

Lessons from history

- 4.1 The lessons of previous referenda should inform its deliberations about the proposed constitutional recognition of local government. This chapter will discuss the 1974 and 1988 referenda on recognition of local government, the relative strengths of 2013, the momentum for change and the risks of delay.

Previous local government referenda

- 4.2 There have been two unsuccessful referenda held on the issue of recognising local government in the Constitution, in 1974 and 1988.
- 4.3 The 1974 question was put to the people as a result of a political impasse: 'The 1974 referendum on local government arose out of the failure of a Premiers' Conference in October 1973.'¹
- 4.4 Two amendments to the Commonwealth Constitution were proposed in the *Constitution Alteration (Local Government Bodies) Bill 1974*. The first would have added an additional Commonwealth legislative power in section 51 of the Constitution, as follows:
- 51(ivA) The borrowing of money by the Commonwealth for local government bodies.²
- 4.5 The second would have inserted a section relating to the funding of local government, utilising the structure and language of the existing section 96, which empowers the Commonwealth to grant financial assistance to the states, as follows:

1 Professor Anne Twomey, *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 60.

2 *Constitution Alteration (Local Government Bodies) Bill 1974*.

96A The Parliament may grant financial assistance to any local government body on such terms and conditions as the Parliament thinks fit.³

- 4.6 The referendum bills were passed by the House of Representatives twice, and rejected twice by the Senate. They were put to a referendum, under the provisions of section 128 of the Constitution, which deals with such a situation.
- 4.7 The Liberal-National Opposition stood strongly against the proposal. The referendum failed to win a national majority and won majority support in only New South Wales. The enduring result of the process was that local government bodies themselves began to speak out in favour of achieving formal recognition in the Constitution.
- 4.8 The 1988 referendum proposed to insert a new paragraph into the Constitution:
- 119A Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of the State and empowered to administer, and to make by-laws for, their respective areas in accordance with the laws of the State.⁴
- 4.9 It has been argued that: 'The question was added as a non-controversial bit of sugar to aid support for the other referendum questions by harnessing the campaigning power of local government.'⁵ Initially the proposal enjoyed bipartisan support; in addition opinion polls in South Australia, Victoria and New South Wales all put the chances of success at around 70 per cent.⁶
- 4.10 Despite having supported the proposal during its 1987 election campaign, including having sent a letter to the Commonwealth Attorney-General supporting the 'inclusion of a chapter on local government in the Constitution'; after the formal announcement of the referendum the Liberal-National Opposition campaigned against it.⁷ The 1988 referendum failed in all states and territories.
- 4.11 When speaking about these two previous failed attempts, Mayor Tim Laurence of Darebin City stated that '[we] know the history of
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3 *Constitution Alteration (Local Government Bodies) Bill 1974.*

4 *Constitution Alteration (Local Government) Bill 1988.*

5 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 67.

6 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 68.

7 *Local Government Funding and Constitutional Recognition*, Sydney University Law School, January 2013, Report No. 3, p. 68.

referendums, and you need bipartisan support to succeed in any proposal. We also need three tiers of government supporting it for maximum success.’⁸ Cr Paul Bell AM reiterated this sentiment ‘the last time [1988]... there was not bipartisan support at the federal level. That is the most important thing, and I believe we have that until the end of this electoral term.’⁹

- 4.12 Having nationwide local government and related peak bodies working to support the change is also vital. The Australian Local Government Association (ALGA) stated that: ‘In previous local government referenda, local government was not intimately involved in the process and in considering the options as it is on this occasion, and there was also a lack of bipartisan support.’¹⁰

The strengths of 2013

- 4.13 Chapter 3 considered the potential for state and territory governments to support a referendum in 2013. The Commonwealth Government has a strong case to bring those governments that remain uncommitted on board. There are, however, other important strengths in 2013 – rare bipartisan support for the referendum proposal, and a compelling argument in support of a referendum to modernise the Constitution.

Bipartisan support

- 4.14 As noted by many witnesses, there is a strong bipartisan agreement in the Australian Parliament that local government should be recognised in the Constitution. The Minister for Local Government noted that ‘the Federal Government [is] clear on its commitment to achieve constitutional recognition of local government...’¹¹
- 4.15 Committee members who dissented from the Preliminary Report stated:
- The Coalition members of the Committee note that the Coalition has committed to support the appropriate financial recognition of local government in the Australian Constitution, provided that change is limited to removing the question of constitutional

8 Mayor Laurence, Darebin, *Proof Committee Hansard*, 20 February 2013, p. 24.

9 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

10 Australian Local Government Association, *Submission 89*, p. 24.

11 Hon Simon Crean MP, Minister for Local Government, *LG constitutional recognition interim report released*, media release, 24 January 2013.

validity in relation to direct Commonwealth funding of local government.¹²

- 4.16 This broad, bipartisan support is vital for the referendum's success. Bipartisan support is often cited as a 'necessary condition':

On the bipartisanship issue, which is a necessary condition to achieve success in the referendum, Labor in government has put 25 of those 44 referendums, and of those 25 it only got bipartisanship support once, and that was the only referendum Labor has ever won. So, if we ask why 24 out of 25 failed, the very simple conclusion is that the opposition rejected them. There is a simple lesson here: if the opposition does not support this referendum it will almost certainly fail. It is a necessary condition, in my view.¹³

- 4.17 Mayor Tony McGrady, of Mount Isa Council, made the case for seizing this opportunity:

when you have local government right across the Commonwealth all fighting for the yes case and when you hopefully have the major political parties on side, this is the time to have the referendum.¹⁴

Correcting uncertainty

- 4.18 Many witnesses emphasised the strength of a referendum proposal that is focussed on correcting a problem highlighted by the High Court. Chapter 2 deals with uncertainty as a constitutional issue, but in respect of campaigning for a referendum, correcting the uncertainty created by *Pape* and *Williams* is a simple and compelling case to put to voters. Professor George Williams pointed out the similarities between the situation surrounding the current proposal and the referendum put – and passed – in 1946:

A year or so before [the 1946 referendum] the High Court found that the Commonwealth was not able to directly fund a pharmaceutical benefits scheme. The Labor government, led by Chifley, went to the people, supported by Menzies, to say that we needed this High Court problem fixed because the Commonwealth needed to be able to directly fund these types of schemes. The status quo needed to be restored so that the sort of

12 Dissenting Report, *Preliminary Report of the Joint Select Committee on Constitutional Recognition of Local Government*, January 2013, p. 19.

13 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 11.

14 Mayor Tony McGrady, Mount Isa Council, *Proof Committee Hansard*, 20 February 2013, p. 13.

schemes people supported could continue. The people voted ‘yes’ to that particular scheme. It went to the people with the clear support of both sides of politics. It is an example, and the only clear example of this kind, where Australians said, ‘We are prepared to vote yes to restore programs that we value...’¹⁵

- 4.19 The frequently invoked conservative character of Australian voters on constitutional matters supports the notion that a corrective referendum will have the greatest chance of success. As Professor Williams further pointed out, there is a danger in delaying a referendum that emphasises uncertainty, as voters will rightly ask why an urgent problem was not dealt with expediently:

if you really want to run this as fixing a problem, if it is left too long the urgency and rationale for it dissipates. Even though this has been left dreadfully late and for a long period of time – and in fact this committee is months past when it should have been running – I think it is going to be much harder to say we need to fix this, because people and opponents will rightly say that it cannot be that big a problem because it has been left for so long.¹⁶

- 4.20 As time goes by, the urgency gives way to the increasing possibility that the High Court resolves the uncertainty by ruling against the direct funding of local government. This issue is at stake now, and should be dealt with as soon as possible.

Momentum for change

- 4.21 Representatives of individual local governments showed great enthusiasm for campaigning for the referendum, and repeatedly referred to the strengths of 2013. They also demonstrated that they are ready to build support and momentum in their communities:

This year we will have 18 open consultation meetings with the public. When as mayor I am out doing public functions, I am selling it and telling people that that is what we need to do to ensure that, if we have a referendum, we have their support to guarantee that local government is recognised as a third tier and to guarantee some funding through Roads to Recovery, as an

15 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 11.

16 Professor George Williams, *Committee Hansard*, 16 January 2013, p. 12.

example. It seems to be gathering a bit of momentum within our community.¹⁷

With strong local leadership at the mayoral and councillor level, the community will get behind the council straightaway, particularly if we use the sorts of techniques Cootamundra have been using and provide clear examples of the direct impact on day-to-day lives that federal funding has for the quality of life for people in the LGA. Using social media, the campaign would swing into gear very quickly and the community would understand that. It is a highly informed community and the pressure, to be frank, would be on the state and, to a lesser extent, the federal member to choose whether to embrace the council taking the lead on the recognition issue and whether they wanted to run counter to that – which would be a risk in itself. I think there is enough time and enough will and that it is way too important for us not to proceed with a referendum.¹⁸

- 4.22 Mayor Peter Besseling, of the Port Macquarie-Hastings Council, suggested that, if Parliamentary approval for a referendum is secured, local government will be able to build support throughout Australia, in a matter of months:

I think if we have a parliament that has the will to do this, we should move straightaway. Obviously, the committee is going to have a large say in whether the parliament has the will to do that or not.

I agree that the timing is not too much of a problem, particularly with modern communications. It is a difficult thing to get parliament to agree to something, but I think the word ‘momentum’ was mentioned earlier. I think we can build on that momentum. Where there is a will there is a way. Once it gets through parliament, we can move that through fairly quickly, so seven months would give enough time for it to be done at the next federal election.¹⁹

- 4.23 Mayor Tim Laurence, of Darebin City Council, stated that his council will campaign in a 2013 referendum, even if it is opposed by the Victorian Government:

17 Mayor Doug Phillips, Cootamundra Shire Council, *Proof Committee Hansard*, 20 February 2013, p. 8.

18 Mr Andrew Crankanthorp, City of Wagga Wagga, *Proof Committee Hansard*, 20 February 2013, p. 10.

19 Mayor Peter Besseling, Port Macquarie-Hastings Council, *Proof Committee Hansard*, 20 February 2013, p. 10.

Yes, absolutely, because this is about delivering real services to real people, not about the power or jurisdictions of three levels of government....

If your voice is credible and your message is talking about real things, you can beat larger people if the community feel the larger people are simply defending their power patches.²⁰

- 4.24 Mayor Laurence further emphasised the power of local government to lead and convince Australian voters to support the referendum, despite state government opposition:

the question is: does the collective voice or actions of councils counteract a negative message from a state government? I am involved in marketing so that comes down to dollars, credibility of the person making the message and the repetition of the message. It is a pretty simple equation. If the national parliament is united in delivering efficiency and having that conversation, then I think state government conversations might be seen just as power plays.²¹

- 4.25 As pointed out by Mr Greg McLean OAM, of the Australian Services Union (ASU), it is not only elected councillors who will campaign for the recognition of local government, demonstrated at a recent conference he attended:

I was there to talk about constitutional recognition of local government. I was highly surprised that when we went to panel discussions neither of my colleagues got any questions but the questions went on for about an hour or an hour and a half for me. Basically I was answering questions on local government constitutional recognition, because the women who are there were elected councillors, employees and others involved in local government and they were concerned about funding and programs and what was really taking place. That was an issue that had great concern to them. I was quite surprised about the amount of interest in it and I am quite surprised the amount of interest that is out there in local government land about constitutional recognition and the security of funding that that would provide.²²

20 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 24.

21 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 22.

22 Mr Greg McLean OAM, Australian Services Union, *Proof Committee Hansard*, 20 February 2013, p. 36.

The risks of delay

- 4.26 The Committee is encouraged that bipartisan support exists for financial recognition at a national political level. However, there is no guarantee about this situation persisting beyond the current Parliament. Cr Bell contrasted the existing bipartisan support with the 1988 referendum:

I went through this the last time as a councillor and there was not bipartisan support at the federal level. That is the most important thing, and I believe we have that until the end of this electoral term. No-one can promise me anything after that. I know the political background of some places, and I do not think you will get the same bipartisan support for a long, long time. If we lost this campaign, you say it will be another 30 years before you get another referendum up. If we do not take this opportunity now with bipartisan support, it is another 30 years before you will get bipartisan support.²³

- 4.27 Mr McLean of the ASU stated:

Insofar as dates and how it should proceed, we are firm supporter that it should be done as soon as possible. We would prefer it to be done at the time of the election held later this year simply because there is an urgency on it. While I have read that some have said that we might need to put it off another four years or another number of years, my concern is that the stars are maybe the best they will be aligned for a long, long time. ... We just do not know what is around the corner. So we would prefer to move on that as a matter of some priority.²⁴

- 4.28 Mr Ken Trethewey, of Cootamundra Shire Council stated:

If the ducks cannot be lined up, we would [support a delayed referendum], but then we would also question whether they will be lined up next time around? If there is a rationale for the opposition, then the rationale does not really change.²⁵

23 Cr Paul Bell AM, Central Highlands Regional Council, *Proof Committee Hansard*, 20 February 2013, p. 20.

24 Mr Greg McLean OAM, Australian Services Union, *Proof Committee Hansard*, 20 February 2013, p. 36.

25 Mr Ken Trethewey, Cootamundra Shire Council, *Proof Committee Hansard*, 20 February 2013, p. 9.

4.29 Mayor Tim Laurence emphasised the important link between the Commonwealth Government committing to holding the referendum and continuing to support local government:

Since 1974 the communities we are servicing have changed dramatically, and the services we are giving have changed. I just do not see how it would be in the federal government's interest to delay any longer. I have mentioned only roads and age care, but there are many other issues, a whole series of social issues that the community wants us to act on regarding homelessness, drugs and alcohol. Local governments are in a position to assist the federal government in enacting programs in those areas.

I think delay is very dangerous, especially when public cynicism about government increases.²⁶

4.30 Mr Andrew Crankanthorp, of the City of Wagga Wagga, put the case very simply and convincingly: 'I think there is enough time and enough will and that *it is way too important for us not to proceed with a referendum.*'²⁷

Major finding

4.31 Based on the evidence to the inquiry:

- there is a strong case for recognition;
- lessons from the history of referenda support a 2013 referendum;
- the prospects for success are good, due to existing bipartisan support at the federal level and the readiness of ALGA and local governments to campaign in support of change;
- the prospects for success will rely on the strong commitment and campaigning by ALGA and its member bodies; and
- the prospects for success will be greatly improved by the support of state governments.

26 Mayor Tim Laurence, Darebin City Council, *Proof Committee Hansard*, 20 February 2013, p. 21.

27 Mr Andrew Crankanthorp, City of Wagga Wagga, *Proof Committee Hansard*, 20 February 2013, p. 10.

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.

Michelle Rowland MP

Chair