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Submission to the Parliamentary Joint Select Committee on the  
Constitutional Recognition of Local Government

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## Constitutional Recognition of Local Government

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# Constitutional Recognition of Local Government

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## Introduction

The City of Bayswater strongly supports financial recognition of local government under the Australian Constitution.

At the Ordinary Council Meeting of the City of Bayswater held on 29 March 2011, Council resolved that the City of Bayswater support the position of the Australian Local Government Association (ALGA) that a referendum be held to change the Australian Constitution to allow direct funding of local government by the Commonwealth, and to include local government in any new preamble to the Constitution if one is proposed.

## Commonwealth funding

The December 2011 *Final Report of the Expert Panel on Constitutional Recognition of Local Government* noted that “Recent Commonwealth programs have shown that the Commonwealth can deal effectively with issues of national importance through a direct funding relationship between the Commonwealth and local government.”

However, the ability of the Commonwealth to continue direct funding has been thrown into doubt by the High Court case of *Pape v Commissioner of Taxation*, which questioned the constitutional validity of providing direct funding to the local government sector.

Given the position of local government as the tier of government closest to the community, such a development is unwelcome and has the potential to severely hamper local governments’ ability to undertake important community infrastructure programs, and as identified by the Expert Panel in its *Final Report*, undermines the Commonwealth’s ability to act in the national interest.

The City of Bayswater and other local governments are reliant on Federal Government funding to provide a range of services to our respective communities, such as *Roads to Recovery* and other infrastructure projects.

A recent example of such a project within the City of Bayswater is the construction of The RISE - a \$22 million multipurpose civic and community hub in Maylands - that was enabled by a grant of \$10 million from the Commonwealth. Development of The RISE and the community facilities it provides has made a significant contribution to the regeneration of the Maylands area and has greatly benefited both local residents and the wider community.

The RISE is an example of the type of Commonwealth assisted project that benefits communities, and its place as a facility that contributes to the area’s sense of place and local identity demonstrates the importance of Constitutional recognition of local government to secure Commonwealth funding.

Local governments typically provide around 200 services to their communities. Rising community expectations and the on-going practice of State Governments in cost shifting responsibility for delivering a number of services means that for local governments such as the City of Bayswater, it is imperative that the ability to receive direct funding from the Commonwealth is formalised through Constitutional recognition.

Any uncertainty regarding continuing Commonwealth funding is unwelcome and is not conducive to effective planning for the future.

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## **Section 96 of the Australian Constitution**

To ensure that the Commonwealth Government is able to directly provide the local government sector with direct grant funding, the City of Bayswater supports an amendment to Section 96 of the Australian Constitution to read as follows:

**“Parliament may grant financial assistance to any state or local government body formed by or under a law of a state or territory.”**

The effective change to Section 96 has been highlighted in **bold** for ease of reference.

## **Referendum**

To put into place the required change to the Constitution, a referendum is required and the City of Bayswater supports such a referendum to be held at a time that maximises the chance of its success and when the following pre-conditions, as identified by the Expert Panel on Constitutional Recognition of Local Government in its *Final Report*, have been met:-

- (a) Federal Government to enter into negotiations with State Governments to achieve bi-partisan support for the financial recognition of local government within the Constitution.
- (b) Federal Government undertake a publicly funded, national education and awareness campaign that will inform the public-
  - i. about the Constitution and how to change it;
  - ii. the nature of the question that will be asked; and
  - iii. the reason(s) why the change is needed.

In this respect, the City of Bayswater supports ALGA's view that an informed voter will cast an informed vote, based on the issues and facts presented, rather than on misinformation or unsubstantiated innuendo.

## **Conclusion**

The City of Bayswater supports the holding of a referendum to achieve financial recognition of local government under the Australian Constitution. The City is of the view that the referendum would be in the national interest, as well as in the best interest of local government as the tier of government closest to the community.

The City also supports ALGA's view that the referendum should be undertaken at a time that will maximise the chance of its success, has bipartisan support at a State and Federal level and is supported by a national, publicly funded education and awareness campaign.

**Terence G Kenyon**  
**MAYOR**  
**CITY OF BAYSWATER**

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