The Senate

Standing Committee on Finance and Public Administration

Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 [Provisions]

September 2007

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Membership of the Committee

Senator Mitch Fifield (Chair)	LP, VIC
Senator Michael Forshaw (Deputy Chair)	ALP, NSW
Senator Carol Brown	ALP, TAS
Senator Mathias Cormann	LP, WA
Senator Concetta Fierravanti-Wells*	LP, NSW
Senator Claire Moore	ALP, QLD
Senator Andrew Murray	AD, WA
Senator John Watson*	LP, TAS

Substitute members

*Senators Barnaby Joyce and the Hon Ian Macdonald replaced Senators Fierravanti-Wells and Watson, respectively, for the inquiry into the provisions of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007.

Participating members for this inquiry

Senator Joe Ludwig	ALP, QLD
Senator Jan McLucas	ALP, QLD

Secretariat

Stephen Palethorpe	Committee Secretary
Julie Dennett	Principal Research Officer
Tim Watling	Principal Research Officer
Trish Carling	Senior Research Officer
Michael Masters	Executive Assistant

Committee address

PO Box 6100
Parliament House
CANBERRA ACT 2600
Email: fpa.sen@aph.gov.au
Tel: 02 6277 3530
Fax: 02 6277 5809
Internet: http://www.aph.gov.au/senate_fpa

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Abbreviations

AEC	Australian Electoral Commission
the bill	Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007
the committee	Senate Finance and Public Administration Standing Committee
Finance	Department of Finance and Administration
ICCPR	International Covenant on Civil and Political Rights
LGAQ	Local Government Association of Queensland
Reform Commission	Queensland Local Government Reform Commission
SSS	the Size, Shape and Sustainability

Recommendations

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.

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.

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.

Recommendation 4

3.102 The committee recommends that the bill be passed.

Chapter 1

Introduction

Background

1.1 On 16 August 2007, the Senate referred the provisions of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the bill) to the Senate Standing Committee on Finance and Public Administration (the committee) for inquiry and report by 4 September 2007.[1]

1.2 On 4 September 2007 the Chair of the committee, Senator Mitch Fifield, presented an interim report to the President of the Senate, indicating the committee's intention to table on 7 September 2007. The committee's final report was presented to the President on 7 September 2007.

Purpose of the bill

1.3 The main amendments contained in the bill relate to issues of the:

- Australian Electoral Commission's (AEC) authorisation and use of information contained in an electoral roll for the purpose of conducting activities (such as a plebiscite); and
- overriding of State or Territory law that does not allow for a person or body to enter into an agreement with, or assist, the AEC in conducting an activity (such as a plebiscite).[2]

Conduct of the inquiry

1.4 The committee advertised the inquiry nationally in the *The Australian* on 22 August and 5 September 2007. To help promote awareness of the inquiry, the committee also advertised in Queensland regional newspapers: the *Gold Coast Bulletin*, *Townsville Bulletin*, *Cairns Post*, on 20 August 2007; and the *Brisbane Courier Mail*, *Rockhampton Morning Bulletin*, *Sunshine Daily Coast*, *Mackay Mercury*, on 21 August 2007.

1.5 The committee received 95 submissions, which are listed in Appendix 1. Submissions were also posted on the Committee's website to facilitate public access.[3]

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1 *Senate Journals*, No. 159, 16 August 2007, p. 4243.

2 Explanatory Memorandum, p. 2.

3 To view the submissions online see: http://www.aph.gov.au/Senate/committee/fapa_ctte/democratic_plebiscites_07/submissions/sublist.htm (accessed 3 September 2007).

The committee also received several items of additional information and correspondence which are listed in Appendix 2.

1.6 The Committee held hearings in three Queensland locations: Noosa on 30 August 2007; Emerald on 31 August 2007 and Cairns on 3 September 2007. A list of the witnesses who appeared at the hearings is in Appendix 3, and copies of the Hansard transcript are available on the committee's Internet page at: http://www.aph.gov.au/Senate/committee/fapa_ctte/index.htm.

Acknowledgement

1.7 The committee appreciates the time and work of all those who provided written and oral submissions to the inquiry, particularly in light of the tight time frame. Their work has assisted the committee considerably in its inquiry.

Note on references

1.8 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

Chapter 2

Background[1]

2.1 In his second reading speech, the Special Minster of State, the Hon. Gary Nairn MP, stated that the imperative for the introduction of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the bill) was the 'law passed by the Queensland parliament on 10 August 2007 that, unless overridden by this Commonwealth law, would prevent councillors in that state having any involvement with these plebiscites.'[2] Therefore, to properly understand the provisions of the bill, it is first necessary to consider the two Queensland local government reform processes that have occurred recently, as well as the related Queensland legislation.

Size Shape and Sustainability process

2.2 In late 2004, the Local Government Association of Queensland (LGAQ) Executive resolved to actively promote discussion amongst it members on the need to consider reform options to ensure the long term sustainability of Queensland local government.

2.3 This position was adopted on the basis that local government itself should be capable of initiating reform rather than have reform imposed upon it by other levels of government.

2.4 The Size, Shape and Sustainability (SSS) initiative was an opportunity for Queensland local government to voluntarily self-determine what structural reform options best provide for its long term sustainability. The SSS process had bi-partisan support in the Queensland parliament and The Local Government and other Legislation Amendment Bill 2006 was introduced to implement the legislative requirements of the SSS process.

2.5 The LGAQ described the SSS initiative in the following terms:

> In essence, SSS was a process of voluntary reform which encouraged councils to review their size and geographic dimensions; their management, organisation and operational arrangements; their financial and accountability practices; and their service delivery mechanisms.
>
> Overseeing this process were Independent Review Facilitators charged with the responsibility of recommending the necessary reforms. These would have included, amalgamations, major boundary changes, resource sharing

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1 Much of the content of this chapter was drawn from *Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007*, Bills Digest, Department of Parliamentary Services, August 2007.

2 The Hon. Gary Nairn MP, Special Minster of State, *House of Representatives Hansard*, 16 August 2007, p. 28.

> arrangements such as multi purpose joint local governments, strategic alliances, shared service centres or a combination of each.
>
> In addition, the Queensland Treasury Corporation (QTC) volunteered to assist councils with their reviews by examining each council's financial position. This was done through their Financial Sustainability Review process.
>
> The state government was a formal partner to the SSS initiative and provided funding ($25 million over five years) to all councils who participated in SSS reviews through the Regional Collaboration and Capacity Building Program.
>
> The SSS framework comprised three different phases, each requiring research and analysis and an overall evaluation of the strengths and weakness of alternative models of change. Each phase of SSS also involved extensive community engagement...
>
> At the end of March 2007 [just prior to the abandonment of the SSS process], 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...[3]

Local Government Reform Commission process

2.6 Despite the progress made under the SSS process, after only '18 months into a 5 year program' the Queensland State Government decided to scrap the SSS process and implement its own reform agenda.

2.7 Following the Queensland government's decision to abandon the SSS process, on 17 April 2007 the Premier of Queensland, the Honourable Peter Beattie, and the Queensland Minister for Local Government, the Honourable Andrew Fraser, announced the establishment of a seven-member Queensland Local Government Reform Commission (Reform Commission). The brief of the Reform Commission was to consider new boundaries for the long-term sustainability of local government across the state.

2.8 The Queensland Government cited as its rationale for the changes that 40 per cent of Queensland councils were struggling financially and that, as Australia's fastest growing state, Queensland's system of local government was outdated and needed 'to be modernised to reflect the way Queenslanders live, work and interact in today's Queensland.'[4]

2.9 Submissions were invited from stakeholders with a closing date of 24 May 2007. A total of 47 267 suggestions were received including:

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3 Local Government Association of Queensland, *Submission 67*, p. 7.

4 www.strongercouncils.qld.gov.au/Whyreform.aspx (accessed 6 September 2007).

- 3976 suggestions;
- 36 570 form letters, proformas, surveys and postcards;
- 3624 petition signatures; and
- 3277 referrals from externals sources.

2.10 The Reform Commission handed down its report on 27 July 2007. It included 25 recommendations, 22 of which were adopted by the State Government. In particular, the Reform Commission recommended reducing the number of councils from 156 to 72. This recommendation was accepted in its entirety by the Beattie government.

2.11 Many concerns were raised regarding the way in which the Reform Commission process was conducted, the basis for its amalgamation recommendations and the impact of those recommendations. These issues are discussed in chapter 3.

2.12 Subsection 92(1) of the *Local Government Act 1993 (Qld)* requires a referendum to be held when the Local Government Electoral and Boundaries Review Commission makes certain proposed determinations regarding 'reviewable local government matters', which includes the creation of a new local government area from two or more existing areas.[5] Where the reviewable matter is in relation to changing the external boundaries of an area, subsection 92(2) empowers the Commission to instead hold a non-compulsory (or non-binding) referendum, or a plebiscite. The reforms put in place by the Queensland government expressly remove any right to appeal any decisions by the government or the Commission in relation to a reform matter.

2.13 In going ahead with its reforms, the Beattie Government decided not to allow a referendum or plebiscite on the amalgamation issue, and made amendments to this effect via the Local Government and Other Legislation Amendment Bill 2007.

2.14 The Australian Government subsequently expressed concern at allegations of a lack of consultation and the possibility that the amalgamations were taking place against the will of constituents. The Prime Minister has explained that this led him to offer funding to allow the Australian Electoral Commission (AEC) to undertake any plebiscite on the amalgamation of any local government body in any part of Australia[6], and observed that:

> I think it is a total travesty of democracy to not only refuse to consult people about what you are going to do that is going to affect them[, but] having refused to consult them, threaten to punish them if they dare to express their opinion in a vote…[7]

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5 *Local Government Act 1993 (Qld)*, s. 64.

6 Reflected in new subsections 7A(1C) to (1G) of the current bill.

7 The Hon. John Howard, MP, Prime Minister, Joint Press Conference with the Treasurer, the Hon Peter Costello, MP, Parliament House, Canberra, 8 August 2007.

2.15 On 10 August 2007, the Beattie Government passed an act implementing the amalgamations, adding a provision prohibiting an existing local government from conducting a poll on the amalgamations. The section provided that:

> An existing local government must not conduct a poll in its area, or a part of its area, if the question the subject of the poll relates to is anything that is, or is in the nature of, a reform matter, or the implementation of a reform matter.[8]

2.16 An example is then given in the legislation which makes clear that the prohibition would relate to a poll about local government area abolition. The Act provides for a maximum penalty of 15 penalty units, plus the cost of holding the poll, to be paid by the councillors in the event a contravention occurs. The Act also amends the *Local Government Act 1993 (Qld)* to provide for the dissolution of the relevant council in the event it undertakes any action for the purpose of holding a poll.[9]

2.17 On 16 August 2007, the Australian Government announced amendments to electoral laws to override the Queensland government's attempt to block local councils from holding referendums on mergers.[10] This led to the current bill containing a provision to the effect that any law prohibiting the holding of a plebiscite would be invalid.[11]

2.18 The Queensland Government has since introduced amendments to repeal the provision banning the holding of plebiscites.

The objectives of the bill

2.19 As the Minister made clear in his second reading speech, this bill is not designed to provide an avenue for citizen-initiated referenda, but rather focuses on preserving the right of local people to participate and be consulted on issues facing their communities.[12]

2.20 To the same end, the Prime Minister stated that:

> It should be remembered that the Government is not expressing a view as to whether or not an individual merger should occur. Rather, the Commonwealth believes that people should have the right to express a view on the actions of a government without threat of penalty.

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8 *Local Government Reform Implementation Act 2007 (Qld)*, s. 159ZY.

9 *Local Government Act 1993 (Qld)*, para. 164(1)(a).

10 'Howard to override Beattie on merger votes', *ABC News*, 16 August 2007.

11 New subsection 7A(1E).

12 The Hon. Gary Nairn, MP, *House of Representatives Hansard*, 16 August 2007, p. 28.

> However, if there is a strong expression of opinion in local government areas that choose to go ahead with the ballots, the Queensland Government may be forced to reconsider those amalgamations.[13]

Provisions of the bill

2.21 Although the bill was prompted by the recent concerns surround the forced amalgamations of Queensland councils, the scope of the bill is not limited to the enabling plebiscites on council amalgamations. Other topics that may be the subject of a plebiscite are discussed further in chapter 3.

2.22 While the Electoral Act already provides for the AEC to make arrangements for the supply of goods or services to any person or body, new subsections 7A(1C) and (1D) authorise the use by the AEC of any information it holds, including information contained in an electoral roll, for the purpose of conducting an activity, such as a plebiscite. These provisions also authorise any disclosure by the AEC of information for the purpose of conducting an activity, such as a plebiscite, and clarify that this particular use and disclosure does not contravene any provision of the Electoral Act.

2.23 New subsection 7A(1E) negatives a State or Territory law which attempts to prohibit a person or body (in this case, a local council) from entering into arrangements for the provision of goods or services from the AEC (in this case, a plebiscite).

2.24 New subsection 7A(1F) reinforces new subsection 7A(1E) by rendering such State or Territory laws inoperative to the extent of any inconsistency with Articles 19 and 25(a) of the International Covenant on Civil and Political Rights, should new subsection 7A(1E) exceed the Commonwealth's legislative powers. Article 19 provides that people should have the right to hold opinions without interference and the right to freedom of expression. Paragraph (a) of Article 25 provides that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.

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13 The Hon. John Howard, MP, *Queensland local government amalgamations*, media release, 19 August 2007.

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:
>
> '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
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> …
>
> 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

Minority Report by the Australian Labor Party

Introduction

1.1 Labor Senators support the passage of the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the bill).

Conduct of the inquiry

1.2 Labor supported the reference of the bill to the committee for inquiry and report.

1.3 However, Labor Senators who participated in the inquiry feel compelled to express our concern about its conduct.

1.4 Many witnesses appeared to be under the misapprehension that the committee could adjudicate on local government amalgamations legislated by the Queensland Parliament. This misapprehension was fostered by government Senators.

1.5 Additionally, much of the questioning by government Senators sought in vain to foster uncertainty in witnesses' minds about Labor's support for the bill.

1.6 Labor Senators commend witnesses who rejected repeated attempts by government Senators to elicit responses to contrived lines of questioning.

1.7 It is most regrettable that government Senators repeatedly invited witnesses to respond to partisan propositions unrelated to the bill.

1.8 Labor Senators also regret the belligerent questioning by government Senators of expert witnesses who questioned the constitutional validity of the bill and its impact on the independence of the AEC. Witnesses are entitled to give evidence free from hectoring by government Senators who dispute their own interpretation of the impact of legislation.

1.9 Labor Senators are disappointed that despite three full hearing days, witnesses from the Department of Finance and Public Administration and the AEC only appeared for a short period at the conclusion of the final hearing day.

1.10 This restricted appearance denied the committee the opportunity to seek detailed information about the development of the bill and the conduct of proposed plebiscites.

1.11 The timing of the appearance also denied the committee the opportunity to seek additional information from answers to questions on notice.

1.12 Labor Senators regret the failure of the Department of Finance and Administration, the Department of Prime Minister and Cabinet and the Queensland Government to lodge written submissions.

Local government amalgamations in Queensland

Amalgamations

1.13 For many months Federal Labor has expressed opposition to forced local government amalgamations in Queensland.

1.14 In Townsville on 17 May this year the Leader of the Opposition, Mr Kevin Rudd, confirmed he had spoken to Premier Beattie about means other than amalgamation to achieve local government efficiencies.

1.15 At that time Mr Rudd also advocated local ballots ahead of any amalgamations:

> I said to Mr Beattie it would be good if he reviewed his approach to this amalgamations process and put forward other ways in which economic and financial efficiencies can be achieved.
>
> My view, broadly, is that local voice and local choice is critical when it comes to the future of local government across Australia, as well as here in Queensland.
>
> My other view is this. If we're going to come up with any amalgamation proposals, the important way forward is then to test them through the democratic process of a local referendum. I think that's a further second test which should be applied.[1]

1.16 Labor Senators note that Mr Rudd's support for local ballots preceded by many months the Prime Minister, John Howard's support for plebiscites and the government's introduction of the bill.

1.17 Labor Senators acknowledge evidence of efforts to protect the position of local government employees following legislated amalgamations.

1.18 Government Senators displayed an inconsistent attitude to job security by adopting feigned concern for the future of local government employees while attacking union-led efforts to secure their members' future job security.

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1 Mr Kevin Rudd MP, Leader of the Opposition, *Doorstop Interview*, 17 May 2007, see: www.alp.org.au/media/0507/dsiloo170.php (accessed 7 September 2007).

Plebiscites

1.19 Labor Senators support the right of local communities to have their say on proposed local government amalgamations.

1.20 Accordingly, Labor Senators do not support measures that restrict the right of councils to conduct local ballots.

1.21 Labor Senators welcome legislation before the Queensland Parliament repealing provisions that imposed penalties related to participation in local ballots.

1.22 Additionally, Labor Senators note the gazettal of a Queensland regulation on 31 August 2007 expiring regulations that gave effect to these penalties.

1.23 Labor Senators note that arrangements for the conduct of plebiscites on local government amalgamations in Queensland have not been determined by the Australian Electoral Commission (AEC). In relation to the timing of the plebiscites, we note evidence from the AEC that:

> …we would be very reluctant to tie up considerable AEC resources in the next few weeks given that it is quite possible that the Prime Minister may call the election after APEC; and
>
> …we are not even considering the possibility of having an attendance ballot in conjunction with the federal poll.[2]

1.24 We trust that Professor Brian Costar's concerns about the impact of the bill on the independence of the AEC will not be realised.

1.25 Labor Senators regret the failure of the government to detail funding implications associated with the conduct of these plebiscites.

1.26 While the AEC indicated that funding for these plebiscites is likely to be provided by the Department of Transport and Regional Services, the government provided the committee with no conclusive advice.

Constitutionality of the bill

1.27 Labor Senators note concerns expressed by Professor Gerard Carney and Associate Professor Graeme Orr about the constitutionality of the bill.

1.28 It is regrettable the government failed to respond to our request for the provision of legal advice supporting the constitutional validity of the measures contained in the bill.

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2 Mr Paul Dacey, Deputy Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 3 September 2007, pp. 60–61.

Constitutional recognition of local government

1.29 Labor Senators welcome widespread support from witnesses for Labor's plan to deliver constitutional recognition for local government.

1.30 Constitutional recognition of local government is a long standing Labor commitment.

1.31 Labor Senators note that two previous attempts by Labor governments to recognise local government in the Australian Constitution have been stymied by opposition from the Coalition parties.

1.32 The Coalition's 1988 campaign against constitutional recognition of local government was led by the then Leader of the Opposition, Mr John Howard.

1.33 Launching the 'no' case on 23 June 1988, Mr Howard said his opposition to constitutional recognition was based on 'a strongly held view that it will distort the natural order and Constitutional balance of our federal structure'.[3]

1.34 Mr Howard said 'Australians will not take a leap in the dark by giving Canberra a chance to interfere in local government and to by-pass state governments'.[4]

1.35 Last year, on 7 September 2006, government Senators, including Senators Fifield, Ian Macdonald and Joyce, opposed a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia.

1.36 On 17 October 2006, government Members in the House of Representatives, including the National Party's Mr Bruce Scott, opposed constitutional recognition.

1.37 The relevant Hansard voting records can be found in Appendices A and B.

1.38 An incoming Rudd Labor Government will establish a Council of Australian Local Governments. One of the new council's first tasks will be the development of a plan to realise the goal of constitutional recognition.

1.39 The Coalition's interest in local government in Queensland on the eve of a federal election year can be contrasted with its mute acceptance of the Kennett Government's forced local government amalgamations in Victoria. During the course of the hearings on this bill Senator Joyce reminded witnesses that this decision of a state Coalition government cost 11,000 jobs, many in rural and regional areas.

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3 Mr John Howard MP, then Leader of the Opposition, Address to the National Press Club, Canberra, 23 June 1988.

4 Mr John Howard MP, then Leader of the Opposition, Address to the National Press Club, Canberra, 23 June 1988.

1.40 Equally, the reliance on the external affairs power to give effect to key provisions of the bill can be contrasted with the Coalition's longstanding lack of enthusiasm for the use of this power.

Plebiscites

1.41 Labor Senators note that the bill makes no reference to plebiscites on local government amalgamations.

1.42 While welcoming the bill, Labor Senators note the government's double-standards on support for the right of citizens to express a view on matters of public controversy.

1.43 Indigenous citizens in the Northern Territory were not invited by the Howard Government to participate in a plebiscite ahead of the recent direct Commonwealth intervention in their affairs.

1.44 Nor were millions of Australian workers invited to express a view before their employment conditions were made subject to the Howard Government's extreme WorkChoices legislation.

1.45 Consistent with our support for the right of communities to express a view on matters of significant public controversy, Labor Senators support the right of communities to express a view on the imposition of nuclear power plants and waste dumps.

1.46 Regrettably, the Howard Government has not revealed to the Australian people the likely location of the 25 nuclear power plants forecast by Mr Howard's nuclear advisory group. Nor has the government supported the right of citizens to express a view on the location of nuclear waste dumps in their communities.

1.47 Labor Senators note that earlier this year the Liberal Party and the Greens joined together in the Victorian Parliament to reject a Labor bill that would have provided for a plebiscite to obtain the views of Victorians on the construction of nuclear power plants in that state.

Scrutiny of other legislation

1.48 The three days of public hearings into this bill stand in contrast to the rushed treatment of other more extensive and complex legislation, including the following bills which were subject to only a one day public hearing in Canberra:

Northern Territory National Emergency Response Bill 2007 and related bills

- a package of five bills that provided the framework and funding for the Commonwealth's emergency intervention in the Northern Territory

Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006

- related to the siting of a radioactive waste dump in the Northern Territory, the bill repealed provisions which made it mandatory for land councils to consult and receive consent from traditional owners about the intended uses of their land

Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005

- provided for the earlier closure of the electoral roll;
- reduced the amount of time a voter has to change their existing details on the electoral roll;
- introduced a new proof of identity requirement for people enrolling or updating their enrolment;
- established a proof of identity requirement for provisional voting;
- increased a number of the disclosure thresholds to above $10,000;
- increased the size and scope of the tax-deductibility of political donations; and
- further restricted the electoral rights of prisoners.

[Labor Senators note that on 30 August 2007 the High Court upheld a challenge to these additional restrictions on the electoral rights of prisoners]

Telstra (Transition to Full Private Ownership) Bill 2005 and related bills

- repealed provisions that required the Commonwealth to retain 50.1% of equity in Telstra, thus enabling the corporation to become fully privately owned

Commonwealth Radioactive Waste Management Bill 2005

- provided the Commonwealth with the power to site a radioactive waste dump in the Northern Territory

Acknowledgements

1.49 Labor Senators thank all those who contributed to the committee's inquiry, including those who lodged written submissions and gave evidence at public hearings in Noosa, Emerald and Cairns.

1.50 Labor Senators acknowledge the outstanding service provided by the committee secretariat and Hansard staff during the course of this inquiry.

Recommendation

1.51 Labor Senators recommend the bill be passed.

Senator Michael Forshaw
Deputy Chair

Senator Claire Moore

Senator Jan McLucas

Senator Joseph Ludwig

APPENDIX A: COALITION OPPOSITION TO CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT – SENATE

7 September 2006

ADMINISTRATION—ROLE OF LOCAL GOVERNMENT

The Minister for Justice and Customs (Senator Ellison), at the request of the Minister for the Environment and Heritage (Senator Ian Campbell) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That the Senate—

(a) recognises that local government is part of the governance of Australia, serving communities through locally-elected councils;

(b) values the rich diversity of councils around Australia, reflecting the varied communities they serve;

(c) acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;

(d) acknowledges the importance of cooperating and consulting with local government on the priorities of their local communities;

(e) acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and

(f) commends local government elected officials who give their time to serve their communities.

Senator Carr, by leave, moved the following amendment:
Omit paragraph (a), substitute:
supports a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia;

Statements by leave: Senators Carr, Bartlett and Ian Macdonald, the Leader of the Australian Democrats (Senator Allison) and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to the motion.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 34

Senators—

Allison	Faulkner	McEwen	Siewert
Bartlett	Forshaw	McLucas	Stephens
Bishop	Hogg	Milne	Sterle
Brown, Bob	Hurley	Moore	Stott Despoja
Campbell, G	Hutchins	Murray	Webber
Carr	Kirk	Nettle	Wong
Conroy	Ludwig	O'Brien	Wortley
Crossin	Lundy	Polley	
Evans	Marshall	Ray	

NOES, 38

Senators—

Abetz	Eggleston	**Joyce**	Payne
Adams	Ellison	Kemp	Ronaldson
Barnett	Ferguson	Lightfoot	Santoro
Bernardi	Ferris (Teller)	**Macdonald, Ian**	Scullion
Boswell	Fielding	Macdonald, Sandy	Troeth
Brandis	Fierravanti-Wells	Mason	Trood
Calvert	**Fifield**	McGauran	Vanstone
Campbell, I	Heffernan	Nash	Watson
Chapman	Humphries	Parry	
Coonan	Johnston	Patterson	

Question negatived.
Main question put and passed. [Emphasis added].

APPENDIX B: COALITION OPPOSITION TO CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT – HOUSE OF REPRESENTATIVES

17 October 2006

LOCAL GOVERNMENT—MOTION BY MR LLOYD (MINISTER FOR LOCAL GOVERNMENT, TERRITORIES AND ROADS)—RESUMPTION OF DEBATE

The order of the day having been read for the resumption of the debate on the motion of Mr Lloyd (Minister for Local Government, Territories and Roads)—That this House:

(1) recognises that local government is part of the governance of Australia, serving communities through locally elected councils;

(2) values the rich diversity of councils around Australia, reflecting the varied communities they serve;

(3) acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;

(4) acknowledges the importance of cooperating with and consulting with local government on the priorities of their local communities;

(5) acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and

(6) commends local government elected officials who give their time to serve their communities—

And on the amendment moved thereto by Mr Albanese, viz.—That paragraph (1) be omitted and the following paragraph substituted:

"(1) supports a referendum to extend constitutional recognition to local government in recognition of the essential role it plays in the governance of Australia"—

Debate resumed.

Mr Albanese, by leave, again addressed the House.

Question—That the words proposed to be omitted stand part of the question—put.

The House divided (the Deputy Speaker, Mr Causley, in the Chair)—

AYES

Mr Anderson	Mr Farmer	Ms Ley	Mr Secker	
Mr Andrews	Mr Fawcett	Mr Lindsay	Mr Slipper	
Fran Bailey	Mr M. D. Ferguson		Mr Lloyd	Mr A. D. H. Smith
Mr Baker	Mr Forrest	Mr McArthur*	Mr Somlyay	
Mr Baldwin	Ms Gambaro	Mr Macfarlane	Dr Southcott	
Mr Barresi	Mrs Gash	Mr McGauran	Dr Stone	
Mr Bartlett	Mr Georgiou	Mrs Markus	Mr C. P. Thompson	
Mr Billson	Mr Haase	Mrs May	Mr Ticehurst	
Mrs B. K. Bishop		Mr Hardgrave	Mr Nairn	Mr Tollner
Ms J. Bishop		Mr Hartsuyker	Dr Nelson	Mr Truss
Mr Broadbent		Mr Henry	Mr Neville*	Mr Tuckey
Mr Brough	Mr Hunt	Mr Pearce	Mr Turnbull	
Mr Cadman	Dr Jensen	Mr Prosser	Mr M. A. J. Vaile	
Mr Ciobo	Mr Johnson	Mr Pyne	Mrs D. S. Vale	
Mr Cobb	Mr Jull	Mr Randall	Mr Vasta	
Mr Downer	Mr Katter	Mr Richardson	Mr Wakelin	
Mrs Draper	Mr Keenan	Mr Robb	Dr Washer	
Mr Dutton	Mrs D. M. Kelly		Mr Ruddock	Mr Windsor
Mrs Elson	Jackie Kelly	Mr Schultz	Mr Wood	
Mr Entsch	Mr Laming	**Mr Scott**	[Emphasis added].	

NOES

Mr Adams	Ms K. M. Ellis	Ms Hoare	Mr Price	
Mr Albanese	Mr Emerson	Mrs Irwin	Mr Quick	
Mr Beazley	Mr L. D. T. Ferguson	Mr Jenkins	Mr Ripoll	
Mr Bevis	Mr M. J. Ferguson	Ms King	Ms Roxon	
Ms Bird	Mr Fitzgibbon	Dr Lawrence	Mr Rudd	
Mr Bowen	Mr Garrett	Ms Livermore	Mr Sawford	
Ms A. E. Burke		Mr Georganas	Mr McClelland	Mr Sercombe
Mr A. S. Burke		Ms George	Mr McMullan	Mr S. F. Smith
Mr Byrne	Mr Gibbons	Mr Melham	Mr Snowdon	
Ms Corcoran	Ms Gillard	Mr Murphy	Mr Swan	
Mr Crean	Mr Griffin	Mr B. P. O'Connor		Mr Tanner
Mr Danby*	Ms Hall*	Mr G. M. O'Connor		Mr K. J. Thomson
Mrs Elliot	Mr Hatton	Ms Owens	Ms Vamvakinou	
Ms A. L. Ellis		Mr Hayes	Ms Plibersek	Mr Wilkie

*Tellers

And so it was resolved in the affirmative.

Debate continued.

Question—That the motion be agreed to—put and passed.

Supplementary Remarks by Senator Andrew Murray

September 2007

Senate Standing Committee on Finance and Public Administration: Inquiry into Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007

1.1 The Australian Democrats support the Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007 (the Bill).

1.2 While I support the Report as a whole, there are issues raised by the Inquiry that I wish to expand on.

A remarkable bill

1.3 The Bill is a remarkable bill in two respects – it promotes direct democracy, and it makes explicit inalienable civil and political rights in Australian law. The Bill will therefore represent a milestone for Australia.

1.4 The people of Australia regularly express their democratic will through elections, and on rarer occasions through constitutional referenda, but for the first time in its 106 year history the federal government is supporting direct democracy initiated by the people.

1.5 The Bill allows for plebiscites – the direct vote of qualified electors to some important public question[1] - to occur under the aegis of the Australian Electoral Commission (AEC), and no state or territory law can gainsay it.

1.6 While the purpose of the Bill is to allow the AEC "to undertake any plebiscite on the amalgamation of any local government in any part of Australia"[2], the Bill appears to be open-ended in that it is for "the purposes of conducting an activity (such as a plebiscite) under an arrangement".[3]

1.7 Who knows what that could imply for future questions considered important by groups of citizens. After all, direct democracy means 'initiated by the people', and their initiatives could surprise many.

1.8 That the conservative Howard government should be so democratically innovative is a surprise to most. Long term it matters not a jot that the Coalition's

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1 The Macquarie Concise Dictionary 2nd Edition.

2 Explanatory Memorandum, Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007.

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

motive is immediate and self-interested. They seek to make mischief between Labor leaders Beattie and Rudd over the Queensland Premier's poorly-timed desire to force through large-scale local council amalgamations. The resistance to this state Labor move is believed to threaten federal Labor's campaign to win Coalition seats in that State.

1.9 No, what matters long term is that the precedent and process for the formal direct expression of popular will has arrived in Australia.

1.10 The second area of welcome democratic innovation is with respect to the International Covenant on Civil and Political Rights (ICCPR) – see Appendix A.[4] The ICCPR was ratified by Australia and came into force for Australia in 1980.[5]

1.11 It is gratifying that the Bill itself refers to the inalienable rights enshrined in the ICCPR in respect of Article 19[6] and Article 25(a).[7] Article 19 provides "that people should have the right to hold opinions without interference and the right to freedom of expression"; and paragraph (a) of Article 25 states "that every citizen shall have the right and opportunity, without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives."

1.12 This explicit reliance on rights comes from a Coalition Government whose resistance to a bill or charter of rights is legendary.

1.13 Although there has been many a campaign for a Bill of Rights in Australia, there is stronger support for a legislated Charter of Political Rights and Freedoms. The Australian Capital Territory is the only Australian legislature to act on this front so far. It would be better if there were one Australian standard in this vital area.

1.14 Unlike a number of other countries, Australians do not have their rights and responsibilities reflected in the Constitution, nor (mostly) in legislation, which is why

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4 International Covenant on Civil and Political Rights (New York, 16 December 1966): Entry into force generally (except Article 41): 23 March 1976. Article 41 came into force generally on 28 March 1979.

5 Entry into force for Australia (except Article 41): 13 November 1980. Article 41 came into force for Australia on 28 January 1993.

6 Article 19 – 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

7 Article 25 – Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.

we have seen indigenous Australians, women and homosexual Australians compelled to seek international help in addressing unjust treatment and discrimination.

1.15 Anti-terrorism security concerns in the USA resulted in the Patriot Act, which restricts a number of rights and liberties. However that legislation sits amongst United States Constitutional guarantees of the Bill of Rights. These guarantees ensure that all citizens shall be secure in their persons and protects them against unreasonable search and seizure. The USA Constitution provides Americans with a right to due process and the right to a fair and speedy public trial, among other things.

1.16 These Constitutional guarantees known as the US Bill of Rights provide the background against which legislation like the Patriot Act is interpreted.

1.17 In the United Kingdom the Human Rights Act 1998 acts as a control measure against which the Courts can interpret legislation. Australia has no Human Rights Act to provide an equivalent safeguard.

1.18 If Australia is going to enact legislation which impacts stringently on its citizens' human rights, as it presently does, it is essential that it either makes it constitutionally clear, or legislatively clear, that there is an overriding safeguard and respect for those human rights.

1.19 The Australian Democrats have attempted to establish a comprehensive human rights standard for Australia and introduced the Parliamentary Charter of Rights and Freedoms Bill 2001. The Democrats' proposed Charter of Rights was an implementation of the ICCPR. It sets out certain fundamental rights and freedoms including the right to equal protection under the law, the right to a fair trial, freedom of expression and freedom of religion.

Five issues

1.20 From my perspective five issues arise from the Bill that deserve further discussion

- Whether the ICCPR articles in the Bill suffice for the purpose
- Whether the Bill needs supplementing by appeal measures
- The timing of plebiscites
- A matter arising from the ICCPR
- How to further advance direct democracy

Whether the ICCPR articles in the Bill suffice for the purpose

1.21 The Committee hearings in Queensland made something very clear to me. Although Australia prides itself on a larrikin culture, where there is a tendency to thumb your nose at authority and not to take things lying down, most Australians are very trusting. Most truly believe that their Government would not do anything to impinge on what they regard as their basic rights.

1.22 There was genuine astonishment from people of all political persuasions that the Queensland Labor Government would have the audacity to attempt to remove their basic right to have their say on whether their local council should be amalgamated, and to forbid them to conduct a local plebiscite on the issue.

1.23 Trish and Nick Radge captured that feeling well:

> 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.[8]

1.24 It came as a surprise to me that Australians have such a trusting approach to their Governments, State and Federal. The Executives of all governments have been steadily increasing the powers of the state over the people for decades. Those who were surprised by the actions of the present Queensland Labor Government have obviously not been following the trend of the Coalition Federal government as it rides roughshod over civil liberties. Its anti-terrorism and immigration laws enable the authorities to search premises on suspicion, to hold some people indefinitely without charge, and to generally discard other basic rights which Australians have always believed were part of being Australian.

1.25 It is clear that until a law impacts directly on a significant portion of middle Australia (obviously this part of the constituency do not believe that they will ever be caught by the provisions of the anti-terrorism or immigration laws, or by the extensive federal police and customs powers now enshrined in federal legislation), their belief that their rights will be protected and promoted remains.

1.26 It was clear from the evidence at the hearings that the Queensland legislation had shaken this belief, but not unhinged it completely, because the Federal Government was riding to the rescue of their rights. In this instance, they were correct; in so many other laws passed in the last couple of years, that couldn't be further from the truth.

1.27 The Bill does make provision for local and other plebiscites to be conducted by the AEC, but is that right sufficiently buttressed by articles 19 and 25(a) of ICCPR?

1.28 Proposed new subsection 7A(1E) intended to be inserted into the Commonwealth Electoral Act by item 1 of the schedule of the bill provides, in effect, that a state or territory law is nullified if it interferes with the conduct of a plebiscite by the AEC under an agreement with the Commission.

1.29 Proposed new subsection 7A(1F) provides that, if subsection 7A(1E) is beyond the legislative powers of the Commonwealth, articles 19 and 25 of the ICCPR are to be called on to support the validity of the subsection.

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

1.30 There is doubt about whether the Commonwealth can validly legislate by adopting a particular interpretation of a particular provision of the Covenant and then selectively apply that interpretation to override particular state laws.

1.31 These doubts rest on passages in the leading High Court judgement in the *Tasmanian Dams* case, particularly the warning by Justice Deane in that judgement that a law cannot be regarded as a law under the external affairs power if it fails to carry into effect the provisions of a treaty or the treaty itself is simply a device to attract domestic legislative power.[9]

1.32 These doubts about the validity of such legislation were raised by eminent authorities on the other occasion on which the Commonwealth selectively invoked a provision of the Covenant to override a particular state law.

1.33 The Commonwealth law in question was the Human Rights (Sexual Conduct) Act 1994, which employed article 17 of the Covenant, relating to the right of privacy, to override Tasmanian laws about homosexual conduct. It was then pointed out that the then Commonwealth government was adopting a particular interpretation of the article, which might not prove to be the correct interpretation, and applying it to override particular state laws which might not be caught by the article on its proper construction. Partly on that basis, as expressed in a dissent by Coalition senators to the report of the Legal and Constitutional Affairs Committee, several members of the Coalition parties voted against the bill. The doubts about the validity of the legislation were not resolved, because it was not litigated.

1.34 As with all questions of constitutional law, there is a corresponding question of constitutional propriety, and, regardless of how the High Court would ultimately resolve the question of law, the question of constitutional propriety remains.

1.35 If the power to enter into treaties is a source of Commonwealth legislative power, and the Commonwealth is to rely on a treaty to override state laws, the constitutionally appropriate course, consistent with the principles of federalism, is for the Commonwealth to put into legislative force the whole of the treaty, and let it fall on state laws where it will according to its tenor.

1.36 It appears contrary to constitutional principle for the Commonwealth to selectively apply particular interpretations of selected provisions of a treaty to nullify state laws which the Commonwealth government of the day happens to dislike, while ignoring other laws which may well be contrary to the treaty.

1.37 This principle gains added force when the treaty in question, in this case the ICCPR, is intended to safeguard what I and many others regard as inalienable individual rights, against the power of government, whether state or federal.

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9 *Commonwealth v. Tasmania (The Tasmanian Dam Case)*, (1983) 158 CLR 1.

1.38 If the treaty is to have force in Australia, surely all of the human rights it encapsulates should have force against all of the laws of all governments, and selected bits of rights, as interpreted by one of those governments, should not be selectively applied only to state governments.

Recommendation 1

1.39 That the International Covenant on Civil and Political Rights be introduced in full into Commonwealth law.

Whether the Bill needs supplementing by appeal measures

1.40 During the hearings I had the following interchange with the Hon. Bruce Scott MP, Member for Maranoa:

> Senator MURRAY—…It is the question of a lack of review where a decision has been made on a false premise or in error, which is essentially your submission... My question is this: have you explored with your own Commonwealth government the question of whether rights of review and rights of appeal could be introduced into federal law, as a consequence of either implied or actual constitutional provisions, which allow for Australians to have access to justice in areas where they have been denied it?
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> Mr Bruce Scott—No, I have not explored the avenue of the rights of review or appeal at a federal level for actions of others—in this case, the Labor government here in Queensland. Just in listening to the words that have come from this report of the Southern Downs about structural efficiency, as you suggested, there is no evidence in there that the amalgamations will deliver.
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> …
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> Senator MURRAY—Would you like the committee to consider the issue as to whether there is a mechanism by which the Commonwealth could institute a right of appeal to a judicial review body or something of that sort? The reason I ask you this question because, as you know, this is a non-binding mechanism. It is a plebiscite. It is the ability for an opinion to be expressed. It does not have the effect of providing a mechanism for setting aside a decision which has been wrongly made. I am not saying the state government is wrong in everything, by the way. I believe there is bound to be a good case for amalgamations, but individuals should be entitled to have a decision reviewed if it has been made in error. That is why I put that question to you.
>
> Mr Bruce Scott—I would be very happy for the Senate committee to review the right of appeal... Because of the parliamentary unicameral system in Queensland, I would think it would be beneficial in relation to the Queensland laws as are enacted by the state government. That does not mean everything they do is wrong.
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> …

> Senator IAN MACDONALD—So that I can follow the line of questioning, do you mean in addition to the Administrative Appeals Tribunal and to the judicial reviews act, which are already there?
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> Mr Bruce Scott—That is what I was going to mention.
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> Senator MURRAY—That is, as you know, for federal law. What we are dealing with here is state law. But the state law precludes appeal on these matters. There may be many instances where it might go to appeal and the appeal would be denied because the government has made the right decision. That is not my point. I do not want to prejudge an appeal. All I say is that the appeal process should exist—because when I read this it should be evidence based; it should say these are the very precise local reasons which you can quantify as to why this amalgamation should occur. It doesn't. Therefore to me there is a case for appeal but there is no process for appeal. If a state government will not provide it, can the federal government provide it? My view is it can…[10]

1.41 Subsection 92(1) of the *Local Government Act 1993 (Qld)* used to provide for referenda/plebiscites to occur, but with respect to these council amalgamations the Queensland government expressly removed any right to appeal any decisions by the Government or the Local Government Reform Commission in relation to a reform matter.

1.42 This is a blatant denial of procedural and natural justice. The Commission makes a decision, which may be in error, on which the Queensland Government relies in good faith, and the people and entities affected by that decision have no right of appeal. If a Commission recommendation for amalgamation is not relevantly evidenced-based, it should surely be open to appeal.[11]

1.43 The question is whether there is any constitutional basis for the Commonwealth enacting a right of appeal or process of review to be available where an error of judgement has been made and no possibility of appeal exists in state law.

1.44 The advice I've had is that this is difficult but not impossible.

1.45 The question of the Commonwealth making such a catch-all provision involves various constitutional areas of law including the section 51 powers, the separation of powers, the complexity of federal and state court/tribunal cross vesting laws, intergovernmental immunities and Chapter 3 considerations (the judicature). There is also the jurisprudence on administrative law involving judicial review on the merits and on questions of law.

1.46 One point of note probably worth bearing in mind is that much of administrative review and appeal law goes to the review or appeal of a 'decision' of a

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10 *Committee Hansard*, 31 August 2007.

11 See for instance Mr Robert Hayward, *Committee Hansard*, 31 August 2007, p. 21.

decision-maker made under an Act. A recommendation to a decision-maker becomes relevant when review is being sought of a decision, as to whether relevant considerations were taken into account, irrelevant considerations, and error of questions of fact. This means that although the recommendation can be examined in the process, it itself is not 'reviewable'.

1.47 The incidental power, section 51(xxxix) of the Constitution permits laws incidental to Judicial matters, and is the power behind legislation such as the *Judiciary Act 1903*. Chapter 3 of the Constitution governs the High Court and other 'federal courts' that the Parliament creates.

1.48 The Commonwealth has created bodies such as the Administrative Appeals Tribunal and others which exercise federal jurisdiction and which must abide by the principles of *Brandy*, namely the difference between judicial and administrative functions.[12]

1.49 Matters of state and territory law are interpreted by state courts and tribunals. States and territories can refer matters to the Commonwealth under section 52(xxxvii) of the Constitution but usually if there is a high level of co-operation other forms of legislative schemes are preferred. Cross vesting laws were struck down by *Wakim*.[13]

1.50 There is no clear and easy way for the Commonwealth to have a role in or legislative power over matters that are the jurisdiction of state and territory courts and tribunals. The state and territories, and the Commonwealth for that matter, can legislate as to vesting of jurisdiction, appeal and review rights, and the curtailment and limitation of appeals and review rights as well. The 'privative clause' provisions are a good example of this.

Recommendation 2

1.51 That the federal government report to the Parliament prior to 31 December 2008 on ways in which review processes can be guaranteed throughout Australia where they are lacking in state or territory legislation in defined circumstances such as these.

The Timing of Plebiscites

1.52 I said earlier that it is widely believed that the Coalition's motive for this Bill is immediate and self-interested. They seek to make mischief between Labor leaders Beattie and Rudd over the Queensland Premier's poorly-timed desire to force through large-scale local council amalgamations. The resistance to this state Labor move is believed to threaten federal Labor's campaign to win Coalition seats in that state.

12 *Brandy v. Human Rights and Equal Opportunity Commission* (1995) 127 ALR 1.

13 *Re Wakim, Ex parte McNally* (1999) 198 CLR 511.

1.53 This political context for the legislation immediately raises the question of the timing of a local council plebiscite in Queensland. Should it be before a federal election, on the same day as the federal election, or after the federal election?

1.54 These are matters for the AEC, in my view. What there should not be is any prohibition on what day they can be held.

1.55 In any case, it should be noted that the AEC, with respect to this particular proposed plebiscite, not future plebiscites, is anticipating the poll would most likely occur by way of a postal vote, rather than an attendance vote.[14]

1.56 Let me put forward yet again the Democrats' position in relation to simultaneous federal, state (and if necessary) local government elections, referenda and plebiscites. Currently there is a virtual outright ban on elections, referenda or votes of the electors (which covers plebiscites) being held simultaneously.[15] Section 394 (1) reads:

> On the day appointed as polling day for an election of the Senate or a general election of the House of Representatives, no election or referendum or vote of the electors of a State or part of a State shall, without the authority of the Governor-General, be held or taken under a law of the State.

1.57 As I have said previously in my supplementary remarks to the 2004 report of the Joint Standing Committee on Electoral Matters (JSCEM)[16] the Democrats are of the opinion that simultaneous federal/state elections or referenda/plebiscites should not be banned outright – they should at least be at the discretion of the governments concerned. Why shouldn't a federal by-election be able to be held simultaneously - with state or local elections; or a state by-election during a federal election; or a federal referendum during local government or state elections - at the discretion of a government or as agreed between governments?

1.58 Australians are in frequent election mode, with nine governments holding federal, state and territory elections, and local government elections, as well as referenda and plebiscites at all three levels of government. The issue is simply one of cost and convenience. For instance, greater efficiency is achieved in the United States of America where simultaneous elections are a long-standing, regular and unexceptional feature of their election system.

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14 Mr Paul Dacey, *Committee Hansard*, 3 September 2007, p. 63.

15 The word 'virtual' is used as s394 uses the proviso 'without the authority of the Governor-General'.

16 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related thereto*, September 2005.

1.59 In 1922 the Commonwealth Electoral Act (CEA) was amended to prevent simultaneous federal and state elections. The 1988 Constitutional Commission recommended that this provision be repealed, and the Democrats urge Government to acknowledge this finding by amending the law.

Recommendation 3

1.60 That section 394 of the *Commonwealth Electoral Act 1918* be repealed.

A Matter arising from the ICCPR – the Right to Vote

1.61 In light of the recent High Court decision in Vickie Lee Roach v Electoral Commissioner and the Commonwealth of Australia seems appropriate to revisit my Supplementary Remarks in the JSCEM 2004 report regarding political rights and freedoms, in particular the voting rights of prisoners.

1.62 The High Court held in the Roach case that the sections of the CEA which disqualified all prisoners from voting were invalid as they were contrary to sections 7 and 24 of the Commonwealth Constitution.

1.63 Although this reverses the unacceptable amendments to the CEA made in 2006, it does not address the reservations I set out in my Supplementary Remarks to the JSCEM in 2004. I will repeat much of what I said there, below.

1.64 We recommended in our 1998 Minority Report that the CEA be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote. It is important to understand that, although prisoners are deprived of their liberty whilst in detention, they are not deprived of their citizenry of this nation. As part of their citizenship, convicted persons in detention should be entitled to vote. To deny them this is to impose an additional penalty on top of that judged appropriate by the court.[17]

1.65 Following the 2001 election, restrictions on the rights of prisoners were strengthened by increasing the disqualification criteria from individuals serving 5 years or more to individuals serving 3 years or more. I would note here, my disappointment at the High Court's decision to find that this provision remains valid.

1.66 The JSCEM Report urges the Government to disenfranchise any citizen serving a jail sentence. This is an extra-judicial penalty. If it is considered necessary to add the removal of citizenship rights to the deprivation of liberty, then that too should be a matter for judicial determination.

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17 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, September 2005, p. 404.

1.67 There is no logical connection between the commission of an offence and the right to vote. For example, why should a journalist, who is imprisoned for refusing on principle to provide a Court with the name of a source, be denied the vote?

1.68 To complicate this further, there is no uniformity amongst the states or between the states and the Commonwealth as to what constitutes an offence punishable by imprisonment. In Western Australia, for example, there is a scheme whereby fine defaulters lose their licence rather than go to prison, yet this has not been introduced uniformly in Australia. Why should an Australian citizen in Western Australia who defaults on a fine but is not jailed, retain the right to vote, whilst an Australian citizen in another jurisdiction who is jailed for the same offence loses the right to vote? This is inequitable and unacceptable.

1.69 Australia is a signatory to Article 25 of ICCPR. Article 25, in combination with Article 2, provides that every citizen shall have the right to vote at elections under universal suffrage without a distinction of any kind on the basis of race, sex or other status. The existing law discriminates against convicted persons in detention on the basis of their legal status. This clearly runs contrary to the letter and spirit of the Covenant.

1.70 It seems ironic that the Government is relying on exactly this International Covenant to support its Plebiscites Bill whereas it totally ignores the same Covenant when it comes to prisoners' right to vote – there is a ludicrous inconsistency in this.

1.71 A society should tread very carefully when it deals with the fundamental rights of its citizenry. All citizens of Australia should be entitled to vote except those convicted of treason or who are of unsound mind. It is a right that attaches to citizenship of this country, and should not be removed.

Recommendation 4

1.72 The *Commonwealth Electoral Act 1918* be amended to give all persons in detention, except those convicted of treason or who are of unsound mind, the right to vote.

How to further direct democracy

1.73 The Bill is important, not only for Queenslanders but for everyone in Australia, because it opens up discussions about direct democracy, the use of plebiscites to determine matters of local importance and, indirectly, the issue of Citizen Initiated Referenda (CIR).

1.74 As I remarked earlier, the Bill allows for plebiscites – the direct vote of qualified electors to some important public question - to occur under the aegis of the AEC, and no state or territory law can gainsay it. The Bill allows the AEC 'to undertake any plebiscite on the amalgamation of any local government in any part of Australia' and it appears to be open-ended in that it is for 'the purposes of conducting an activity (such as a plebiscite) under an arrangement'.

1.75 The purpose of the Bill is to restore a right that was taken away – to re-establish the right of councils to conduct a plebiscite on the proposed amalgamation of local government councils in Queensland.

1.76 Dr Graeme Orr, Associate Professor from the University of Queensland warned against holding plebiscites in an ad hoc manner:

> The second and deeper policy issue is that if we are to go down the path of holding plebiscites, we should do so in a less ad hoc way. Why are we having polls in Queensland shires but not, say, in Northern Territory Indigenous communities? Why are our political leaders talking about plebiscites on specific hot issues and not others? Does the electorate realise that such polls have no binding effect, and what cynicism will be generated when they realise that they are no more than expensive opinion polls, however good they are, for participatory democracy? We had a debate about citizens' referenda in the late 1990s. If we want direct democracy, let us consider trialling it in a considered, comprehensive, legally sensible and meaningful way but steer clear of the current obsession of ad hoc plebiscites, which are little more than politicking on single issues... [18]

1.77 Dr Orr elaborated on his comments:

> ...We have already had Premier Beattie threaten to hold plebiscites on issues that the Commonwealth might find uncomfortable. I really think that if we want to go down the path of direct democracy then we need to go back to the debates about binding citizens referenda rather than this kind of adhocery, which is driven in large part by warring political parties.
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> ...
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> I think we saw in the late nineties that there are some grounds where there is a lot of interest in and support for it, particularly from people who might consider themselves excluded from the mainstream political debate. It really is a difficult question because you are effectively reworking a representative democracy into a direct democracy. I think we would have to go and look at the American model to see some of the issues and problems with that, particularly if you have lobby groups or political parties trying to get initiatives on the ballot really to manipulate the political process. [19]

1.78 In common language, many Australians use 'plebiscite' and 'referendum' interchangeably, which may be true when they are not binding. Some referenda have been ignored because they are not binding. For example in Western Australia, there have been several referenda on introducing daylight saving to the state and all have been rejected by a majority of the population. However an independent member of the Parliament of Western Australia introduced legislation for a trial of daylight saving

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18 Dr Graeme Orr, Associate Professor from the University of Queensland, *Committee Hansard*, 3 September 2007, p. 2.

19 Dr Graeme Orr, Associate Professor from the University of Queensland, *Committee Hansard*, 3 September 2007, p. 8.

that passed, and it has been imposed on the state for the next two years, after which another referendum will be held.

1.79 Plebiscites can not be binding, and need not be initiated by governments, although they generally need governments to carry them out. A plebiscite is, for all intents and purposes, a vote by the electorate to determine public opinion on a question of importance, something like an opinion poll. Although its effect is not binding on the government concerned, it may inform their decision as to how to proceed.

1.80 Only constitution alteration referenda are binding, at federal and state levels. Referenda in Australia are initiated by governments. A referendum is a direct vote in which an entire electorate is asked to either accept or reject a particular proposal proposed or passed by a legislative body.[20] This may be the adoption of a new constitution, a constitutional amendment, a law or a specific government policy. The outcome of a constitutional referendum, under current Australian law, is binding on the Government and Parliament.

1.81 Australia has conducted 44 federal referenda to amend the constitution but only 8 have been successful. Probably the best known is the 1967 referendum which is colloquially viewed as recognising indigenous people as Australian citizens which in turn lead to giving them the right to vote.

1.82 I wholeheartedly agree with the way in which referenda for constitutional change in Australia is framed. Higher law should be difficult to change. It is appropriate that the only way to amend the Australian Constitution is to require a majority of people in the majority of the states to agree to a proposition before it can be changed.

1.83 However it has become clear in recent years that there is disenchantment among the electorate with politics and politicians. There is a sense of powerlessness, that people themselves cannot impact on or effect change or have a voice in relation to the matters which impact directly on them.

1.84 This is not a feeling unique to Australia. The new campaign in the United Kingdom, lead by the Conservative leader David Cameron, is championing direct democracy as a way forward, and a point of difference from the British Labour Government - "I passionately believe we need to localise power, as recommended by the Direct Democracy movement of Conservative activists and MPs" - David Cameron.[21]

1.85 The primary principle espoused by the UK direct democracy movement is that decisions should be taken as closely as possible to the people they affect. This seems a

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20 The Macquarie Concise Dictionary 2nd Edition

21 See http://www.direct-democracy.co.uk/.

common sense approach, but it is easy to find examples in Australia where that is not the case.

1.86 One that springs readily to mind is the proposed pulp mill in the Tamar Valley in Tasmania. There are three levels of government and the community at play in that matter and decision-making is proving very hard.

1.87 Some argue they want to maintain a pristine environment, others argue that the mill is in the wrong place or is of the wrong type, others argue for jobs and security and it is hard to establish what the broad community opinion is. Either way, it is an example where, after obtaining and making available to the community scientific studies of the impact of the mill, a plebiscite would usefully help gauge the local community's feelings on the matter.

1.88 If members of the Liberal and National parties' conservative coalition had ever had any real interest in direct democracy, as members of the Conservative Party in the UK do, then they would have supported the Australian Democrats' decades-long initiatives to introduce CIR in defined circumstances. Or at least they would have pursued versions of it.

1.89 Since inception the Democrats have, as part of their policy platform, championed the concept of direct democracy. In 1980 Democrat Senator Colin Mason introduced the Constitution Alteration (Electors' Initiative) Bill 1980, which was a bill for an act to alter the Constitution so as to vest in the electors the power to propose laws and to approve or disapprove such proposed laws. This bill lapsed with the dissolution of that Parliament, but was reintroduced several times over the years in an altered and improved form. These initiatives failed to gain the support of the major parties and did not proceed.

1.90 The relevant aspects of that and preceding bills are now included in my own omnibus Private Senator's Bill - the Constitution Alteration (Electors' Initiative, Fixed Term Parliaments and Qualifications of Members) Bill 2000.

1.91 Do not be surprised that this bill currently languishes on the Notice Paper. In the 106 years since Federation only 17 private bills have passed. These are 7 Private Member's Bills and 10 Private Senator's Bills including last year's two – the first time Parliament has passed two in the same year. That does not include the five parliament-related acts introduced by Speakers and Presidents, which might be considered a separate category of their own, non-government, but not exactly private.

1.92 The Democrats have always supported direct democracy because it is obvious many people feel disconnected from the democratic process. Not just here, but everywhere. As a result Canada, Italy, New Zealand, Switzerland, 27 states in the USA, Venezuela and Poland all have versions of direct democracy.

1.93 It is clear from the 95 submissions to the Committee on the current Bill that many people feel strongly that they should have the right to 'have their say'.

1.94 Although the Queensland Government conducted two inquiries into council amalgamations, many of the submissions indicated that communities felt they had not been consulted, that their wishes had not been taken into account by the state Government, that they had not been accorded due democratic respect. They particularly resented the Queensland Government foolishly trying to muzzle them by legally prohibiting local plebiscites. Although the Beattie government has scuttled back from that decision, it has had the unexpected bonus of producing the current Bill.

1.95 While recognising that Australia is a representative democracy and supporting what that entails, I support direct democracy in defined circumstances because it promotes popular engagement with the political process on questions of public importance, particularly in matters that affect people immediately and specifically.

1.96 Increasingly we need to recognise that local people are best served when they are able to determine what happens in their own backyard, whether it is the placement of a pulp mill, the location of a nuclear power plant, or the amalgamation of their local council with another.

1.97 This is particularly important when representative governments are at odds with each other. For example the proposed pulp mill in Tasmania has local, state and federal governments in difficulties, and some very agitated citizens groups. People directly affected should be entitled to say whether they want a pulp mill or not, and if they do, whether it should be in Bass' Tamar Valley or in nearby Braddon.

1.98 Non-binding plebiscites have their place. They are an expression of opinion that politicians must then take into account, but the elected politicians must make the decision. Representative democracy requires representatives to make decisions on behalf of voters. It is the bedrock of our system.

1.99 There are circumstances when voters make the final decision, and Australia's constitutional referenda fall into that category.

1.100 Plebiscites that are little more than an opinion poll are likely to have little effect unless they are done on a large scale. There is no doubt that if a plebiscite indicated a majority of people were against council amalgamation, it would give the Queensland Labor Government pause, even though it does not mean that the State government has to take popular opinion into account and change the law accordingly.

1.101 The question is – will the current Bill encourage a further look at CIR?

1.102 CIR has a different effect from a plebiscite as it seeks to require governments and parliaments to act on the opinion of a majority of the voters. It is not just any opinion. CIR is inevitably and rightly constrained to defined circumstances. Without constraint CIR could be an obstacle to effective government if the system permitted too many issues, particularly fringe issues, to be the subject of referenda.

1.103 The fears can be overstated. Even in countries similar to Australia, such as New Zealand, where CIR have been established since 1993, the results have not

necessarily brought about any legislative change, although they have, according to researchers, been the trigger for political parties to amend legislation, or introduce legislation on particular issues.

1.104 However, based on the experience of other countries, there is sufficient research and experience from their direct democracy structures to be able to construct an effective form of it for Australia.

1.105 In the past the Democrats have proposed a strict system that would only allow proposals with widespread community support (determined by either a percentage of voters, or by establishing a numerical base point of signatures on a petition) to get a proposal to the referendum stage. This approach mirrors most other jurisdictions where there is some kind of minimum percentage of voters or petitioners before a citizen initiated referendum can proceed.

1.106 In some jurisdictions CIRs are binding on the legislature. That type of direct democracy can be open to abuse under voluntary voting systems if there is a small voter turnout influenced by powerful sectional interest groups. Australia has the safeguard of a compulsory voting system and therefore a high voter turnout. A further safeguard would be if the vote was binding only when the voter turnout was (say) more than 60 percent and if a clear majority of votes cast were in favour. Below those percentages the result should not be binding and would have advisory status only.

1.107 Another safeguard could be that once the CIR has passed, the resolution would not automatically pass into law until it was approved by the Federal Parliament. This provides an important check on popular referenda backed by powerful sectional interests, ensures full legislative scrutiny and ensures that the final decision rests with the elected representatives.

1.108 Although it has been considered by many that any parliament would be reluctant to oppose any resolution backed by a wide cross-section of the community, the experience in New Zealand, shows that even on CIRs where voter turnout was over 80 percent and a favourable vote of over 80 percent was achieved, the parliament did not necessarily feel obliged to legislate on the matter in line with the result.[22]

1.109 A further possibility exists for direct democracy. Although there may be issues which do not reach the required number of signatures or percentage of voters for the matter to go to referendum, if 0.5 percent of the population petitioned over an issue, then it would automatically be referred to a parliamentary committee, which would determine whether a referendum would be held.

1.110 In the legislation establishing the mechanism for CIRs there would also have to be some sort of limit on the funding of the campaigns for or against, otherwise the opportunity for special interest groups to obtain the requisite signatures and then

22 Caroline Morris, *Lessons in Direct Democracy from New Zealand*, Perspective, Centre for Policy Studies, 2007.

spend vast amounts of money promoting their side of the argument could impact on the effectiveness and fairness of direct democracy and possibly create an imbalance.

1.111 No doubt in the CIR legislation there would be some issues that could not be subject to CIR – these might include taxation, appropriations, matters affecting the court system, questions arising from decisions of a court, or even contentious issues such as immigration.

1.112 It is increasingly clear that Australians are often disenchanted with our political system, and there is a feeling that they are not listened to on many issues. In the past, ordinary Australians used protest and public meetings to make the Government and politicians aware of their dissatisfaction about an issue. When large numbers of people protested against the Vietnam War, the Government took notice and changed direction. The Coalition Government has ignored at least two large protests in the recent past, one against the Iraq War and the other in relation to reconciliation. Those who participated in these lawful protests probably feel that their wishes were ignored.

1.113 Direct democracy has been shown to improve people's engagement with the political process. In 1993 prior to the Citizen Initiated Referenda Act 1993, New Zealanders were asked if they agreed with the statement "Politicians don't care what people think" and 66 percent of those surveyed agreed with that statement. In 2005, that figure had reduced to 44 percent.[23]

1.114 Direct democracy could provide an important mechanism for re-engagement with the political process in Australia. As the UK Conservative leader David Cameron said recently during the 'Stand Up Speak Up' campaign "I want us to end the age of top-down, 'we know best' politics. Politics should be bottom-up and open – driven by the passions and priorities of the public."

1.115 All Australian political parties have declining membership. The age of the masses being signed up political party members has gone. Ways need to be found to re-engage Australians in our democracy so that voters feel empowered when they need to be. Much greater active participation in democracy is a model which Australia should embrace.

1.116 Possibly the federal Government's call for plebiscites on issues like council amalgamations and the location of nuclear power plants will be the starting point.

1.117 Cr Berwick, Mayor Douglas Shire Council expressed his views on direct democracy, referring to 'participatory democracy':

> I think it is time for Australia to take a look at participatory democracy, and I will explain my understanding of that. Representative democracy is where you get a board elected and they make decisions on behalf of the

23 Caroline Morris, *Lessons in Direct Democracy from New Zealand*, August 2007, Appendix.

community. That is what we are all used to. Participatory democracy is a process, such as a planning scheme where the process says, 'You must consult with the community before you can do this.' Maybe we need a bit more participatory democracy where you get a skills based board and processes that you have to go through to do things. This may well give the community a better outcome than the downside of representative democracy, which has its own problems, such as poor standards of skills on local councils, which you see all over the place. People get elected but do not really understand their roles and responsibilities, which have become very complex. They are expected to deal with everything under the sun and they lob onto a local council without the sorts of skills that you would need in order to deal with really complex issues. It is not a criticism; it is just a reality.

If you have participatory democracy you say that before you can change this planning scheme you must go through a process of community engagement which puts the issues on the table, you must make sure you build some understanding in the community about the pros and cons and then you either survey by a statistical survey or you have plebiscites or whatever to gauge community opinions. So what you are doing there is empowering the community, not through a representational democracy but through a participatory democracy.

I think other countries do this better than Australia, but it is a good way to go to give small communities such as ours some control over our own future so that we are not swallowed up by big agendas, big societies, big developers or big whatever. 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.[24]

Recommendation 5

1.118 That the Senate refer the question of ways in which direct democracy can be advanced in Australia to a committee for report by 31 December 2008.

Senator Andrew Murray

24 Cr Berwick, Mayor, Douglas Shire Council, *Committee Hansard*, 3 September 2007, p. 8.

APPENDIX A

(Note: attachment below excludes Part 1V – which is the 'machinery' part of the Covenant)

International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966
entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b)Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a)To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Appendix 1

Submissions Received

Submission Number	Submitter
1.	North Queensland Self Government League
2.	Alex Tymson
3.	Mr Kenneth Vaughan
4.	Trish and Nick Radge
5.	Andrew Hopkins
6.	Noosa Shire Council
7.	Fay McGrath
8.	Anne-Marie Jones
9.	Marilyn Shepherd
10.	G.M. and M.J. Vickery
11.	Tony Lawrence
12.	Alex McDonald
13.	John McKinlay
14.	J.G. Christensen
15.	Cr Rod Davis, Councillor for Port Douglas Shire
16.	Professor Brian Costar
17.	Mr Glen Elmes MP, State Member for Noosa
18.	Roisin Allen, The Douglas Shire Sustainability Group
19.	Michelle Kerr
20.	Bob Richardson
21.	E R Realf
22.	Peter Brown, Secretary, Coolum Residents Association

23.	Mareeba Shire Council
24.	Inglewood Shire Council
25.	Boulia Shire Council
25a.	Boulia Shire Council
26.	Cr Kelsey Neilson, Councillor for Boulia Shire
26a.	Cr Kelsey Neilson, Councillor for Boulia Shire
27.	Tewantin Community Association
28.	Jeffery Bedford
29.	Tara Shire Council
30.	Isisford Shire Council
30a.	Isisford Shire Council
31.	Paul and Adrienne Prentice
32.	Lynda Hansen
33.	Ron and Sue Smith
34.	Simon Gamble
35.	The Hon Bruce Scott MP, Federal Member for Maranoa
36.	Friends of Douglas Shire
37.	Peak Downs Shire Council
38.	Cr Vic Pennisi
38a.	Cr Vic Pennisi
38b.	Cr Vic Pennisi
39.	Barry Lazarus
40.	Development Watch
41.	Trevor John Cooper
42.	Robin Potter
43.	Frank Wilkie

44.	Jennifer Carr
45.	Roy and Joy Wellington
46.	Remote Area Planning and Development Board
46a.	Remote Area Planning and Development Board
47.	Glenn Churchill, Federal National Party candidate for Flynn
48.	Gordon and Narelle Hayes
49.	Friends of Noosa
50.	Cr Mike Berwick, Mayor of Douglas Shire Council
51.	Cr Allan Sutherland, Mayor of Redcliffe City Council
52.	The Hastings Street Association of Noosa
53.	Bronwyn & Barry Francis
54.	Al Taylor
55.	Anthony Slaughter
56.	Shirley Zwart
57.	Graeme Orr, Associate Professor, Law School, University of Queensland
58.	Ben and Jilly Roberts
59.	Jon Sullivan, Federal Labor candidate for Longman
60.	Mrs Fiona M Schaefer
61.	Robert and Susan Johnson
62.	Howard E. Pierce
63.	Terry Brennan, Chief Executive Officer, Stanthorpe Shire Council
64.	Submission by five Western Councils consisting of Aramac Shire, Jericho Shire, Ilfracombe Shire, Isisford Shire and Tambo Shire
65.	Yvette D'Ath, Federal Labor candidate for Petrie
66.	Johanne Wright, President, Eumundi, Doonan, Verrierdale Action Group

67.	Local Government Association of Queensland
68.	Taroom Shire Council, Mayor Don Stiller
69.	Jim Turnour, Federal Labor Candidate for Leichhardt
70.	AgForce
71.	Maxine Roberts
72.	Brenda Kelly, Chief Executive Officer, Blackall Shire Council
73.	Howard Hobbs MP, State Member for Warrego
74.	Jason O'Brien MP, State Member for Cook
75.	Australian Local Government Association
76.	Tourism Noosa
77.	Gerard Carney, Professor of Law
78.	Mayor Robert Loughnan, Bungil Shire Council
79.	Greg McLean, Assistant National Secretary, Australian Services Union
80.	Mayor Joy Baluch AM, President, Local Government Association of South Australia
81.	Kevin Spencer
82.	Maroochy Branch of the Queensland Greens Party
83.	Sue Price
84.	TC Overson
85.	Fiona McNamara, Federal Labor candidate for Dickson
86.	Noosa Shire Residents and Ratepayers Association
87.	Ken Rafter
88.	Crows Nest Shire Council and Rosalie Shire Council
89.	Alex Harris
90.	Richmond Shire Council
91.	Roger Omdahl

92.	Chris Trevor, Federal Labor Candidate for Flynn
93.	Mrs V.D. Burnett
94.	Walter and Josephine Wearing
95.	Peter Franks, Chief Executive Officer, Livingstone Shire Council

Appendix 2

Additional Information and Correspondence

Additional Information

1. Mr Bob Ansett, Friends of Noosa, received 30 August 2007.
2. Mr Roger Omdahl, received 4 September 2007.
3. Mr James Hopkins, received 4 September 2007.
4. Mr Glen Elmes, MP, tabled documents during public hearing, Noosa, 30 August 2007.
5. Cr John Brown, Mayor, Peak Downs Shire Council, tabled document during public hearing, Emerald, 31 August 2007.
6. Cr Mike Berwick, Mayor, Douglas Shire Council, tabled document during public hearing, Cairns, 3 September 2007.
7. Department of Finance and Administration, tabled document during Cairns, 3 September 2007.
8. Mr Joseph Elu, tabled document during public hearing, Cairns, 3 September 2007.
9. Department of Finance and Administration, received 6 September 2007.
10. Queensland Department of Local Government and Planning, received 7 September 2007.
11. Tambo Shire Council, received, 7 September 2007.

Correspondence

1. Mr Hamish Brown, received 31 August 2007.

Appendix 3

Public Hearings and Witnesses

Thursday, 30 August 2007 – Noosa

ABBOT, Councillor Robert John,
Mayor, Noosa Shire Council

ANSETT, Mr Robert Graham,
Vice Chairman, Friends of Noosa

BERARDO, Mr James,
Convenor, Friends of Noosa

BROWN, Mr Hamish Danks,
Private capacity

BUCKLEY, Mr Ian,
Acting Branch Secretary, Queensland Services Branch,
Australian Services Union

BUTT, Mr Peter Charles, Vice President,
The Hastings Street Association of Noosa

COOPER, Mr Stephen John, Chief Executive Officer,
Tourism Noosa

COOPER, Mr Trevor John,
Private capacity

COTTER, Mr John,
Vice President, AgForce

DILLON, Ms Sue,
Policy Advisor, AgForce

ELMES, Mr Glen,
Member of Parliament, Legislative Assembly of Queensland

HOPKINS, Mr James Edwin,
Private capacity

KOVASSY, Mr Lazlo,

Private capacity

McLEAN, Mr Greg,
Assistant National Secretary and Head of Public Services Division,
Australian Services Union

MITCHELL, Mrs Raynette,
Secretary, Eumundi, Doonan, Verrierdale Action Group Inc.

OMDAHL, Mr Roger,
Private capacity

PARDON, Councillor Frank James,
Deputy Mayor, Noosa Shire Council

PENNISI, Councillor Victor Frank,
Private capacity

RAISON, Mr Brian Keith,
President, Development Watch Inc.

REDDAWAY, Mr Gregory John,
Treasurer, Friends of Noosa

SCANLON, Mr Brendan Leon,
Committee Member, Eumundi, Doonan, Verrierdale Action Group Inc.

SPENCER, Mr Kevin Ronald,
Private capacity

TAYLOR, Dr Michael Victor,
President, Noosa Shire Residents and Ratepayers Association Inc.

TREVOR, Mr William Robert,
Mayor, Isis Shire Council

WALPOLE, Mr Robert Arthur,
President, Coolum Residents Association

WILLIAMS, Mr Boyd,
Chairman, Tourism Noosa

Friday, 31 August 2007 – Emerald

BACK, Councillor John, Mayor,
Ilfracombe Shire Council

BECKER, Councillor Owen,
Deputy Mayor, Taroom Shire Council

BOND, Councillor Ailsa Alice,
Deputy Mayor, Isisford Shire Council

BROWN, Councillor John Charles,
Mayor, Peak Downs Shire Council

CHURCHILL, Mr Glenn Gordon,
Private capacity

DINHAM, Mr Malcolm Harry,
Councillor, Tara Shire Council

GLINDEMANN, Mr Russell Peter,
Councillor and Deputy Mayor, Jericho Shire Council

GRAY, Mrs Jennifer Catherine,
Councillor, Aramac Shire Council

HANSEN, Councillor Selwyn,
Taroom Shire Council

HAYWARD, Mr Robert James,
Chief Executive Officer, Tambo Shire Council

HOBBS, Mr Howard William MP,
Member for Warrego and Shadow Minister for Local Government

LINDEMAN, Mr Don,
Chief Executive Officer, Peak Downs Shire Council

SCOTT, The Hon. Bruce,
Member for Maranoa, Commonwealth Parliament

STILLER, Councillor Donald,
Mayor, Taroom Shire Council

WALKER, Councillor Laurence Allen,
Peak Downs Shire Council

WEARING, Mrs Josephine Mary,
Private capacity

Monday, 3 September 2007 – Cairns

BERESFORD-WYLIE, Mr Adrian,
Chief Executive, Australian Local Government Association

BERWICK, Councillor Michael Peter,
Mayor, Douglas Shire Council

BRIGHT, Ms Anne,
State Manager/Australian Electoral Officer Queensland,
Australian Electoral Commission

COSTAR, Professor Brian John, Swinburne University of Technology
Private capacity

DACEY, Mr Paul,
Deputy Electoral Commissioner, Australian Electoral Commission

DAVIS, Mr Rod,
Private capacity

ELU, Mr Joseph Benjamin,
Chairman, Seisia Island Council

FLAVEL, Mr Malcolm,
Private capacity

GABOUR, Mr Michael J,
Spokesperson, Friends of Douglas Shire

HOFFMAN, Mr Gregory Thomas,
Director, Policy and Representation,
Local Government Association of Queensland Inc

KRIS, Mr John Toshie,
Chairman, St Paul's Island Council

LEU, Ms Julia Fay,

Acting Chief Executive Officer, Douglas Shire Council

McKILLOP, Ms Charlie Leith,
Private capacity and Liberal candidate for Leichhardt

MOWBRAY-d'ARBELA, Mr Marc,
Assistant Secretary, Legislative Review Branch,
Department of Finance and Administration

ORR, Dr Graeme, Associate Professor, Law, University of Queensland
Private capacity

PRIEBE, Mr Peter,
Private capacity

RAMSLAND, Mr Don,
Chief Executive Officer, Inglewood Shire Council

RICH, Councillor John,
Board Member, Australian Local Government Association

ROGERS, Councillor Glen Frederick,
Mayor, Stanthorpe Shire Council

SUTHERLAND, Councillor Allan,
Mayor, Redcliffe City Council

TALBOT, Ms Simone Louise,
Policy Advisor, Local Government Association of Queensland Inc

WHITE, Councillor Joan,
Mayor, Inglewood Shire Council

Appendix 4

Excerpts from the *Local Government Act 1993 (Qld)*

Ban on conducting polls

159ZY Polls

(1) An existing local government must not conduct a poll under chapter 6, part 2 in its area, or a part of its area, if the question the subject of the poll relates to anything that is, or is in the nature of, a reform matter, or the implementation of a reform matter.

Example

An existing local government must not conduct a poll under chapter 6, part 2 about whether its local government area should be abolished and be included in a new local government area.

(2) If, before the commencement of this section, a local government had resolved to conduct a poll the conduct of which is prohibited under subsection (1), the local government

(a)must, despite chapter 6, part 2, take all necessary action to ensure that the poll is not conducted; and

(b)must give public notice that the poll is not to proceed--

(i)by advertisement in a newspaper circulating generally in its local government area or part of its local government area; and

(ii) in any other way that is reasonably appropriate for making the information publicly known.

(3) A person who is a councillor of a local government must not take any action for the purpose of the conduct of a poll that the local government is prohibited from conducting under this section.

Maximum penalty--15 penalty units [or $1125[1]]

(4) All persons who contravene subsection (3) in relation to a particular poll, whether or not they are prosecuted under subsection (3), are jointly and severally liable for the

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1 Section 5, *Penalties and Sentences Act 1992 (Qld)*

total poll amount, which may be recovered by the State, in action as for a debt for the amount, and reimbursed to the existing local government, or the successor of the existing local government, less the costs of recovering the amount.

...

During consideration of the bill, the Parliament agreed to amend s.164 of the *Local Government Act 1993 (Qld)*, so as to include a contravention of section 159ZY within the provisions which empower the Minister to dissolve the council in question. Section 164 reads:

164 Dissolution of local government

(1) The Governor in Council may, by regulation, dissolve a local government if the Minister is satisfied that the local government—

(a) has acted unlawfully, including by contravening section 159ZY(1), or corruptly; or

(b) has acted in a way that puts at risk its capacity to exercise properly its jurisdiction of local government; or

(c) is incompetent or can not properly exercise its jurisdiction of local government.

(2) Subsection (1) is subject to the Constitution of Queensland 2001, chapter 7, part 2.
(3) If the Legislative Assembly ratifies the dissolution of the local government under subsection (1)—

(a) the local government's councillors go out of office; and

(b) the local government continues in existence as a body corporate and continues to be constituted by the local government's administrator.

Right to appeal

Section 159X of the *Local Government Act 1993 (Qld)* reads:

159X Review of particular decisions and actions

(1) A designated decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside, or called into question in another way, under the Judicial Review Act 1991 or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) Without limiting subsection (1), a person may not bring a proceeding for an injunction or any other order to stop or otherwise restrain the performance of a designated act, or for a declaration about the validity of a designated act.

(3) In this section—

decision includes—

(a) conduct engaged in to make a decision; and

(b) conduct related to making a decision; and

(c) failure to make a decision.

designated act means—

(a) an act of the reform commission, including the act of making a recommendation to the Minister, the performance of which is authorised, or purportedly authorised, under this part; or

(b) an act of the Minister the performance of which is authorised, or purportedly authorised, under this part.

designated decision means a decision to perform a designated act.