;
- the Department of Regional Australia, Local Government, Arts and Sport, as lead coordinating and implementing agency, take the necessary steps for implementing a national civics education campaign and managing funding of partisan campaigns;
- the Attorney-General's Department release a draft of the constitution amendment bill by 31 January 2013 in order to begin the process of public consultation;
- temporary amendments be made to the *Referendum (Machinery Provisions) Act 1984*, to effect the following outcomes:
 - ⇒ remove the legislative limit on Government spending;
 - ⇒ confirm that Parliamentarians should draft and approve the 'Yes' and 'No' cases for the official referendum pamphlet for financial recognition of local government. In the event that there is no requirement for a 'No' case, the Committee recommends that there should be an official 'Yes' case only;
 - ⇒ allow the official Yes/No pamphlet to be sent to every household rather than every voter;
 - ⇒ enable a range of communication methods to educate and reach across all Australian demographics; and
 - ⇒ use format guidelines for the official 'Yes/No' referendum pamphlet to ensure the factual nature and comparability of the cases in the hands of voters.

