



Moreland City Council

**Submission Number: 34**  
**Date Received: 29/11/2012**



Municipal Offices  
90 Bell Street  
Coburg  
Victoria 3058

Postal address  
Locked Bag 10  
Moreland  
Victoria 3058

Telephone: 03 9240 1111  
Facsimile: 03 9240 1212

CRS No. N/A  
Xref: D12/277495  
Doc. No. D12/288124  
Enq: Lisa Thomas-Bates

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

**Via Email:** [jsclg@aph.gov.au](mailto:jsclg@aph.gov.au)

Dear Mr Worthington

## **CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT**

I refer to the recent establishment of a Joint Parliamentary Committee to consider the report from the Expert Panel on Constitutional Recognition of Local Government.

Before addressing key issues and considerations, I draw your attention to Moreland City Council's strong support of constitutional recognition as an essential step in ensuring that local communities receive the services and infrastructure they deserve. Council has passed three resolutions over the past 18 months supporting constitutional recognition of local government as detailed below:-

### Council meeting 9 March 2011

1. "That Moreland City Council declares its support for financial recognition of local government and indigenous Australians in the Australian Constitution so that the federal government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.
2. That the Mayor write to the Prime Minister, the Leader of the Opposition, the Federal Members for Wills, the Federal Member for Melbourne and the Australian Local Government Association (ALGA) to advise them of Council's support for constitutional recognition".

### Council meeting 9 November 2011

"To retrospectively adopt Council's submission to the Expert Panel supporting constitutional recognition of local government".

### **Language Link**

中文	9280 1910	Español	9280 1916
Italiano	9280 1911	Hrvatski	9280 1917
Ελληνιστ	9280 1912	हिन्दी	9280 1918
العربية	9280 1913		
Türkçe	9280 1914	All other languages	
Việt Ngã	9280 1915	9280 1919	

## Council meeting 11 July 2012

1. "To support the financial recognition of local government in the Australian Constitution allowing the federal government to provide funding directly to Councils.
2. To support the ALGA and MAV to establish a campaign to highlight the vital significance of local government to the community.
3. To call on the Commonwealth to commit to a referendum to recognise local government in the Australian Constitution by 2013.
4. To send a copy of this resolution to the VLGA, MAV, ALGA and Upper and Lower House members".

The campaign and ongoing commitment to constitution recognition of local government by the Commonwealth is consistent with Council's Advocacy Program 2011 – 2012, action 145 "Participation in sectoral campaign for the constitutional recognition of local government". In support of this campaign, Council provides the following comments with regard to the symbolic, financial and democratic recognition of local government and recognition through federal co-operation.

### **Symbolic Recognition**

Symbolic recognition of local government would seek to enhance the status of local government in the Australian Federation in a way that has minimal or no legal effects. It is acknowledged that a proposal to add a preamble was put to a referendum in 1999, however proved unsuccessful. Council's preference is for the inclusion of local government in any new Preamble to the Constitution.

### **Financial Recognition**

Moreland City Council relies on funding from both state and federal government to supplement income from rates and other charges and to provide essential services and infrastructure to our community.

The 2009 decision of the High Court in the case of *Pape v Federal Commissioner of Taxation* raised legal doubt of the Commonwealth's powers to fund local government directly. With this uncertainty, Council supports the changing of the Constitution to ensure that the federal government can provide funding directly to Councils without having to pass the funding through the state government which can sometimes lead to delays, increased costs and a reduction in funds available to deliver the services that the Commonwealth supports.

Council supports an amendment to Section 96 of the Australian Constitution to ensure that local government has the same ability to access funding from the Commonwealth as the States currently have, through changing Section 96 to read:-

".... 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".

### **Democratic Recognition**

The limited protection for local government under State Constitutions is a concern for local government as it cannot be a legitimate democratic institution if it is not protected by inclusion in the Australian Constitution. In order to address citizens' rights to democracy at the local level, Council supports the inclusion of a guarantee in the Australian Constitution that local communities have a right to elect their local Councils.

Council supports the following inclusion in the Australian Constitution:-

*"Each state shall, and each territory may, establish and maintain a system of local government bodies directly chosen by the people".*

This option provides for a clear democratic requirement based upon the wording in the current Constitution for elections to the Commonwealth House of Representatives and Senate. This option provides for a much clearer, stronger democratic requirement.

In line with the Victorian Constitution, Council supports the following wording to be added to the above inclusion.

*"The Parliament of a State or Territory may by Statute dismiss a local government body; and provide for the appointment of persons to perform its functions and exercise its powers until such time as a new Local Government can be elected".*

### **Recognition through Federal Co-operation**

With the expectation that different levels of government in Australia co-operate on issues that require a joint approach, Moreland City Council encourages, as a minimum, that the role of local government be expressly recognised in the Australian Constitution in the context of improving the relationship between all three levels of governments.

Although referendums in this context have not been successful in the past, Moreland City Council remains optimistic that the 2013 referendum will result in the recognition of local government in Australia's Constitution. Moreover, Council encourages the referendum being held at a time which would maximise its chance of success. 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 will ensure that voters have the ability to cast an informed vote based on facts rather than misinformation.

Thank you for the opportunity to put forward a submission to the Joint Select Committee on the constitutional recognition of local government.

Please do not hesitate to contact me directly on \_\_\_\_\_ should you wish to discuss this submission further.

Yours sincerely

Cr Oscar Yildiz, JP  
**MAYOR**

27/11/2012

c.c. Councillors  
Australian Local Government Association