Chapter 3

Key Issues

3.1 The committee received evidence covering a wide range of issues and from the perspective of a variety of stakeholders, including councils, community organisations, individuals and academics. The majority of evidence was critical of the actions of the Queensland Government with respect to the amalgamation and plebiscites issue and expressed strong support for the bill. However, a number of submissions and witnesses were critical of the Australian Government for intervening in a state-local government issue.

3.2 Some of the key issues and concerns identified in the course of the committee's inquiry are examined below. They are broadly categorised under two headings: *the plebiscite bill* and *the amalgamation process*.

The plebiscites bill

3.3 In general, the five main issues that recurred throughout this aspect of the committee's inquiry were:

- protection of democratic rights;
- necessity;
- practical issues;
- constitutional issues; and
- other plebiscite topics.

Protection of democratic rights

3.4 The issue which goes to the heart of the bill, which is a response to the Queensland Government amendments to the *Local Government Act 1993 (Qld)*, is the protection of a community's democratic right to conduct plebiscites on the question of council amalgamations.

3.5 The Queensland Government's *Local Government Reform Implementation Act 2007 (Qld)*, as well as implementing the amalgamations, prohibits councils from conducting plebiscites on the matter of reform. As the situation stands, councils face severe fines and/or abolition if they seek to undertake a vote on amalgamations. The committee has received strong and consistent evidence attacking this punitive measure. Trish and Nick Radge put the typical case:

> The Beattie government is using bullying tactics to stop communities voting on an issue that effects every part of their life - their homes, their rates, their local environment and their local population. As a democratic society we have a right to vote for whoever we want, to protest against things we disagree with and to speak out without fear of reprisal. This right

> has been taken away from us when we are not allowed to vote in a referendum and indeed that the councillors who represent us are threatened with sacking and fines.[1]

3.6 The depth of feeling surrounding this issue was effectively demonstrated by evidence given by Mr Hayward, CEO of Tambo Shire Council. Mr Hayward told the committee that prior to the introduction of the punitive provisions and the Prime Minister's offer to fund plebiscites, he paid for a plebiscite in Tambo shire out of his own pocket in order to protect his council from the threat of dismissal:

> **Mr Hayward**—We had ours [plebiscite] recently. Even prior to the legislation being passed to prohibit councils, the minister tied our hands by saying he would sack the council because of misappropriation of funds—that it was a waste of taxpayers' money.
>
> ...
>
> **Mr Hayward**—That was from the policy adviser but the minister himself had also said that. The legislation has now since been passed and obviously overrides that. In that instance, the cost of the poll was $4,000. I actually paid for that out of my own pocket.
>
> ...
>
> **CHAIR**—Mr Hayward, you said you paid for that out of your own pocket, your own personal finances?
>
> **Mr Hayward**—Yes, out of my own personal pocket. And, given the opportunity of an official poll that would be widely recognised, I would do it again.
>
> **CHAIR**—That is a very impressive commitment to your local community.
>
> **Mr Hayward**—That was not the reason I did it, though. It was so that we could have the opportunity to have our say, one way or the other. My council were at risk of being dismissed if they did it themselves.[2]

3.7 The committee commends Mr Hayward on his selfless actions and is of the view that he should not have been put in such a difficult position. The Tambo Council ought to have been able to use its own funds to seek the community's views about being amalgamated with Blackall Council. Accordingly, the committee makes the following recommendation.

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1 Trish and Nick Radge, *Submission 4*, p. 1.

2 Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council and Senator Mitch Fifield, Chair, Senate Finance and Public Administration Committee, *Committee Hansard*, 31 August 2007, p. 27.

Recommendation 1

3.8 The committee recommends that the Queensland government reimburse Mr Hayward, Chief Executive Officer of Tambo Shire Council, in recognition of the expenses he incurred in funding its plebiscite in an effort to give the community a say and to protect its councillors from punitive fines and dismissal. Failing that, the committee recommends that the Commonwealth government, consistent with its policy of funding local government plebiscites in Queensland, consider reimbursing Mr Hayward.

3.9 The Queensland Premier has introduced a bill to amend the ban on plebiscites contained in the *Local Government Reform Implementation Act 2007 (Qld)*. Premier Beattie is reported as saying that:

> Perhaps we were a bit heavy-handed on [the question of holding plebiscites], and that we got that wrong… [T]hat part of it we stuffed up. But if people want the right to protest we should allow that. I obviously got that wrong. When it comes to giving people a vote, John Howard and Kevin Rudd got it right and I didn't.[3]

3.10 This bill has yet to be debated, and as at the time of writing the worst excesses of the legislation still stand. The relevant provisions of the *Local Government Act 1993 (Qld)* can be found at Appendix 4.

3.11 The committee is also concerned about the absence of a right to appeal decisions made by government or the Reform Commission in relation to any reform matter. The Local Government Association of Queensland (LGAQ) submitted that:

> the legislation…specifically denies any challenge, appeal, review or questioning of decisions made by the Commission or the government in relation to any aspect of the reform process… The explanatory notes to the legislation acknowledge this as a departure from the government's own fundamental legislative principles… On issues of such vital importance to the future of councils and their communities, this is a significant denial of natural justice and democratic principles.[4]

The relevant provisions of the *Local Government Act 1993 (Qld)* can also be found at Appendix 4.

Necessity of federal intervention

3.12 Despite strong support, several witnesses questioned the necessity of the plebiscites bill. For example, Associate Professor Graeme Orr from the University of Queensland submitted that there 'is no rationale for ad hoc Commonwealth

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3 'I was wrong, says Beattie, as he allows plebiscites', *The Australian*, 20 August 2007, p. 4.

4 Local Government Association of Queensland, *Submission 67*, p. 10.

intervention into a sub-State issue like the organisation of local government'.[5] He told the committee that, although he disagrees with the actions of the Queensland Government, which he said 'clearly should have allowed plebiscites',[6] he believes that there is 'no need for this bill' unless local government were to run the plebiscites and require electoral roll information.[7]

3.13 The Queensland Government has been extremely critical of the bill and the inquiry undertaken by this committee. In correspondence to the Special Minister of State, the Hon Andrew Fraser MP, Queensland Minister for Local Government, Planning and Sport stated that:

> …there is absolutely no public benefit in the course of the inquiry being undertaken by the committee. It represents an abuse of the majority the Howard Government holds in the Senate – when countless worthy proposals for Senate inquiries have been routinely cast aside by the government's numbers.
>
> This inquiry is exposed for what it, in reality, always was: a sham, taxpayer-funded touring circus for Howard Government mouthpieces to peddle unconstitutional false hope.
>
> Port Douglas and Noosa are, granted, nice places to visit; especially when compared to Canberra's wintry August. But the inquiry, like the bill itself, is just a cruel hoax.[8]

3.14 In this context, the committee notes that the Queensland Government has publicly stated that the provisions prohibiting the conduct of polls by local governments will not be utilised; and that the Queensland Government has introduced legislation into the Queensland Parliament to repeal the relevant sections of the *Local Government Act 1993 (Qld)*, as amended.[9]

3.15 Further, a representative from the Department of Finance and Administration (Finance) informed the committee of some developments regarding the apparent withdrawal by the Queensland Government of the punitive provisions in its legislation:

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5 Associate Professor Graeme Orr, University of Queensland, *Submission 57*, p. 1.

6 Associate Professor Graeme Orr, University of Queensland, *Committee Hansard*, 3 September 2007, p. 7.

7 Associate Professor Graeme Orr, University of Queensland, *Committee Hansard*, 3 September 2007, p. 4.

8 Letter from the Hon. Andrew Fraser MP, Queensland Minister for Local Government, Planning and Sport to the Hon. Gary Nairn MP, Special Minister of State, 24 August 2007, tabled by the Department of Finance and Administration, 3 September 2007.

9 Letter from the Hon Andrew Fraser MP, Queensland Minister for Local Government, Planning and Sport to the Hon Gary Nairn MP, Special Minister of State, 24 August 2007, tabled by Department of Finance and Administration, 3 September 2007.

> I am not in a position to formally confirm that the Commonwealth understands that the laws have been repealed. I have been awaiting a call to get that confirmation, but as we understand it there was a regulation made by the Governor in Council on Thursday 30 August and that was said to commence upon its gazettal. We understand that gazettal occurred on Friday, 31 August. That had the effect of repealing provisions that would have enabled offences against councillors and the dissolution of councils involved in engaging the [Australian Electoral Commissions] in plebiscites. That has just been picked up from material that is off the record. We just want to make sure that this is operative. It is not always the case that a regulation can amend a primary act. Presumably Queensland knows what it is doing, but I am not in a position to confirm that it has had that effect. It seems that that is what is intended…[10]

3.16 After the public hearings, the committee received additional information from Finance which elaborates on this evidence. The additional information states:

> ...it is the understanding of this Department that the regulation has commenced. However, in light of the issues below, this Department is not in a position to comment on the effectiveness of the Queensland regulation.
>
> The regulation was made by the Governor in Council on Thursday, 30 August 2007 and was gazetted on Friday, 31 August 2007.
>
> The regulation commenced upon notification in the *Queensland Government Gazette*. Pages 2326 to 2327 of the *Queensland Government Gazette* No. 118 refer and are attached for your information.
>
> The regulation was then tabled in the Queensland Parliament on Tuesday, 4 September 2007. However, a notice of a motion to disallow the regulation was given on that day by the Member for Warrego, Mr Hobbs MP. Mr Hobbs gave notice that he would move that the regulation be disallowed "because on legal advice I believe the regulation is invalid". The Acting Speaker subsequently issued a ruling to amend the notice of motion to remove the quoted words.
>
> It is also our understanding that section 50 of the *Statutory Instruments Act 1992* (Qld) provides for a disallowance period of 14 sitting days after the subordinate legislation has been tabled, while Standing Order 59 for the Queensland Legislative Assembly provides for notices of disallowance motions to be considered within seven sitting days after notice has been given.[11]

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10 Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review Branch, Department of Finance and Administration, *Committee Hansard*, 3 September 2007, p. 62.

11 Department of Finance and Administration, additional information, 6 September 2007 (received 6 September 2007); see www.aph.gov.au/senate/committee/fapa_ctte/democratic_plebiscites_07/additional_info/finance070907.pdf (accessed 7 September 2007).

3.17 In subsequent correspondence, Finance confirmed that the disallowance motion had been defeated: 'the Queensland Parliament considered the disallowance motion on 5 September 2007. The motion was defeated.'[12]

3.18 On 7 September 2007, the Director-General of the Queensland Department of Local Government, Planning, Sport and Recreation wrote to the committee to outline the status of the regulation, the offending provisions of the Act, and the Queensland amendment bill. The correspondence confirms that the regulation was approved and gazetted on 30 and 31 August 2007, respectively. It also indicates that section 159ZZA (the sunset clause) of the *Local Government Act 1993 (Qld)* provides the regulation making power to expire section 159ZY (the punitive provision). According to the letter, the date of gazettal is:

> ...the effective date of commencement for the regulation and therefore the expiry of section 159ZY from the *Local Government Act 1993*. The next reprint of this Act will see section 159ZY omitted.
>
> The Local Government Amendment Bill 2007 was introduced into the Queensland Parliament on 22 August 2007 to omit section 159ZY, and to amend sections 160 and 164. This Bill remains on the current list of Bills to be debated by Parliament.
>
> The regulation was made to allow section 159ZY to be removed from State law earlier than would have happened under the Bill.
>
> No councillor or council taking action, after 31 August 2007, to conduct a poll about local government reform can be fined or dismissed.[13]

3.19 Despite these assurances, the committee still has some reservations about the effect of the regulation. For instance, the sunset clause specified in section 159ZZA of the *Local Government Act 1993 (Qld)* relates to the 'expiry of Part 1B', which relates to the entirety of the 'Implementation of whole of Queensland local government boundaries reform', not simply section 159ZY.

3.20 As a result, the committee is of the view that there remains a degree of uncertainty surrounding the status of the punitive provisions. The committee also notes that it is unusual for subordinate legislative instruments, such as a regulation, to amend primary legislation. The committee further notes that, at the time of writing, the amending bill remains listed on the Queensland parliament notice paper and is yet

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12 Department of Finance and Administration, additional information, 6 September 2007 (received 6 September 2007); see ww.aph.gov.au/senate/committee/fapa_ctte/democratic_plebiscites_07/additional_info/finance070907.pdf (accessed 7 September 2007).

13 Mr Michael Kinnane, Director-General, Queensland Department of Local Government, Planning, Sport and Recreation, *correspondence*, 7 September 2007, (received 7 September 2007), see www.aph.gov.au/senate/committee/fapa_ctte/democratic_plebiscites_07/submissions/sublist.htm.

to be debated.[14] As a result, in the committee's view there is a degree of uncertainty about the status of the relevant provisions in the Queensland Act.

3.21 The committee is therefore reluctant to assume that the punitive provisions of the Queensland legislation have been withdrawn until it receives confirmation that this is actually the case.

3.22 In this regard, the committee is mindful of the comments made by the Chief Justice of the Queensland Supreme Court on 4 September 2007 in relation to the current civil case between the Queensland Government and the Local Government Association of Queensland. The Chief Justice told the court he took into account the Queensland Government's submission that the amendment would go back before the Queensland Parliament, but said it 'would be quite wrong' for him to rule on the likelihood of the outcome. He noted further that '(c)ourts have resisted and must continue to resist speculation about what might emerge or what might not emerge from the legislative process'.[15]

3.23 Many witnesses told the committee of the importance of allowing communities to express their views on the issue of council amalgamations. For example, Dr Taylor of the Noosa Shire Residents and Rate Payers Association gave evidence that:

> …the immediate wish of the Noosa community is to have an opportunity to express its views on forced amalgamation via an official plebiscite. Why is the community so keen to express its views? Because the local government reform process was deeply flawed. It was undertaken with indecent haste and smelled strongly of a done deal, and the reform commission's report was hopelessly inadequate. In a word, the whole process was undemocratic.[16]

3.24 Many councils also told the committee that they intend to hold a plebiscite once the bill is passed and the funding is available.[17] The rationale was summarised by Mr Hoffman of the LGAQ in the following terms:

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14 The Local Government Amendment Bill (Qld) is listed on the notice paper of 9 October 2007. The bill's status is listed as 'Resumption of second reading debate.'; see www.parliament.qld.gov.au/view/legislativeAssembly/tableoffice/documents/notice_paper/2007/071009-NP.pdf (accessed 7 September 2007).

15 See further www.smh.com.au/news/National/Judge-wont-adjourn-Qld-council-case/2007/09/04/1188783217665.html (accessed 5 September 2007).

16 Dr Michael Taylor, President, Noosa Shire Residents and Ratepayers Association, *Committee Hansard*, 30 August 2007, p. 2.

17 See, for example, Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council, *Committee Hansard*, 31 August 2007, p. 26; Councillor Donald Stiller, Mayor, Taroom Shire Council, *Committee Hansard*, p. 50; and Councillor Peter Glindemann, Deputy Mayor, Jericho Shire Council, *Committee Hansard*, p. 26.

> There are two aspects to the issues confronting the communities that are potentially seeking the opportunity to undertake the plebiscite. The first is the return of the democratic right to express an opinion on a matter such as this, given its fundamental importance to that community and how it perceives its future. The second is that, if there is a significant take-up of the plebiscite opportunity and strong opposition to the amalgamations currently in legislation, the opportunity potentially remains for that expression of public opinion to influence the government of the day.[18]

Practical issues

Timing

3.25 The committee heard anecdotal evidence that early plans were in motion to hold plebiscites in a number of locations as early as 20 October. In their evidence, representatives of the LGAQ informed the committee that negotiations on the date for a plebiscite were taking place with the Australian Electoral Commissions (AEC) in Canberra on 4 September, and that the LGAQ's initial position would be to advocate for the poll to take place on 20 October.

3.26 However, in its evidence, the AEC ruled out the possibility of conducting plebiscites on 20 October, because of the need to concentrate resources to the federal election.[19]

3.27 The main alternative date that was discussed by several witnesses was the day of the forthcoming federal election. Professor Costar, after noting that the AEC is currently preparing for the 'mammoth task' of the federal election, went on to discuss three concerns. Firstly, he noted the potential uncertainty that may arise if the plebiscite were to be voluntary saying that this may 'confuse a number of voters who think that the entire election is voluntary'. Secondly, he said there could arise problem, if the plebiscite were an attendance poll, with voters confronted with three different ballot papers. Finally, he noted that the last time a plebiscite was held simultaneously with a federal poll in 1984 'it spiked the informal vote'.[20]

3.28 The uncertain timing of the election also made an accurate estimate of the earliest possible date for a plebiscite difficult, but the AEC representative took the view that the poll would most likely occur by way of a postal vote, not least for reasons of economy.[21] He also revealed that the AEC is not considering the option of holding a plebiscite in conjunction with the federal election:

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18 Mr Gregory Hoffman, Director, Policy and Representation, Local Government Association of Queensland, *Committee Hansard*, 3 September 2007, p. 19.

19 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 60.

20 Professor Brian Costar, *Committee Hansard*, 3 September 2007, pp 2–3.

21 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 63.

> At this stage we are not even considering the possibility of having an attendance ballot in conjunction with the federal poll, other than the issue of section 394 of the Commonwealth Electoral Act. There are all sorts of other issues of confusion—boundary differences, voting differences, different ballot papers, higher informality possibilities—that we are not even contemplating that as an option at this stage.[22]

Financial implications

3.29 According to the Explanatory Memorandum, the bill will have a financial impact but 'it is not possible to quantify that impact at this stage as the cost is dependent upon the nature of the arrangements entered into by the AEC'.[23]

3.30 However, the committee did take some evidence on the likely cost of plebiscites, based on the experiences of councils which had staged them in the past. The cost, seemingly dependent on the number of voters and the type of ballot, ranged from 'a few thousand', through to approximately $30 000 in Inglewood.[24]

3.31 The representative from the AEC noted that a postal ballot would be the most cost-effective means of conducting a plebiscite:

> …our preference, and the most economical way, is for a postal ballot rather than an attendance ballot.[25]

3.32 The AEC representative indicated that the Department of Transport and Regional Services would provide the required funding to the AEC to enable it to perform its functions under the bill, rather than funding being directly appropriated to the AEC.[26]

Mechanics

3.33 The committee notes that the mechanisms by which plebiscites will be conducted are uncertain because the details of the plebiscite process are to be determined through regulation.[27]

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22 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 61.

23 Explanatory Memorandum, p. 1.

24 Councillor Russell Glindemann, Deputy Mayor, Jericho Shire Council, *Committee Hansard*, 31 August 2007, p. 26; Councillor Glen Rogers, Mayor, Stanthorpe Shire Council, *Committee Hansard*, 3 September 2007, p. 26.

25 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 61.

26 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 63.

27 Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007, Schedule 1, Item 3.

3.34 The committee heard that councils are 'looking for agreements to have the poll on the same day state wide, coordinated by LGAQ and run by the Australian Electoral Commission'.[28]

3.35 The AEC also commented that the mechanics of the plebiscites process would need further consideration, namely:

> Funding is another issue, and the logistics. Figures quoted by LGAQ talk about as many as possibly 800,000 voters, which, if we have a postal ballot, means 2½ million envelopes that we do not have and that have to be printed, because there are three envelopes in a set of ballot material—an outer, a returner and declaration envelope. So there are all those sorts of issues. We are not being bloody-minded. We are not digging our heels in. But—and I speak on behalf of the commissioner as well—we have our focus on the federal poll at the moment and the timing of the emotion out there is a little unfortunate in that we are obviously not sure of the date of the election other than probably before Christmas.[29]

3.36 A specific practical issue arose during the committee's hearings in Noosa. The committee heard evidence that several communities immediately adjacent to the Noosa local government area, including Eumundi, Doonon, Verrierdale and Coolum would like to participate in a future Noosa plebiscite. Prior to the decision to amalgamate Noosa Shire, Maroochy Shire and Caloundra City to form the Sunshine Coast Council, both regions wanted to become part of the same local council area. Mrs Mitchell of the Eumundi, Doonan, Verrierdale Action Group Inc. expressed her doubts that they could be included in a Noosa plebiscite saying:

> [I]f Noosa Council calls for a plebiscite, we presume it would just be conducted within Noosa shire. So we are in no-man's-land. We are outside of that, but we are inside of Maroochy shire and we presume that they do not want a plebiscite. We will be in this no-win situation if plebiscites are conducted within shires.[30]

3.37 In the committee's view it would be preferable for existing local government entities to explore with the AEC, ways to over come this and other similar examples, in order to facilitate the participation of these communities in a plebiscite which is of genuine interest to them.

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28 Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council, *Committee Hansard*, 31 August 2007, p. 32.

29 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, p. 61.

30 Mrs Raynette Mitchell, Secretary, Eumundi, Doonan, Verrierdale Action Group, *Committee Hansard*, 30 August 2007, p. 34.

Implications for the Australian Electoral Commission

3.38 Professor Brian Costar argued that the bill undermines the independence of the AEC enshrined in the *Commonwealth Electoral Act 1918* (Commonwealth Electoral Act) by in effect requiring it to conduct 'politically charged' plebiscites:

> This comes about by the fact that the reported comments of the Prime Minister and other Ministers that the services of the AEC will be made available for the conduct of plebiscites concerning local government amalgamations in effect means that the AEC will be 'directed' by the Special Minister of State to conduct such plebiscites when and where the Minister so determines. This infringes the status of the Commissioner as an independent statutory officer.[31]

3.39 In response to claims that the bill gives the government additional powers which might be seen as the 'thin end of the wedge' in terms of the government directing the AEC to undertake plebiscites or similar polls, a representative from the AEC informed the committee that this is not the case:

> I would like to point out that, under the existing section 7A of the Commonwealth Electoral Act, the commission *may* make arrangements for any such polls, so there are no direction powers there at all.
>
> …
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> …the commission *may* make arrangements. It is quite clear that there is a discretion for the AEC for the commissioner or the commission to decide whether or not to perform these functions.[32] (emphasis added)

Constitutional issues

Constitutional validity

3.40 The committee received evidence arguing that the bill may be constitutionally invalid on two bases:

- that it falls outside the scope of Commonwealth legislative power; and
- that it infringes the *Melbourne Corporation* case principle relating to the existential autonomy of the states.[33]

3.41 Professor Gerard Carney argued that, to the extent that proposed subsection 7A(1E) of the bill purports to override state law, it is likely to go beyond the scope of

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31 Professor Brian Costar, *Submission 16*, p. 1.

32 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, pp 60 & 63.

33 Associate Professor Graeme Orr, University of Queensland, *Submission 57*; Professor Gerard Carney, *Submission 77*. The *Melbourne Corporation* principle provides that the states are immune from Commonwealth laws that are too directly restrictive of the core functions and freedoms of the states as independent polities.

Commonwealth legislative power because it is not 'sufficiently connected' to the source of legislative power upon which the AEC is established and to its functions under the Commonwealth Electoral Act.

3.42 Professor Carney noted that proposed subsection 7A(1F) may be supported by the external affairs power (section 51(xxix)) in its application to state law, as a partial implementation of Australia's international obligations under Articles 19 and 25(a) of the International Covenant on Civil and Political Rights (ICCPR). However, proposed subsection 7A(1F) would be superfluous if the Queensland law is deemed invalid for infringing the implied freedom of political communication.[34] In Professor Carney's view, section 159ZY of the *Local Government Reform Implementation Act 2007* appears to infringe that implied freedom.[35]

3.43 Associate Professor Graeme Orr argued that the bill 'would not pass constitutional muster' since it offends the *Melbourne Corporation* principle and it is not supported by any underlying Commonwealth power.

3.44 Associate Professor Orr's opinion differed to that of Professor Carney in relation to the constitutionality of the Queensland law (as it originally stood):

> My view…is that the Queensland law, though harsh, is not unconstitutional because it still leaves a host of methods for councils and councillors to communicate with their public, including by various survey methods and protests.[36]

3.45 In response to concerns about the constitutional validity of the bill, a representative from Finance informed the committee that the Australian Government had considered the relevant legal and constitutional issues:

> …the government gave very careful consideration to the legal and constitutional issues when considering its response to the Queensland law. We note that a number of submissions raise legal and constitutional issues. We also note that not all of those opinions are uniform. Those positions do not affect the government's position. As I have said, the government gave very careful consideration to the legal and constitutional issues.[37]

3.46 When questioned by the committee about whether the government had obtained legal advice about overriding state legislation by founding the bill upon the ICCPR, the Finance representative indicated that the government had obtained legal advice from the Australian Government Solicitor:

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34 The validity of the offending Queensland provisions is currently before the Queensland Supreme Court, see www.smh.com.au/news/National/Judge-wont-adjourn-Qld-council-case/2007/09/04/1188783217665.html (accessed 5 September 2007).

35 Professor Gerard Carney, *Submission 77*, p. 1.

36 Associate Professor Graeme Orr, University of Queensland, *Submission 57*, p. 4.

37 Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review Branch, Department of Finance and Administration. *Committee Hansard*, 3 September 2007, p. 68.

> It is on the public record from the Prime Minister in his statement on 16 August when he said…that the Commonwealth was 'going to act to prevent that'—being the Queensland laws—'occurring'. Then he said:
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> 'And we have legal advice that we can do so and the bill will provide accordingly'[38]

3.47 On the basis of the statement by the Prime Minister, the committee is satisfied that the legal advice supports the constitutional validity of the measures contained in the bill.

Constitutional recognition

3.48 The Constitution, while recognising government at the national and state levels, does not make mention of local government. The issue of constitutional recognition of local government has been put to the Australian people twice (in 1974 and 1988) by way of referenda pursuant to section 128 of the Constitution.[39] In both instances, the proposals to expressly recognise local government in the Constitution were rejected; the current situation is that the constitutional relationship between the Commonwealth and local government has to be through the states.

3.49 A number of councils and other witnesses told the committee of their support for the recognition of local government in the Constitution. For example, Mr Bob Ansett from Friends of Noosa told the committee that he hoped that 'the experience that we are going through in Queensland at the present time would muster the support of all parties to ensure that constitutionally the local government is recognised in the Constitution'.[40] However, Mr Ansett warned that constitutional recognition of local government, while a good long-term goal, would not address the immediate issue of forced amalgamations in Queensland.[41]

3.50 In a similar vein, Mr Glen Elmes MP, submitted that:

> I do not have a problem with the constitutional arrangements. Let us face it, there has not been anything really wrong with the arrangement as it stood up until this particular point. Whether we recognise local government in the

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38 Mr Marc Mowbray-d'Arbela, Assistant Secretary, Legislative Review Branch, Department of Finance and Administration. *Committee Hansard*, 3 September 2007, p. 68.

39 *Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007*, Bills Digest, Department of Parliamentary Services, August 2007, p. 8. The *Constitution Alteration (Local Government Bodies) 1974* sought to give the Commonwealth Parliament powers to borrow money for, and to make financial assistance grants directly to, any local government body; the *Constitution Alteration (Local Government) 1988* sought to give constitutional recognition to local government by entrenching the existing situation of local governments being creatures of the states in the Constitution.

40 Mr Bob Ansett, Vice Chairman, Friends of Noosa, *Committee Hansard*, 3 September 2007, p. 4.

41 Mr Bob Ansett, Vice Chairman, Friends of Noosa, *Committee Hansard*, 3 September 2007, pp 4–5.

> federal Constitution or the state constitution, I am prepared to go along with it... I think if we had gone about the process within the existing rules we would not be sitting here talking about whether or not we need to enshrine local government in the state constitution or the federal Constitution because we had a process that worked.[42]

3.51 Witnesses also acknowledged that constitutional recognition of local government will 'not happen overnight' since it is not directly linked to the current issue of local government amalgamations in Queensland.[43] In any case, the attitude of state governments to constitutional recognition for local government would need to be taken into account:

> There is a lot of work to be done on a future referendum on constitutional recognition. It is a very complex issue
>
> …
>
> I do not think there is a great appetite for recognising or elevating local government to any degree; although, I think we are making some progress in various states where there is some discussion about the fact that there needs to be a reform of how local government is treated. Each of the states are now entering into agreements with their local government associations. I think there is a bit of a way to go. I think they are lukewarm in some states and I think we have a bit more work to do.[44]

3.52 There are a range of complex issues around constitutional recognition and a range of different possible objectives. For example:

- protection from state government actions;
- funding sources; and
- roles and responsibilities of local governments.

Recommendation 2

3.53 The committee recommends that the Commonwealth government should continue dialogue with local government to ascertain and clarify the objectives and form of any constitutional recognition. A future referendum should only be held once local government has a clear and unified view of the purpose and form of constitutional recognition.

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42 Mr Glen Elmes MP, Legislative Assembly of Queensland, *Committee Hansard*, 3 September 2007, p. 75.

43 Councillor Joan White, Inglewood Shire Council, *Committee Hansard*, 3 September 2007, p. 34.

44 Councillor John Rich, Australian Local Government Association, *Committee Hansard*, 3 September 2007, p. 15.

Other plebiscite topics

3.54 The committee notes that the provisions of the bill are broadly drafted and potentially go beyond the issue of plebiscites on local government amalgamations. The bill would therefore enable plebiscites to be conducted in relation to a range of other topical issues.

3.55 In this context, the committee notes that the Prime Minister's announcement related only to the funding of plebiscites for local government amalgamations. The decision in relation to funding has been made by the Government and is not subject to this bill.

Committee view

3.56 Aside from a small number of opposing groups, the committee heard of the overwhelming support for the bill. Support was particularly strong from local councils and community groups who gave evidence that their democratic right to voice their opinion on an issue that affects them greatly had been trammelled by the 'heavy handed' action of the Beattie government (discussed further below).

3.57 The committee notes the concerns raised by several academic commentators regarding the constitutional validity of the bill. It also notes that the Australian Government has obtained legal advice to the contrary. Without access to this latter material it is not possible for the committee to offer an opinion on this issue.

3.58 The committee also notes the views put that the bill is unnecessary, because the Queensland government has decided to withdraw punitive penalties against councils undertaking a poll. In this context, the committee notes that, at the time of writing, it is unclear whether or not the offending provisions remain in force. The passage of this bill will provide protection in the event these provisions were not repealed or similar legislation was again introduced.

3.59 The committee is of the view that the bill will restore a pre-existing right of Queensland local councils to conduct a plebiscite on whether their constituents support council amalgamations, a right recently removed by the Queensland government. The committee acknowledges that any plebiscite will not over-rule the Queensland government's move to amalgamate many councils across the state. However, what the bill will do is ensure that councils have the opportunity to seek the views of their communities, in an open and public manner, on a decision imposed upon them by the Queensland government without adequate consultation and without a right of appeal.

3.60 Accordingly, the committee strongly supports the passage of this bill.

Amalgamation process

3.61 Although the scope of the bill is broader than the Queensland council amalgamations, many submitters commented on the bill in that context. In this respect two main issues emerged, the:

- inadequate Local Government Reform Commission (Reform Commission) process; and
- unsupported Reform Commission recommendations.

Each of these topics is discussed below.

Criticisms of Local Government Reform Commission process

3.62 There was a range of criticism of the Reform Commission process. These included the:

- undue haste of the process;
- lack of adequate consultation;
- abandonment of the SSS process; and
- Reform Commission's terms of reference which essentially predetermined the recommended amalgamations.

Undue haste

3.63 The Reform Commission was given three months to undertake a state-wide review of external boundaries and electoral arrangements for all 156 councils in Queensland. In Noosa, Mr Glen Elms MP submitted that:

> I think it is fair enough to say that that schedule—the size, shape and sustainability schedule—was lagging a little bit slowly. That is a fair enough comment to make. But to change it all in three months when it has been in effect for 100 years is undue haste. I think if we had gone about the process within the existing rules we would not be sitting here talking about whether or not we need to enshrine local government in the state constitution or the federal Constitution because we had a process that worked.[45]

3.64 While witnesses generally acknowledged that there had been some delays in the SSS process, it was put to the committee that one reason for the delay was the Queensland treasury corporation:

> Part of the reason the process was perhaps not proceeding as quickly as it might was that there was a requirement for the Queensland Treasury Corporation to have investigated the financial status of the councils. They

45 Mr Glen Elms MP, Legislative Assembly of Queensland, *Committee Hansard*, 30 August 2007, p. 78.

> completed their study with 105 of the 157 councils but the remaining councils could not participate in the process because the Queensland Treasury Corporation had not done its work. For the Premier to say that we were dragging our feet—and, by the way, Noosa was not—without referring to the fact that the Queensland Treasury Corporation was tardy at best in its process, really begs the question: what was he trying to achieve in the first place?[46]

3.65 The LGAQ explained that the Queensland government's imperative to proceed with its reform agenda with such haste was driven by a new government objective to enable the amalgamated local governments to go to election on the expected date for council elections; that is 15 March 2008.[47]

3.66 The committee agrees that, on any reasonable analysis, this timeframe was insufficient to achieve a properly considered result. The LGAQ reflected on the danger in adopting such a short-sighted approach when it submitted that:

> The state government indicated that the boundaries of local governments were in fact outdated and needed to be changed. The process it introduced, as I indicated, potentially provided for the future for the next 50 to 100 years to be resolved in a period of three months without the opportunity for communities to engage effectively with the Local Government Reform Commission as it undertook its work nor subsequently to express their opinions in any formal process in relation to matters specifically relating to changes that would affect those communities for a very long time.[48]

Lack of adequate consultation

3.67 As discussed in chapter 2 the Reform Commission invited submissions within a one month timeframe. As a result of the Reform Commission receiving tens of thousands of submissions, many submitters felt that their suggestions were not properly considered and their concerns had not been listened to. For example, Mr Alex McDonald submitted:

> The Commission says it received thousands of suggestions overall but I doubt if any significance was given to any suggestion indicating the person sending the suggestions did not want any amalgamation in their area. In my opinion, the Commission could not have read and understood all submissions received in the short period of time it existed and basically spent its time cutting and pasting, reusing as much as possible the words of the first written report to justify its expected result.[49]

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46 Mr Brendan Scanlon, Committee Member, Eumundi, Doonan, Verrierdale Action Group, *Committee Hansard*, 30 August 2007, p. 29.

47 Mr Gregory Hoffman, Director, Policy and Representation, Local Government Association of Queensland, *Committee Hansard*, 3 September 2007, p. 13.

48 Mr Gregory Hoffman, Director, Policy and Representation, Local Government Association of Queensland, *Committee Hansard*, 3 September 2007, p. 12.

49 Alex McDonald, *Submission 12*, p. 1.

3.68 In a similar vein, E.R. Relf submitted:

> The current Queensland Government ignored some 18,000 Noosa votes against amalgamation at the time of the last Federal Election, and also against amalgamation approx 34,000 submissions sent by Noosa residents during the Local Government Committee review process.[50]

3.69 Furthermore, the LGAQ described the lack of direct communication and interaction between the Reform Commission and those communities with an interest in the process:

> Despite calls from the LGAQ and many communities across Queensland to conduct regional forums/briefings, the Local Government Reform Commission made a deliberate decision to stay in Brisbane and operate behind closed doors. Interested parties had only one month in which to forward suggestions to the Commission and at no time were councils or community representatives able to engage in face to face discussions or debate with the Commission or its officers.[51]

3.70 It is of little surprise to the committee that, given the timeframe, the Reform Commission has been accused of undertaking inadequate consultation. The committee heard this complaint from many witnesses at each of its hearings.[52]

Abandonment of the SSS process

3.71 Aggravating the short timeframe and lack of engagement was the fact that the SSS process was abandoned with little or no warning. Caught by surprise, most stakeholders scrambled to make submissions to the Reform Commission. Representatives of the Noosa Council expressed anger and frustration at the Queensland Government's secrecy when planning the amalgamation. Mayor Abbot remarked:

> [W]hatever the Queensland government did to stop the leaks, they should patent it and sell it to every other government in the world, because it was absolutely faultless. Nobody knew… We could not get people to talk to us who would talk to us before, and we were finding more and more difficulty in getting not necessarily information but even assistance from those people because they for some reason had become resistant… On the Monday, there was a cabinet meeting. On Tuesday, down came the hammer. So, from my perspective, there must have been something significantly planned prior to that. There must have been some understanding of what the final state

50 E.R. Realf, *Submission 21*, p. 1.

51 Local Government Association of Queensland, *Submission 67*, p. 2.

52 See, for example, Councillor Donald Stiller, Mayor, Taroom Shire Council, *Committee Hansard*, 31 August 2007, p. 49; Councillor Malcolm Dinham, Tara Shire Council, *Committee Hansard*, 31 August 2007, p. 57; Mr Peter Butt, Vice President of the Hastings Street Association, *Committee Hansard*, 30 August 2007, p. 56.

> picture would look like, and there must have been significant work already done before the commission started.[53]

3.72 Mayor Trevor of Isis Shire Council felt similarly:

> The minister looked us in the eye, urged us to re-enter the process that had the full support of the Queensland government, shook our hands and at the same time had printing being done in the back office to pull the rug from underneath us. That really riled us. If he had said, 'I am not happy with the process and I want to make some changes to it,' that is fine; that is his right. But to tell us one thing while he was actively doing another we see as treacherous at the best.[54]

3.73 According to various witnesses the SSS reform process included the consideration of amalgamations, but also ranged more broadly to other issues such as shared service delivery; management, organisation and operational arrangements; and resource sharing arrangements. Mayor Trevor submitted that:

> Local government reform was never just about amalgamation; it was about talking and seeing how we could deliver services across boundaries, how communities could work together better and, in some cases, where communities would want to amalgamate to be able to do that—where there were like groups very close together. We always believed that communities and local government would have a fair say in how that process was undertaken. That reform process and the Queensland government's decision have taken away the right of those communities to have their say.[55]

3.74 The LGAQ submitted that most councils were fully engaged in the SSS process, and that positive progress was being made:

> At the end of March 2007, 27 Review Groups consisting of 117 councils were fully engaged in the SSS process. Fifteen of these groups had developed their terms of reference setting out the scenarios for investigation during the comprehensive review phase of the process. In many cases, councils were prepared to delay local government elections until October 2008 in order for reviews to be completed and unhindered by electioneering.[56]

3.75 The Noosa council verified this analysis, when Mayor Abbot expressed his Council's enthusiasm for reform in the context of the SSS process:

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53 Councillor Robert Abbot, Mayor, Noosa Shire Council, *Committee Hansard*, 30 August 2007, p. 13.

54 Councillor William Trevor, Mayor, Isis Shire Council, *Committee Hansard*, 30 August 2007, p. 39.

55 Councillor William Trevor, Mayor, Isis Shire Council, *Committee Hansard*, 30 August 2007, p. 37.

56 Local Government Association of Queensland, *Submission 67*, p. 8.

> [W]e were at the end of the first stage in the review, where we were establishing bon fides. We, as Noosa council, had submitted to the panel our wishes, basically, as far as what we thought the size and shape of the future Noosa council should be… We saw that the real potential for the Sunshine Coast was to make two good councils out of three.[57]

3.76 Councillor Pennisi, who appeared in a private capacity but sits on the Stanthorpe council, also assured the committee of that council's engagement with the SSS process:

> All councils in that region were at the table and very willing participants. I would like to add that from a personal point of view I have no doubt that amalgamation in some cases is very, very necessary. [58]

Predetermined outcomes

3.77 A number of witnesses criticised the Reform Commission's terms of reference, claiming that they were drafted with a view to achieving a pre-determined outcome.

3.78 The LGAQ submitted that:

> The terms of reference for the Commission were considered especially narrow giving preference for "whole of area" amalgamations and a focus on financial sustainability over other community development objectives. This has been of particular concern for many councils and communities across the state and is justified by research commissioned in June by the Department of Local Government, Planning, Sport and Recreation entitled "outcomes of major local government structural change". This research concludes that "there is little evidence (mainly due to lack of data capture) about the gains to be made out of amalgamations and that factors such as efficiency, scale, cost reduction and elimination of duplication are often over-emphasised and not properly balanced with factors such as the attachment people have to place and community and their concept of local democracy and representation".

3.79 A number of witnesses appearing before the committee also took the view that the terms of reference were skewed to achieve a predetermined outcome.[59] In Emerald, Mr Howard Hobbs MP put it bluntly:

> The reality is this. Look at the terms of reference and look at the statements by the minister and the Premier as well as the second reading speech, which I did. I got a map of Queensland with the council boundaries. In fact, I drew what I thought they would have had to draw with those terms of reference. I came out very close to what we did. In other words, the instructions they

57 Councillor Robert Abbot, Mayor, Noosa Shire Council, *Committee Hansard*, 30 August 2007, p. 12.

58 Councillor Frank Pennisi, *Committee Hansard*, 30 August, p. 64.

59 See, for example, Mr Trevor Cooper, *Committee Hansard*, 30 August 2007, p. 63.

> gave the reform commission were to draw the boundaries the way they wanted them. That is quite clear. I do not think anyone can really deny that. It was simply a matter of just joining the dots.[60]

Criticisms of forced amalgamation of Queensland councils

3.80 Witnesses were also highly concerned that the amalgamation recommendations of the commission were not supported by any social or economic analysis. Mr Hobbs MP put it succinctly:

> [N]o professional, academic, social or cost-benefit analysis has been done in relation to this exercise. It is like going out and buying a huge business and not looking at the books. Local government assets are valued at about $86 billion, and nobody had a look to see what the impacts are likely to be at the end of the day. Nor did they really have a good look at what the social impact is likely to be on many of the communities and on the 37,000 employees.[61]

3.81 The Hon Bruce Scott MP, Federal Member for Maranoa, argued that amalgamation is a 'band-aid answer' rather than a real solution to addressing inefficiencies in local government:

> The Beattie Labor Government has repeatedly expressed financial sustainability and efficiency as justification for the forced amalgamation of Queensland shires. One cannot deny that there are a number of councils in Queensland which are in debt or are struggling financially. This could be attributed to the gradual increase in local council responsibility due to pressure from both state and federal levels of government, often without adequate monetary acknowledgement. Whatever the cause, history shows amalgamation is not the answer to monetary problems, and does not only fail to improve efficiency but also damages social fabric and community cohesion.[62]

3.82 Mr Scott also argued that, in addition to failing to fully resolve issues of inefficiency, amalgamation has 'generated negative consequences in the way of reduced local community cohesion and association, reduced vibrancy in local democracy, decreased economic activity and a loss of sense of place'.[63]

3.83 Mayor Trevor of Isis Shire Council agreed,

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60 Mr Howard Hobbs MP, Queensland Legislative Assembly, Shadow Minister for Local Government, *Committee Hansard*, 31 August 2007, p. 17; see also Councillor Michael Berwick, Mayor, Douglas Shire Council, *Committee Hansard*, 3 September 2007, p. 48.

61 Mr Howard Hobbs MP, Queensland Legislative Assembly, Shadow Minister for Local Government, *Committee Hansard*, 31 August 2007, p. 13.

62 The Hon Bruce Scott MP, Federal Member for Maranoa, *Submission 35*, p. 5.

63 The Hon Bruce Scott MP, Federal Member for Maranoa, *Submission 35*, p. 6.

> Under the process that we have been through and that the government has now pulled the rug on here in Queensland, there has been no economic modelling showing any benefits of 'big is best'. Indeed, at the local government conference in the last couple of days we have heard from international speakers on overseas trends to break down local governments so that the word 'local' becomes what it was meant to be—local people working together to solve local problems.[64]

3.84 Mr Hayward, CEO of Tambo Shire Council, concurred, adding that:

> Good analysis considers the triple bottom line approach. The social and environmental factors were not considered, and only cursory consideration was given to the financial aspects. However, no financial modelling was conducted on the proposed changes to see if there were any cost benefits. When this was raised with the minister early in the week during the local government conference, he confirmed that no such modelling was undertaken to see what benefits there would be. In the report they use buzzwords like 'economies of scale', but when asked what these may be no-one can actually cite any examples. The recommendations are based on assumptions and not on sound financial reasoning.[65]

3.85 Associate Professor Graeme Orr from the University of Queensland argued that the Queensland Government has been heavy-handed in its approach to the amalgamation issue:

> The pre-existing Local Government Act included a process for local polls. Whilst these may have had no binding purpose, they would have allowed Shires/ratepayers to vent steam.[66]

Impacts on communities

3.86 Repeatedly, the committee heard of witnesses' grave concerns for their local communities as a result of the forced council amalgamations. Although it is not possible to cover all of the council areas that are deeply worried about the implications of forced amalgamations, the committee uses the following examples as illustrative of the concerns raised.

3.87 Redcliffe council has identified a possible additional financial cost of as much as $100 million in the next two years, primarily due to the need for IT systems between existing councils to be integrated. Mayor Sutherland noted that additional costs such as these, and ever-present demands for services from ratepayers, creates an inevitable tension:

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64 Councillor William Trevor, Mayor, Isis Shire Council, *Committee Hansard,* 30 August 2007, pp 37–38.

65 Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council, *Committee Hansard,* 31 August 2007, p. 21.

66 Associate Professor Graeme Orr, *Submission 57,* p. 1.

> [W]e have a very high standard of maintenance. In fact, if any of you guys from down in the capital city can remember, Redcliffe won the Tidiest Town award in 2005 because the community have a say in the direction of their city and successive councils have maintained an extremely high standard. In a big, amalgamated city, a shire of 350,000 people, is that same standard going to be applied to the rest of the shire or are we going to fall to the same standard as the others? I am not saying that disparagingly about our neighbours, because our neighbours maintain their places at as high a standard as they can possibly afford. The fact is they cannot afford to maintain standards to the level we do. That is something that we have tested on our community through extensive community surveys. Our community demand that.[67]

3.88 In addition to the financial impact, councils were quick to identify the possible social ramifications of amalgamation for communities. In Emerald, Mr Scott MP described the partnership which exists in the Tambo shire in relation to the provision of services. He gave the particular example of rural pharmacy initiatives provided by the federal government, which stand to be compromised by the amalgamation process:

> The local community believed that for the health of their community they needed a pharmacy like every community needs a doctor. It is about essential services. That pharmacy is there because of the local council and the funds that it is providing and the funds that federal government is providing under the rural pharmacy initiative to provide support for a pharmacy in a place where it would otherwise be uneconomic to provide a pharmacy. It would not be there if the process was administered by council that governed a larger area. Evidence from anywhere around the world, as I said earlier, is that efficiency is not a function of size. Local communities and local solutions are all about local people and local decisions. The other thing about that pharmacy, which is a very good example, is that the nearest town is 100 kilometres away. If you need prescription drugs, sometimes you might not have the time to use the next mail service to bring those prescription drugs to you. That provides a local service for that community. It is working very well.[68]

3.89 A similar situation exists in relation to critical community services such as the SES, fire brigade and ambulance services, which the committee heard are sometimes subsidised by local councils and staffed by council officers in a voluntary capacity. In the event that amalgamation takes places, these subsidies would be at risk.[69]

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67 Councillor Allan Sutherland, Mayor, Redcliffe City Council, *Committee Hansard*, 3 September 2007, p. 54.

68 The Hon Bruce Scott MP, Federal Member for Maranoa, *Committee Hansard*, 31 August 2007, p. 3.

69 Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council, *Committee Hansard*, 31 August 2007, p. 25.

Councillor Back gave other examples of the role of local councils in supporting their community:

> I would have to say that amalgamating a lot of the smaller councils and smaller areas will take away the enticement that is carried out by local leadership of local councils. If there is no-one in the town working to try to entice new businesses and new ideas, obviously they are going to fall over. Moving all the power to one large central town does not help us in that matter. In our little town of Ilfracombe, as you have no doubt heard in other places, we do all sorts of things. At present we own the post office and the railway and run them both because they looked to be in danger of falling by the wayside. Previously they owned the store and some houses but once they got up and going again and got on their feet, they on-sold them, as is the case with both of those things.[70]

3.90 Various witnesses also made the obvious point that amalgamation must involve fewer local government representatives. Mr Hayward described some of the consequences of reducing the number of representatives, including an inevitable loss of representation of local issues:

> The proposed new shires are double in size and in some cases triple. Representation will be significantly reduced. Tambo will have only one councillor on the new proposed shire and therefore reduced representation. By having only four councillors and a mayor, it is hard to form a quorum. Most of our councillors are property owners. They shear and wet weather gets them bogged in. If we have only four councillors, it will not be uncommon to not have a quorum. We have six councillors and Blackall has eight … Because we have eight councillors we have great representation. We have eight people with different attributes representing different communities—one is a nurse, one is a landowner. We get really good representation with more people like that sitting around the table and we make better decisions. To have only one councillor coming from Tambo, with that person representing the entire region, we honestly do not believe that we will see the same development that we have been actively pursuing.[71]

3.91 Councillor Back expressed similar frustrations:

> Previously our three shires, Ilfracombe, Isisford and Longreach—the three which are to be amalgamated—ran to nine councillors in Longreach and six in each of Ilfracombe and Isisford. That gave us representation of 21 councillors. This has been reduced to six only and the problem we see is one of representation. Isisford is quite a long way from Longreach and there is a voting public of 178. Ilfracombe has 200 voters. These numbers do not come up to the required number for a one-vote, one-value concept.

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70 Councillor John Back, Mayor, Ilfracombe Shire Council, *Committee Hansard*, 31 August 2007, p. 23.

71 Mr Robert Hayward, Chief Executive Officer, Tambo Shire Council, *Committee Hansard*, 31 August 2007, *Committee Hansard*, 31 August 2007, p. 25.

> Although we had a meeting with Mr Beattie and Mr Fraser in Barcaldine and Mr Beattie said he would try to allow us representation on a community basis, this has not been the case. When the legislation went through they have changed it to do away with multimember divisions. We were given our divisions—which we had asked for—but not six out of six. This has led us into an extremely untenable position. The Electoral Commission phoned me three days before the due date when all the numbers were due in and things settled and I was asked for our estimation of what we would consider a fair or reasonable break-up of the new regional shire. He said, 'I cannot see how we can cut this up; it is almost impossible'—and it is.[72]

3.92 Loss of local identity was a recurring theme among councils. Noosa shire was particularly keen to emphasise its special character:

> [T]he prospect of Noosa being amalgamated into the southern shires is sad beyond belief. This is a process of mediocrity; this is a process of dumbing things down. Noosa runs far and away the best shire in this state, and arguably in the country. For it to be absorbed into its southern neighbours is a travesty. They ought to be looking at Noosa and saying, 'This is a shining beacon; this is the place that we can look to for leadership across the world in how to develop sustainable communities.' They ought not be looking to throw it together with two shires which have totally disparate philosophies. They look to do different things with their towns. We are not criticising them; we are just saying, 'Leave us alone to do our thing.' There are millions of people across the world who come here on a regular basis because Noosa represents to them many things which they cannot find elsewhere in the world. To insist on us being aggregated with other shires with such different reasons for being is ridiculous beyond belief.[73]

3.93 In a similar vein, the Mayor of Douglas Shire, Councillor Berwick told the committee:

> Part of Australia's heritage is regional and rural communities. Let's look after them. Let's keep them empowered. They have their own character; they are all different. Once you start joining us all together into big governments we start to lose our identity—and we are upset about it. Every state has done this badly. It is about 'big is better', but big is not necessarily better. You want to keep character and diversity. They are not all the same as Douglas's; they might be completely different in different places. It does not matter. It is diverse. If there is any way this process can help keep that diversity in place in Australia I think it is good for all of us. And I think that diversity is about empowering local communities.[74]

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72 Councillor John Back, Mayor, Ilfracombe Shire Council, *Committee Hansard*, 31 August 2007, p. 23.

73 Mr Gregory Reddaway, Treasurer, Friends of Noosa, *Committee Hansard*, 30 August 2007, p. 6.

74 Councillor Michael Berwick, Mayor, Douglas Shire Council, *Committee Hansard*, 3 September 2007, p. 41.

3.94 The unique situation of Torres Strait Councils having responsibilities arising from being partly bounded by an international border were detailed by the Chair of the Torres Strait Regional Authority, and Chair of the St Paul's Island Council, Mr Toshie Kris:

> There was no proper consultation throughout our region. It really distresses me. We are talking about a region that looks after more services than any other shire in the region, because we also deal with an international treaty right throughout our region. I would love to see how the Mayor of Cook Shire or the Mayor of Douglas Shire would deal with 10 canoes sitting on the beach with people with diseases ranging from TB and dengue to HIV. These are real issues that are happening throughout our region. It has been stated that our region is the eyes and ears of Australia. With the amalgamation process, the only thing left is the bare skull. There is a passage through that skull to Australia that no-one has really given any answers to.[75]

3.95 Erosion of cultural identity was also cited as a consequence of the amalgamations by Mr Joseph Elu, Chair of the Seisia Island Council:

> We are a different race of people to any other in this world. There are only 30,000 of us on this planet. This amalgamation will throw us together in a sense that we do not want to be. It will throw us, on the tip of Cape York, together with Aboriginal people. We feel we will lose our identity... We believe that God gave us part of the country that we are sitting in. I plead with this committee to come up with some answers for us. Otherwise, we will be lost to everything in this world.[76]

Committee view

3.96 The committee is deeply concerned about the process and potential outcomes of the Queensland council amalgamations. It heard evidence of the abandonment of the voluntary SSS reform process, the 'flawed' Local Government Reform Commission process and the 'predetermined' recommendations for amalgamations without the right of appeal.

3.97 The committee received much evidence on this issue of the likely social and economic outcomes of the amalgamations. The committee is concerned that in the short timeframe given to the Local Government Reform Commission, it was not able to conduct comprehensive social and economic analysis. The committee is of the view that this ought to have been done prior to deciding on the council amalgamations. Accordingly, the committee makes the following recommendation.

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75 Mr Toshie Kris, Chair of the Torres Strait Regional Authority, and Chair of the St Paul's Island Council, *Committee Hansard*, 3 September 2007, p. 57.

76 Mr Joseph Elu, Chair of the Seisia Island Council, *Committee Hansard*, 3 September 2007, pp 57–58.

Recommendation 3

3.98 The committee recommends that the Senate Rural and Regional Affairs and Transport Committee conduct an inquiry into the social, economic and other impacts of the amalgamation process at a suitable time after the council amalgamations are implemented.

3.99 The committee accepts that there is nothing inherently wrong with council amalgamations. Amalgamation may be right for some councils and not right for others. However, the committee supports the views of many submitters that the scope of local government reform should consider questions beyond mere mergers (such as shared resources and service delivery), and that councils and communities impacted by any reforms should be properly consulted in the process.

3.100 The committee is also deeply troubled by the imposition of punitive penalties designed to override councils' and communities' democratic right to express their views on the amalgamations by way of a plebiscite. In the committee's view there can be no justification for the removal of such a fundamental democratic right.

3.101 The committee notes that the Queensland government has acknowledged it was wrong to be so heavy-handed and that it has put forward amendments to remove the offending provisions. The committee further notes that at the time of writing, it is uncertain whether or not the offending provisions remain on the Queensland parliament statute books. Accordingly, the committee strongly supports the passage of the plebiscites bill in order to provide certainty to councils wishing to enable their communities to express a view on the amalgamations.

Recommendation 4

3.102 The committee recommends that the bill be passed.

Senator Mitch Fifield

Chair