

Reference: Lisa Roberts
Enquiries: 9239 5216

12 February 2013

Submission Number: 236
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Mr Glenn Worthington
Joint Select Committee on the Constitutional recognition of Local Government
PO Box 6021
Parliament House
Canberra ACT 2601

Re: Recognition of Local Government in the Australian Constitution
Submission to the Joint Select Committee on Constitutional recognition of Local Government

Dear Glenn,

Thankyou for the recent invitation for councils to lodge submissions on the important issue of Constitutional Recognition of Local Government.

Please find enclosed the submission from the City of Greater Dandenong.

In summary, Council support s all forms of constitutional recognition, but in particular, believes that financial recognition represents an achievable outcome in amending the Constitution.

Council now looks forward to the outcomes of the Joint Select Committee in considering this and other submissions and for this issue to be taken to a referendum later in 2013.

Yours sincerely,

John Bennie
Chief Executive Officer

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Hrvatski СРПСКИ Tetum

Soomaali فارسی Русский

Submission to: Joint Select Committee on Constitutional Recognition of Local Government
From: City of Greater Dandenong
12 February 2013

Introduction

The City of Greater Dandenong (CGD) is committed to supporting and achieving financial, democratic, and symbolic constitutional recognition of local government and resolved to actively support the Australian Local Governments Association (ALGA) in its campaign for constitutional reform on 25 July 2011.

Commonwealth and State parliaments clearly accept that local governments play an integral part as the third tier of government in the Australian Federation. The issue has been debated by all governments and industry associations since 1973 and throughout this time has gained momentum across the commonwealth, state and local government sectors and the communities they serve.

Most recently, a resolution acknowledging the role of local government in Australia was made by the Commonwealth Parliament in 2006. In 2009, the High Court case *Pape vs Commissioner of Taxation* cast doubt on the validity of Commonwealth spending programs whether or not they were supported by legislation. It appeared that direct funding from Commonwealth government to local governments was not specifically provided for in the constitution and could come under threat.

As a result, in 2010, the Australian Government made a commitment to hold a referendum on the recognition of local government in the Australian Constitution. At the National General Assembly of the ALGA in 2011, the Prime Minister Julia Gillard acknowledged that local government was a sophisticated partner in government that provides a range of essential services to the community. This is true. Over 560 councils across the country provide vital community services every day of the year to the entire population of Australia.

The Government took a further step in meeting its commitment to constitutional recognition of local government by establishing an Expert Panel to provide advice on the issue and subsequently the Joint Select Committee on Constitutional Recognition of Local Government.

The City of Greater Dandenong welcomes this further opportunity to make a submission to the Joint Select Committee.

Constitutional recognition will recognise local government in several ways and protect the services we have come to take for granted while providing funding security to improve service delivery for our communities well into the future.



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While it is recognized that there are four fundamental forms of constitutional recognition: symbolic recognition; financial recognition; democratic recognition; and recognition through federal cooperation, which Greater Dandenong has submitted on previously, this Council firmly believes that the crucial elements that have the most positive outcome for Australian councils is financial recognition and bi-partisan support,

Greater Dandenong Supports Financial Recognition

The City of Greater Dandenong does not differ from any other Australian council in relation to its reliance on Commonwealth funding whether it comes via the State Government or directly from the Commonwealth Government. The Regional and Local Community Infrastructure Program (RLCIP) funding which, in Greater Dandenong, was in excess of \$9 million over the last three years was fundamental to Council achieving significant community infrastructure results during that time.

The Roads to Recovery program which has provided approximately \$600,000 per year to Greater Dandenong over the last three years has allowed Council to invest in its ageing road infrastructure and enhance the safety, access and mobility throughout the municipality – this will be of crucial significance as the Port of Hastings develops over the next ten years. Other projects these funding programs have made possible include:

- new playgrounds at Dandenong and Tatterson Parks
- improvements to facilities at Barry Powell Reserve, Bakers Road, Dandenong North
- the Noble Park “More than Just a Pool” redevelopment (over \$7 million invested)
- upgrading of community facilities at Springvale Recreation Reserve, Newcomen Road, Springvale
- upgrading of lighting facilities in Palm Plaza, Dandenong
- a new Noble Park Civic Space
- upgrading of Springvale streetscapes.

Council's Long term Financial Strategy relies on significant Commonwealth funding of several programs, particularly Roads to Recovery.

For these reasons, the City of Greater Dandenong supports a change to section 96 of the Constitution to ensure that the Commonwealth Government can provide funding directly to local councils without having to pass the funding through State Governments. The Constitutional change supported by Greater Dandenong would read as follows:

...the Parliament may grant financial assistance to any State or to any local government body formed within the limits of a State or Territory on such terms and conditions as the Parliament thinks fit.

Greater Dandenong Supports Bi-Partisan Approach

Political life in Australia has altered significantly since the Constitution was first enabled and the Constitution no longer reflects the reality of the system of government in Australia. Local governments no longer just concern themselves with "roads, rates and rubbish" in certain defined areas. They are now recognised as being fundamental to all levels of community life, wellbeing and infrastructure.

Local government covers such areas as planning, building, environmental and sustainability management, sport and recreation, tourism, road and drainage infrastructure, community health and care, regional development, emergency management and cultural services. Local government consults with the community through group and stakeholder engagement and advocates for communities by communicating with State and Federal leaders and legislators. The local government sector also continues to take an increasing role in national policy areas such as economic development, climate change, public policy and regional service delivery resulting in greater reliance and efficiencies between the three levels of government. Local government, through its peak body, is a member of the Council of Australian Governments and 13 other ministerial councils. Clearly, the different levels of government cooperate on many issues and it is in the best interest of people that they continue to do so.

As an example, Greater Dandenong played a pivotal role between the community and VicUrban (now Places Victoria) during the Revitalisation of Central Dandenong. While providing an advocacy role for the community, the City of Greater Dandenong also acted as a facilitator for VicUrban throughout the concept, development and construction stages of the project. The project is now completed and the responsibility for maintaining the infrastructure of the new area has been handed back to Council.

The High Court has recently ruled that some schemes between the governments have not been valid or legally possible. In this respect, Greater Dandenong supports that a reference be included in the Constitution that supports cooperation among and between all three levels of government which would influence the High Court's approach to interpreting Constitutional provisions that enhance cooperation and inclusion at all levels.

Conclusion

Greater Dandenong supports all potential forms of constitutional recognition but understands the complexities of including all four modes of recognition in a referendum. In an ideal world, Greater Dandenong would be hesitant to leave any forms of recognition out of the mix, but agrees that gaining financial recognition in the Australian Constitution is the lynch pin to securing the recognition that all Australian councils deserve.

Greater Dandenong is committed to taking a lead role in communicating the relevance and importance of this Constitutional Reform to its communities so they can make informed and conscious decisions regarding the Referendum when it is raised.

12 February 2013

6.5 OTHER

6.5.1 Constitutional Recognition of Local Government

Attachments: Summit Declaration 2008
Responsible Officer: Director Corporate Services

Report Summary

Whilst Local Government forms an essential part of Australia's system of government, its existence is not noted in Australia's constitution and essentially exists at the discretion of the various State Governments.

The desire to achieve constitutional recognition has become greater in recent times with a 2009 High Court case casting serious doubt over the ability of the Commonwealth Government to directly fund Local Government projects without passing funds through the State Governments.

There have been several attempts over the past 40 years to amend this situation which have not been successful. Council has received correspondence from the Australian Local Government Association (ALGA) seeking Council to pass a resolution of support calling for a referendum by 2013 to amend the constitution.

Recommendation Summary

This report recommends that Council declares its support for constitutional recognition of local government.

Constitutional Recognition of Local Government (Cont)**Background**

The Australian Constitution commenced on 1 January 1901 and is the blueprint for how government at the national level works in Australia.

Local Government fulfils a significant and vitally important role within the Australian Federation. This is acknowledged by Australian Local Government Association (ALGA) representation on the Council of Australian Government. However, responsibility for Local Government is not mentioned anywhere in the Constitution and is therefore the responsibility of the States. Local government in Victoria is currently enabled under the Victorian Constitution Act 1975.

There have been several attempts at amending the Constitution to recognise local government in Australia. Changes via referendum were attempted in 1973/1974 by the Whitlam Government and in 1988 by the Hawke Government and both attempts failed. The failure to recognise local government and its role as the primary institution of local democracy has been particularly highlighted over the last five years since the Australian Government introduced a Parliamentary Resolution that recognised the importance of local government in the system of Australian governance. In 2007, the ALP went into the election with a commitment to consulting with relevant parties on the process for achieving constitutional recognition of Local Government.

Throughout this time the ALGA have reaffirmed its wish to have local government recognised in the Australian Constitution and have resolved to seek support for this recognition and advocate for a number of principles in relation to local democracy. In 2008, a special ALGA National General Assembly was called and delegates adopted a Summit Declaration which is included as Attachment 1. The declaration included the statement below:

We believe that to ensure the quality of planning and delivery of services and infrastructure provided to all Australians, and the ongoing sustainability of local government, any constitutional amendment put to the people in a referendum by the Australian Parliament (which could include the insertion of a preamble, an amendment to the current provisions or the insertion of a new Chapter) should reflect the following principles:

- *The Australian people should be represented in the community by democratically elected and accountable local government representatives;*
- *The power of the Commonwealth to provide direct funding to local government should be explicitly recognised; and*
- *If a new preamble is proposed, it should ensure that local government is recognised as one of the components making up the modern Australian Federation.*

Constitutional Recognition of Local Government (Cont)

At the recent ALGA National General Assembly in June 2011, constitutional recognition was one of the main issues addressed and was supported by the Prime Minister of Australia.

In its *Explanatory Notes on Constitutional Recognition for Local Government*, ALGA has acknowledged that the three main types of constitutional recognition can be identified as follows:

- symbolic recognition – a reference in the preamble to the Constitution implicitly recognising the existence of local government. A preamble generally does not create rights and obligations and has no legal effect but it is possible that could be changed by the High Court over time.
- institutional recognition – imposing a duty on States to retain a system of local government and that a council ought not to be amalgamated or dissolved without fair hearing. This does not currently exist for local government; or
- financial recognition – a recognition that local government requires a more secure revenue stream to provide the services and infrastructure expected by the community. Local government could then be directly funded without “passing” grants through state governments.

Whilst local government remains unrecognised in the Australian Constitution, it is the view of ALGA that local government is a residual power of the state and not an entity in its own right.

Proposal

The current president of the ALGA wrote to Australian councils in February and May 2011 requesting that they resolve to endorse the ALGA’s position that a referendum be held in 2013 to change the Constitution to allow direct funding of local government bodies by the Commonwealth Government and to include local government in any new Preamble to the Constitution. It is proposed the Council supports the ALGA in its advocacy for local government recognition in the Constitution.

Victorian Charter of Human Rights and Responsibilities

The Victorian Charter of Human Rights and Responsibilities has been considered in the preparation of this Policy but is not relevant to the content of this report.

Financial Implications

No financial resources are impacted by this report.

Consultation

Five Greater Dandenong councillors attended the ALGA National General Assembly in June 2011 and have shared their experience with the remaining councillors and executive staff.

Constitutional Recognition of Local Government (Cont)**Recommendation****That the Greater Dandenong Council:**

1. declares its support for financial recognition of local government in the Australian constitution so that the Federal Government has the power to fund local government directly;
2. declares its support for inclusion of local government in any new Preamble to the Constitution if one is proposed; and
3. calls on all political parties in writing to support a referendum by 2013 to change the Constitution to achieve this recognition.

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Moved by: Cr Angela Long

Seconded by: Cr Pinar Yesil

That the Greater Dandenong Council:

1. declares its support for financial recognition of local government in the Australian constitution so that the Federal Government has the power to fund local government directly;
2. declares its support for inclusion of local government in any new Preamble to the Constitution if one is proposed; and
3. calls on all political parties in writing to support a referendum by 2013 to change the Constitution to achieve this recognition.

CARRIED



LOCAL GOVERNMENT CONSTITUTIONAL SUMMIT

A SPECIAL NATIONAL GENERAL ASSEMBLY

Constitutional Recognition of Local Government Summit Declaration

Whereas:

- Local government existed in Australia prior to Federation;
- Local government contributes more than 2 per cent of economic activity to GDP, through the employment of over 168,000 people, the custodianship of more than \$200 billion of assets and the annual expenditure of over \$23 billion on the services and infrastructure that allows Australian communities to develop and grow; and
- The role of local government in the governance of the Australian Federation has been recognised by participation on the Council of Australian Governments (COAG)

We the Mayors, Shire Presidents, Councillors and Aldermen, who are:

- Democratically elected by the Australian people to councils throughout the Commonwealth; and
- In attendance at this Local Government Constitutional Summit – A Special National General Assembly

Now declare our commitment to achieve the recognition of local government as the third sphere of government in the paramount political document of the Australian Federation – the Australian Constitution.

We :

- Applaud the commitment of the Rudd Labor Government to constitutional recognition, and the Australian Labor Party and Coalition commitment to participate in the development of a referendum proposal on the constitutional recognition of local government; and
- Commend the spirit of bipartisanship demonstrated by the passing of the Federal Parliamentary Resolution in 2006 recognising the importance of local government to our nation and our system of Australian Government.

Building on these developments and, whilst recognising the continuing importance of maintaining accountability and legislative frameworks for local government established by State and Territory Parliaments, we now declare our belief that constitutional recognition will assist the process of reforming the Australian Federation by:

- Correcting the historical oversight of not recognising in Australia's paramount political document the level of government that is closest to the people;
- Acting as a driver for local government participants to act in a transparent, fair and accountable manner;

- Reinforcing the belief that local decision-making will ensure the provision of services and infrastructure that best meet local needs;
- Reaffirming the concept that individuals and communities have the right to engage in the democratic processes of their local government area;
- Advancing the relationship between all three spheres of government within the Australian Federation; and
- Establishing a clear capacity for the Commonwealth to provide direct funding to local government, so as to improve or provide the infrastructure and services to meet the legitimate expectations of all Australians, whilst ensuring the sustainability of the local government sector.

We believe that to ensure the quality of planning and delivery of services and infrastructure provided to all Australians, and the ongoing sustainability of local government, any constitutional amendment put to the people in a referendum by the Australian Parliament (which could include the insertion of a preamble, an amendment to the current provisions or the insertion of a new Chapter) should reflect the following principles:

- The Australian people should be represented in the community by democratically elected and accountable local government representatives;
- The power of the Commonwealth to provide direct funding to local government should be explicitly recognised; and
- If a new preamble is proposed, it should ensure that local government is recognised as one of the components making up the modern Australian Federation.

We call on the Australian Local Government Association, the State and Territory Associations and the councils of Australia to work with the:

- Parliaments of Australia;
- Governments of Australia;
- Political Parties of Australia;
- The Australian Council of Local Government;

and, most importantly, the
- People of Australia.

So as to create and leave a stronger nation for future generations.

DATED this 11th Day of December 2008

Geoff Lake

Cr Geoff Lake
On behalf of the Delegates
Local Government Constitutional Summit

