



**SUBMISSION TO THE EXPERT PANEL ON THE
CONSTITUTIONAL RECOGNITION OF LOCAL
GOVERNMENT**

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**PREPARED BY THE
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INTRODUCTION

The Western Sydney Regional Organisation of Councils Ltd (WSROC) welcomes the opportunity to make a submission to the Expert Panel on the Constitutional Recognition of Local Government.

WSROC represents ten Western Sydney councils including Auburn, Bankstown, Blacktown, Blue Mountains, Fairfield, Hawkesbury, Holroyd Liverpool, Parramatta and Penrith.

Our LGAs service over 1.6 million people and our regional economy is estimated at \$85 billion annually.

Over the next 20 years it is expected that Western Sydney will have to manage a population increase of over 1 million people and our councils will be at the forefront of managing this growth and ensuring vital services and needs are met.

In recent years it has become clear that the constant expansion of the roles and functions of local government since Federation are not reflected in Australia's founding document. The absence of a formal place for local government in the nation's Constitution is a critical impediment in the effective functioning of the modern Australian Federal System. WSROC believes these reforms are vital to more accurately reflect and support the growing role local government performs in contemporary Australia.

WSROC welcomes the Australian Government's commitment in 2007 to progress the issue of the recognition of local government in the Constitution. While we are aware that this issue has been put to the Australian public twice before, the changing roles of local government away from its traditional, "roads rates and rubbish" to a key provider of social and community services and programs means it is more important than ever that the roles of local councils are enshrined in the Constitution.

The outcome of the Pape case in the High Court in 2009 has further highlighted the urgency of the need for recognition as a means of securing access to regular funding and financial security to ensure that Councils expanding roles as service providers can be maintained.

Our communities and residents recognise the vital role that councils play in maintaining their communities and neighbourhoods and we believe that this time, the referendum has a real chance of success.

Local Government is one of the oldest forms of Government in Australia and predates Federation by more than 60 years – the first council was established in Adelaide in 1840 – and has been an integral part of our federalist system since its inception in 1901.

WSROC accepts the popular view that the omission of local government from the original Constitution was an unfortunate oversight, however it is now time that this omission was corrected.

WSROC believes that local government should not only be recognised in the Constitution but that the recognition be financial, with inclusion in the preamble if there is to be one.

The need for change

In recent years we have seen a significant increase in the Commonwealth's use of direct funding programs as a means to achieve national objectives – an effective system which has now been potentially compromised, both by the Pape case and by continuing doubts about the constitutional validity of such direct funding.

WSROC believes an appropriate amendment to the Constitution will ensure that the Australian Parliament is able to provide grants directly to local government on whatever terms and conditions it sees fit so that local communities have access to adequate funding for the services and infrastructure they require.

WSROC believes that this simple change to Section 96 of the Constitution to provide for financial recognition is a simple and pragmatic proposal that will resonate with the broader community and so garner the necessary support to succeed at a referendum.

However, as highlighted by research carried out by the Australian Local Government Association in 2009, the community's understanding of the Constitution and our system of referenda is limited. WSROC supports calls by the ALGA for the conduct of a broadly based "education" program on the constitution and constitutional reform, and that this program should be conducted in advance of the referendum by the Australian Electoral Commission.

Not only has the role of local council changed in recent years, but our constituents are increasingly sophisticated and well educated and WSROC believes that with the appropriate education and information campaigns, this amendment will garner the support of our communities.

WSROC also supports the three core principles devised by the ALGA as the basis of any referendum on local government:

- That the Australian people should be represented in the community by democratically elected and accountable local government representatives;
- That the power of the Commonwealth to provide direct funding to local government should be explicitly recognized; and

- If a new preamble is proposed, it should ensure that local government is recognized as one of the components making up the modern Australian federation.

WSROC is pleased to note that the proposal for Constitutional recognition of local Government has the stated support of each of the key political parties, and that the NSW Government has also stated that it supports constitutional recognition for local governments.

The financial imperative

It is expected that the act of enshrining local government in the national Constitution will provide a degree of financial security for local governments as their roles in delivering services to their community expands.

This is especially important for WSROC's member councils and other NSW Councils who have seen a significant rise in the incidence of cost shifting over the past few years, which along with a State policy of rate pegging and only partial reimbursement of State-mandated discounts, has threatened the financial future of some councils.

In addition, WSROC notes that recently there has been increasing importance of direct funding programs to local government and the Commonwealth's increasing propensity to rely on such funding mechanisms to achieve national objectives.

Over the past decade, federal governments from both sides of politics have demonstrated their clear preference to use direct funding through initiatives such as the Roads to Recovery Program and the Regional and Local Community Infrastructure Program rather than to use the indirect mechanism of Financial Assistance Grants which flow through the States and are untied in the hands of councils.

This funding arrangement had been satisfactory until the outcome of the *Pape* case which deemed that there was no express or implied provision in the Constitution which grants the Commonwealth responsibility over local government and that, as a consequence, the Commonwealth has no general power to directly fund local government bodies or activities under Section 81 of the Constitution.

This now has potentially disastrous effects for local councils.

The Nation Building Roads to Recovery Program, first funded in 2001 could potentially be invalid after the *Pape* decision and payments made under the Program illegal. If so, local government could be asked to repay the total paid under the Program, amounting to more than \$4 billion by the end of the current program in 2014.

The problems foreshadowed by the *Pape* case can be resolved by constitutional amendment. Section 96 could be amended by adding the words "and local government" or by drafting a new Section 96A to provide: "The Parliament may grant financial assistance to any local government body on terms and conditions as the parliament thinks fit."

Financial recognition is the best option

In recent years there has been much discussion on the possible ways in which local Government can be included in the Constitution, including the option of simply including it in a new preamble, if one was to be developed.

Apart from the fact that there are currently no plans for a new preamble as WSROC understands it, we consider that including in a preamble without specific reference in the Constitution itself would be at best just a symbolic recognition, and would not necessarily have any real effect on constitutional interpretation.

Further it is believed that the public is unlikely to vote for constitutional change on a matter regarded as purely symbolic – in order to achieve recognition, the voters must be convinced of the importance of the change and how it can potentially impact on their own lives.

In addition, the issue of financial uncertainty as highlighted by the Pape case can only be resolved by through financial recognition.

However, if a new Preamble is proposed, WSROC would support calls for local government to be mentioned as a level of government in the Australian Federation, in addition to financial recognition.

Other options have been put forward in the past including democratic or institutional recognition as proposed in 1988. However, this option would have the effect of significantly altering the current relationship between the States and the local government, including the State's power to dismiss or amalgamate councils.

Currently, local government is a democratically elected sphere of government and is directly accountable to the local communities it serves. Local government is also required to meet numerous legal and financial reporting obligations stipulated under state legislation.

WSROC notes that such changes are not the intention of the campaign to achieve constitutional recognition and supports maintaining the existing status quo in the relationship. Furthermore, the State and Territory Governments would be unlikely to support such a change which would result in a vigorous 'no' campaign being waged, reducing the chances of success.

WSROC notes and welcomes the stated support of the NSW and Queensland Governments to recognise local government in the constitution as is currently proposed and sees no need to jeopardise the current positive relationship by attempting to impose an unnecessary reduction in the State's authority to oversee local government in their own areas.

The current campaign for Constitutional recognition at a Federal level is primarily to clarify the legality of the Commonwealth's ability to directly fund local governments. WSROC

does not believe that this should jeopardise the current relationship between the second and third tiers of Government and that it is appropriate that local government remain under the jurisdiction of the States and Territories as currently recognised under their constitutions.

The changing role of local government

In recent years local councils have moved well beyond their traditional remit of “roads, rates, rubbish” and are now responsible for delivering a wide range of services. Amongst its many functions, local government:

- maintains over 80 (640,000 km) per cent of the nation’s road network;
- provides, operates and maintains a vast range of community infrastructure;
- plans communities, keeps them clean, safe and healthy;
- cares for the environment through waste management and natural resource management,
- administers community education and local environmental programs;
- provides an array of regulatory services often on behalf of other levels of government, for
- example, environmental health and food inspection services;
- promotes regional development, tourism and economic and social advancement;
- supports emergency services activities; and
- provides an increasing array of human services, from services for the young and the elderly (such as childcare and Home and Community Care) to the promotion of public health and public safety).

The fact that it is elected by the community and responsible for a broad range of services in a clearly defined geographic area means that local government is well-placed to understand and meet local needs and respond to those needs in ways that are most appropriate to local conditions and this changing role is well understood in the communities they serve.

Between 2009 and 2011 ALGA surveys showed the importance of local government has increased from 55% to 73% in rural areas and amongst women from 59% to 65%. Women in the 35-49 age group saw the biggest increase, rising by 12 points.

This understanding among local government’s own constituents is a reflection of the increasing role that councils play in the lives of their residents and the immediate impact that accompanies a change in activity or a failure to deliver expected services.

However, despite the well documented increase in services and demands on local government, the options for financing these services have not been reviewed or updated in line with Council’s expanded roles.

Councils are providing a mix of up to 150 services, while being funded primarily through property tax, which represents approximately 3% of Australia’s total taxation revenue.

The financial constraints facing local government have been illustrated in a 2006 Price Waterhouse Coopers report which identified a \$14.5 billion backlog in repairing ageing infrastructure and which also found that between 10% and 30% of councils would face financial sustainability challenges without reform to their revenue or expenditure patterns.

In the absence of greater funding from the Commonwealth, communities face reduced services, delays in essential infrastructure work, or trying to raise additional revenue from communities which are already paying their fair share.

Councils still obtain the majority of their revenue from resident's rates, with user charges, developer levies and fines and penalties providing secondary income sources. Government funds comprise a significant percentage of operational costs – in some regional areas of NSW, Government grants account for over 60 per cent of council's annual budget.

Expanded roles has also led to high levels of cost shifting – estimated by the ALGA to be running at between \$500 million and \$1 billion a year, and in NSW, the State Government's policy of rate capping, and changes to the system of developer levies has further restricted the ability of WSROC's member councils to deliver essential services.

As many of WSROC's member councils include new land release areas in their LGAs, they are now hard hit by the need to provide essential infrastructure to new communities, but without the funds to pay for it.

As a result, WSROC believes significant funding reform is crucial if local government is to remain financially sustainable in the long-term and be able to continue to meet community needs. Funding certainty is critical to the short and long-term planning of councils, particularly in rural and regional areas where there is a greater reliance on external funding.

Research has shown that the community believes that councils are the best placed to make decisions for their local communities, because councils are part of the community and can respond in locally appropriate ways. Decisions made from the state or national capitals often have limited understanding of the local priorities or social and economic imperatives.

The Commonwealth clearly sees merit in providing support to local communities because it has done so for the past 30 years. Over the past decade, the Commonwealth Government has increasingly provided program funding directly to local government. This is a practical solution when delivering programs at local level which are aimed at achieving a national objective.

The change local government is seeking, is to formalize and secure what has been occurring for the past ten years to give financial security to communities.

CONCLUSION

WSROC strongly supports the need for financial recognition of local Government under the National constitution to provide the funding certainty which will allow councils to continue to meet the needs and expectations of their communities.

We welcome the Commonwealth Government's commitment to hold a referendum on the recognition of local government by 2013, and note that the change has the stated support of all major parties.

WSROC believes that the preferred option for recognition would be a simple amendment to Section 96 to enable the Commonwealth to provide direct funding to local government if it wishes, and agrees with ALGA studies which suggest that this option has the best chance of success.

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