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OBERON COUNCIL



AUSTRALIAN LOCAL
GOVERNMENT ASSOCIATION

26 SEP 2011

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Oberon Council

PO Box 84

OBERON NSW 2787

23 September 2011

To the Mayor, Councillors and CEO,

I am writing to encourage your council to consider making a submission on the Discussion Paper issued by the Expert Panel on the Constitutional Recognition of Local Government and highlight the case that the Australian Local Government Association (ALGA) will be putting forward in its submission. The Expert Panel's Discussion Paper, released on 22 September, canvasses four options for constitutional change to recognise local government. Submissions from interested parties are sought by 4 November 2011.

Constitutional recognition has been a priority of local government for a long time but the issue has advanced significantly in recent years after ALGA began a comprehensive process in 2008 aimed at considering possible options and developing a united voice on the type of constitutional change, and preferred options.

The Discussion Paper issued by the Expert Panel and the establishment of the Expert Panel itself are the most recent steps in the Government's progress towards a referendum by 2013.

The Expert Panel is chaired by the former Chief Justice of New South Wales, the Hon Jim Spigelman and comprises parliamentary, academic and local government representatives, including myself and former ALGA President, Cr Paul Bell.

I encourage each and every council to make a submission. It is important that the Expert Panel gains an understanding of the level of local government support for constitutional recognition. In this regard I am pleased to note that over 400 councils across Australia have passed resolutions supporting a simple change which would remove any doubt about the capacity of the Commonwealth to continue to directly fund local government through programs such as Roads to Recovery. Councils which have passed those resolutions might find them useful as a basis for submissions.

ALGA will be working with your state and territory local government associations to make a comprehensive submission to this important process and I have included an **attachment** to this letter which outlines the case ALGA will be putting forward in its submission.

I urge your council to also make a submission to the Panel, putting your views on the record about constitutional recognition and, if appropriate, your support for any particular option.

The Expert Panel has been tasked by the Government to assess whether there is sufficient support in the Australian community to recognise local government in the Constitution and to provide recommendations to the Government on specific changes which could be made.

It is important that all councils take the opportunity to register their support for constitutional change. I hope you will find the outline of ALGA's submission helpful in identifying issues which might be covered in your own submission.

Yours sincerely

A handwritten signature in cursive script that reads "Genia McCaffery". The signature is written in black ink and is positioned below the "Yours sincerely" text.

Mayor Genia McCaffery

President



AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

Outline of ALGA's Submission to the Expert Panel

The Expert Panel on Constitutional Recognition of Local Government released its Discussion Paper on 22 September for public comment by 4 November. ALGA will be making a submission on the Discussion Paper, as will state and territory local government associations.

ALGA urges all councils to take the opportunity to make a submission.

The Expert Panel has been asked by the Government to assess whether there is sufficient public support to recognise local government in the Constitution and to provide recommendations on options for changing the Constitution.

The Discussion Paper seeks to gauge public support for recognition in general and for one or more of four specific options for change:

- Symbolic recognition of local government by including it in a new Preamble or Statement of Values;
- Financial recognition of local government, which would allow the Commonwealth to directly fund local government;
- Democratic recognition of local government, which would require states to establish and maintain local government; and
- Recognition through federal cooperation, which would seek to encourage cooperation between the levels of government, including local government.

ALGA's submission will emphasise our preference for financial recognition of local government and outline the comprehensive process undertaken by ALGA in reaching that view, including our assessment of broad public support and support by councils.

Throughout 2008 ALGA worked with state and territory local government associations and with councils to explore the need for constitutional recognition, the level of support for change and the options for recognition. Initial council conversations, held by many councils in the first half of 2008, led to an experts' forum and then to a major national constitutional convention, held in Melbourne in December 2008 and attended by around 600 delegates, which identified possible options for consideration by the ALGA Board.

In-depth public research in mid 2009 (which showed that the public would not support symbolic or more complex institutional recognition, but would support financial recognition) and the outcome of the Pape Case in the High Court (which cast strong doubts on the validity of direct federal funding of local government) led the ALGA Board to determine that its preference was for the financial recognition of local government. This option would allow the direct funding of local government by the Commonwealth.

There is overwhelming support for the financial recognition option amongst local government, with more than 400 councils already passing resolutions in support of this option.

ALGA's submission will highlight the strong support which clearly exists for ensuring that the Commonwealth can continue to fund local government directly, by removing any doubts about the constitutional validity of such funding. The Commonwealth already directly funds local government for the Roads to Recovery program and the Regional and Local Community Infrastructure Fund - part of the stimulus funding provided by the Nation Building – Economic Stimulus Plan during the global financial crisis.

The High Court decision in *Pape v Commissioner of Taxation* (2009) cast doubt on the Commonwealth's power to provide this funding directly to local government. There is no general power in the Constitution which allows the Commonwealth to provide direct funding to local government to maintain services and infrastructure, including roads, and, because of this, the validity of this funding is not certain. Local government requires certainty if it is to remain financially sustainable in the long-term and to be able to deal with the growing needs of its communities. The High Court decision clearly signals a need for change and change cannot occur without amending the Australian Constitution.

The financial recognition of local government can be achieved through a relatively simple change to Section 96 of the Constitution which allows the Commonwealth to fund the states. Adding local government into this section is a pragmatic response to the doubt identified in the Pape case. It will confirm the right of the Federal Parliament to fund local government directly, but it will not affect the relationships between local government and the state governments, which will continue to have the power to determine how councils operate.