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Mr Glenn Worthington
Secretary
Joint Select Committee on the Constitutional Recognition of Local Government
PO Box 6021
Parliament House
CANBERRA ACT 2601

Dear Mr Worthington

Submission – Constitutional Recognition of Local Government

The Shire of Halls Creek supports of the Constitutional Recognition of Local Government, and is appreciative of the opportunity of making a submission on this matter to the Joint Select Committee.

In recent times, the Council has made resolutions in support of Constitutional Recognition at its meetings held on 17 March 2011, 20 October 2011 and 13 December 2012. The last of these resolutions authorised this current submission.

The Shire of Halls Creek respectfully submits as follows:

- The Council of the Shire of Halls Creek strongly supports the financial recognition of local government in the Australian Constitution Act, to ensure that the Commonwealth can continue to fund local government directly by removing any doubts about the constitutional validity of such funding. The Commonwealth already directly funds local government through the *Roads to Recovery* program and the *Regional and Local Community Infrastructure Fund* (which was part of the stimulus funding provided by the Nation Building – Economic Stimulus Plan during the global financial crisis).
- The High Court decision in *Pape v Commissioner of Taxation* (2009) cast doubt on the Commonwealth's power to provide this funding directly to local government. There is no general power in the Constitution, which allows the Commonwealth to provide direct funding to local government to maintain services and infrastructure, including roads. Because of this, the validity of this funding is not certain. Local government requires certainty if it is to remain financially sustainable in the long-term and to be able to deal with the growing needs of its communities. The High Court decision clearly signals a need for change, and change cannot occur without amending the Australian Constitution.
- The financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution, which allows the Commonwealth to fund the States. Adding a local government into this section is a pragmatic response to the doubt identified in the *Pape* case. It will confirm the right of the Federal Parliament to fund local government directly, but it will not affect the relationships between local government and the State governments, which will continue to have the power to determine how councils operate.

- The Council of the Shire of Halls Creek does not support the type of "Democratic recognition" that would require states to establish and maintain a particular form of local government. That would appear to be counter to the required flexibility that would allow the local government sector to evolve and adapt to changes in its operating environment.
- As for recognition through federal cooperation, which would seek to encourage cooperation between all levels of government, the Council of the Shire of Halls Creek is of the view that all levels of government ought to be cooperating even under the current Constitution, and that a constitutional amendment should not be necessary in order to achieve such cooperation.
- "Symbolic recognition" of local government in some form of new Preamble should be incidental to the financial recognition of local government. The Council of the Shire of Halls Creek is not opposed to the symbolic recognition of local government but observes that, on its own, it would hardly be worth the effort.

The Shire of Halls Creek further submits that:

- The Shire of Halls Creek needs certainty of funding so that programs like Roads to Recovery can continue
- The Shire of Halls Creek supports an amendment to section 96 of the Constitution that would read: "Parliament may grant financial assistance to any State or local government body formed by or under a law of the State or Territory".
- Bipartisan support is an essential precondition if the referendum is to have the best chance of success
- The Shire of Halls Creek supports the referendum being held at a time which maximises its chance of success.
- The Shire of Halls Creek 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.

The Shire of Halls Creek considers that the Expert Panel's recommended precondition, that the Commonwealth negotiate with the States to achieve their support, to be absolutely critical for a successful referendum. The support of the great majority, if not all, of the States will be essential for a successful referendum.

As the date of the next Federal election appears to have been set for 14 September 2013, and as it is not yet evident that the Commonwealth has entered into any negotiations with the states for financial recognition in the Constitution (and has yet to indicate publicly whether or not it supports the proposal), it is quite likely that it is already too late for a credible referendum on this issue to be held in conjunction with this year's Federal election.

The establishment of the Joint Select Committee is a major step forward, but given the delays in appointing the Committee and the effluxion of time before the date of the 2013 Federal election, there would appear to be insufficient time now to achieve the preconditions recommended by the Expert Panel and for the necessary garnering of bipartisan support, and for adequately informing the public.

We also observe that bipartisanism has been very difficult to achieve in the current term of the Parliament.

If the Joint Select Committee has any queries in relation to this submission, or would like to discuss the matter further, please do not hesitate to contact the undersigned.

Yours faithfully

Warren Olsen
Chief Executive Officer