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The Parliament of the Commonwealth of Australia

Final report on the majority finding  
of the Expert Panel on Constitutional  
Recognition of Local Government:  
the case for financial recognition, the  
likelihood of success and lessons from  
the history of constitutional referenda

Joint Select Committee on Constitutional Recognition of Local Government

March 2013  
Canberra

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## Foreword

Our Constitution was drafted over 100 years ago when people travelled by horse and cart, and travelling more than 15 kilometres was a long journey. We were still a continent of separate colonies, when local government was responsible for ensuring that settlements had access to markets (roads) and that they were hygienic (rubbish removal). Back then, these 'property' services were funded simply by levies on property (rates).

However, the days of local government doing just roads, rates and rubbish are long gone. Local governments are now recognised by the Commonwealth, state and territory governments as ideally positioned to both deliver services and to advocate for their communities. Over the past century, local governments have progressively expanded their roles and responsibilities, and this trend will only continue.

When the Constitution was drafted at the end of the nineteenth century, local government was not included. There was no suggestion that the Commonwealth would need to make financial transfers to local government. The situation in 2013 is markedly different. The Commonwealth has been providing substantial funds directly to local government for over two decades, or four decades if the Regional Development Employment Scheme is included.

Today the Commonwealth funds many programs by granting money directly to local government, across services such as roads, child care, economic development, aged care, environment protection, water efficiency and dozens of other areas. However, following recent decisions of the High Court, local government as a sector has expressed increasing uncertainty about this funding being secure in future. Constitutional experts have told the Committee that there is serious doubt about the direct funding of local government surviving a constitutional challenge. And the Committee was told that there is already a case on its way to the High Court.

The Parliament has remedied the immediate implications of those High Court decisions in the *Financial Framework Legislation Amendment Act (No.3) 2012*, and this is good law. However, there is immense uncertainty in councils and shires around

Australia about the possibility of further challenge. This uncertainty is infecting the strategic planning of local governments, and making it difficult to make long term business decisions. In both urban and regional areas, the local council is often the largest single employer, and this uncertainty can have significant economic impacts locally. It is in the economic interests of these communities to have this issue resolved.


The Committee has considered the work of the Expert Panel on Constitutional Recognition of Local Government, and agrees that the financial recognition of local government is a worthwhile referendum proposal to put to Australian voters. The Committee's preliminary report recommended that this referendum be put to Australian voters in 2013, and set out a number of important steps that would support a successful referendum. The Committee reiterates its support for the recommendations and conclusions of the preliminary report.

The Committee has also considered the likelihood of success of a referendum on the financial recognition of local government. In particular, the Committee has reported on the level of state support, and the extent to which public education 'preconditions' have been – or can be – met. There are a number of other important strengths to the case for a referendum in 2013. There is currently bipartisan support at the federal level for the financial recognition of local government. The previous referenda on local government did not enjoy this support, and there is no guarantee that it will survive past 2013. Additionally, the Committee is pleased to report that the Australian Local Government Association (ALGA) has committed to support a 2013 referendum.

The Committee believes that these considerations, taken together with the readiness of local government to campaign for change, and the momentum already in the community, the referendum has a good prospect of success.

I thank all Members and Senators for their work on this inquiry, and commend this final 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 Lee Rhiannon

Senator Trish Crossin  
(to 29/11/2012)

Senator the Hon Lisa Singh  
(from 29/11/2012)

Senator David Fawcett

Senator Glenn Sterle

Mr Steve Irons MP

Mr Tony Windsor MP

Ms Kirsten Livermore MP

Mr Tony Zappia MP

Mrs Jane Prentice MP

## Committee Secretariat

Secretary Dr Glenn Worthington


Inquiry Secretary Mr Thomas Gregory

Research Officer Ms Leonie Bury

Office Manager Mr Daniel Miletic

Administrative Officer Ms Emily Costelloe





## 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 March 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.

*Paragraph 13 was varied (as above) by the Parliament on 6 February 2013.*





# Recommendation

## Recommendation

Taking the major finding into consideration, the Committee recommends that a referendum on the financial recognition of local government be put to Australian voters at the 2013 federal election.

