



Submission to the Joint Select Committee Inquiry into Constitutional Recognition of Local Government	
-----------------------------------------------------------------------------------------------------------------	--

Date	January 2013
-------------	---------------------

Opening:

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community.

The Associations are pleased to be invited to respond to the request from the Joint Select Committee on Constitutional Recognition of Local Government and make a submission to the Joint Select Committee's Inquiry into Constitutional Recognition of Local Government

Executive Summary:

The Associations have been long-term advocates for recognising Local Government in the Australian Constitution given its critical role as the sphere of government operating at the local scale.

The Associations are unequivocal in our support for holding a referendum to make a simple change to section 96 of the Constitution to allow the continuation of direct funding of Local Government by the Australian Government, when that referendum is winnable.

Owing to the lack of support amongst many State and Territory Governments, the slim level of the majority support amongst the voters, and the nature of the next election, the Associations do not believe 2013 is the time to win such a referendum.

The Associations believe the best option is to postpone the proposed referendum to a time in the course of the next Parliament and decouple it from an election if at all possible.

As the Associations have been actively involved in the development of the Australian Local Government Association's long-term position on Constitutional Recognition of Local Government, and its response to the Joint Select Committee on Constitutional Recognition of Local Government, **the Associations strongly support ALGA's submission to the Joint Select Committee.**

Purpose:

The Associations understand that the Terms of Reference read as follows:

(1) a Joint Select Committee on Constitutional Recognition of Local Government be appointed to inquire into and report on the majority finding (financial recognition) of the Expert Panel on Constitutional Recognition of Local Government including by amending section 96 of the Constitution, and in conducting its inquiry, the Committee will assess the likelihood of success of a referendum on financial recognition, and will take into account the following matters:

- a) the report of the Expert Panel on constitutional recognition of Local Government, including preconditions set by the Expert Panel for the holding of a referendum;
- b) the level of State and Territory support;
- c) the potential consequences for Local Government, States and Territories of such an amendment; and
- d) any other matters that the Committee considers may be relevant to a decision on whether to conduct a referendum, and the timing of any referendum.

The Associations note the membership of the Joint Select Committee on Constitutional Recognition of Local Government was finalised on 28 November 2012. We appreciate that the Joint Select Committee moved swiftly holding its first meeting on 29 November 2012 and resolved to immediately call for submissions.

The Associations recognise that the Joint Select Committee will be consulting on the form of words proposed by the Expert Panel on Constitutional Recognition of Local Government and other issues including the timing of the proposed referendum. The Expert Panel proposed an amendment to s96 of the Australian Constitution as follows (proposed new words in italics):

The Parliament may grant financial assistance to any State *or to any local government body formed by State or Territory Legislation* on such terms and conditions as the Parliament sees fit.

We acknowledge submissions must be received by 15 February 2013, but that the Joint Select Committee is keen to receive submissions ahead of the first public hearing to be held in Sydney on 16 January 2013.

Given the Associations have been actively involved in the development of the ALGA's long-term position on Constitutional Recognition of Local Government, and its response to the Joint Select Committee, the Associations strongly support ALGA's submission to the Joint Select Committee (namely Australian Local Government Association *Submission to the Joint Select Committee on the Constitutional Recognition of Local Government* December 2012.)

Therefore the Associations will reiterate pertinent parts of ALGA's submission, and add NSW perspectives where that is useful.

The Associations support ALGA's opening comments on pages 2&3 and reinforce the following points:

The Board's preferred option is now that Section 96 be amended to read:

Parliament may grant financial assistance to any state **or local government body formed by or under a law of a state or territory** on such terms and conditions as the Parliament sees fit.

In reaching this position ALGA was mindful of the need to pursue its preference for financial recognition while acknowledging the need to address state government concerns. (ALGA, 2012, page 3)

In framing the actual question that is taken to the voters in the eventual referendum it will be important to ensure that it is written in the plainest language possible.

The Associations would also like to emphasise our support for the following:

It is important to stress that ALGA's decision to pursue constitutional recognition and the subsequent decision to support financial recognition have been the product solely of local government's own long standing vision for inclusion in the Constitution, the developments in the High Court since 2009 with the *Pape* and *Williams* cases and a realistic appraisal by the sector, over a period of more than five years, that any constitutional change needs to be practical, simple and justified.

ALGA's proposal is not aimed at supporting a centralisation of power in the hands of the Federal Government... (ALGA, 2012, page 3)

Comment on the report of and preconditions set by the Expert Panel on constitutional recognition of Local Government.

The Associations support ALGA's comments on the report of and preconditions set by the Expert Panel on pages 3 to 8 and reinforce the following points:

ALGA considers the first precondition, that the Commonwealth negotiate with the States to achieve their support for the financial recognition option, to be absolutely critical for a successful referendum. Local government operates within legislative frameworks created by State Parliaments and ALGA accepts that the inclusion of local government in the Constitution is an important matter for the state governments. In addition, the Constitution establishes the framework for Federation and how the Commonwealth and States will work together. ALGA has always considered the support of the great majority, if not all, of the States to be essential for a referendum on the recognition of local government...

ALGA is not aware that the Commonwealth has entered into any negotiations with the states for financial recognition and indeed the Government has yet to indicate publicly whether it supports the proposal... (ALGA, 2012, page 4)

We support ALGA's conclusion about the second precondition, namely:

The establishment of the Joint Select Committee is clearly a major step forward, but there has been a substantial delay in appointing the Committee and the time frame for the Committee's report is extremely short and certainly well short of the six months ALGA considered necessary. ALGA is concerned that this will limit the Committee's ability to elicit submissions, hold public hearings and come to a carefully considered view about the timing and form of a referendum. ALGA also now believes it will not be possible for local government to run the most effective campaign in 2013, given the lack of time after a Committee report at the end of March and a subsequent parliamentary process to develop and pass a Bill... (ALGA, 2012, page 5)

We reiterate ALGA's points on what is essential to maximise success at the referendum:

- **Bipartisan support** is essential to ensure the best chance of success for a referendum proposal. With the lack of understanding in the community about the Constitution, voters rely on the political parties to formulate their opinions. Australian constitutional history demonstrates that unless there is broad bipartisan support, referendums are unlikely to succeed (ALGA, 2012, page 5&6).
- **The Government needs to take the lead** on the issue and demonstrate its support publicly to champion the change. The Government needs to take the opportunity to raise the issue above politics and avoid the temptation of using a referendum question opportunistically. The Australian public's lack of knowledge of constitutional matters, conservatism when it comes to changing the Constitution, and susceptibility to misinformation, requires the Government championing the change to be a trusted source of information on the need for, and consequence of, the change (ALGA, 2012, page 6).
- **The public needs to be informed about our Constitution**, and how to change it (ALGA, 2012, page 6).
- **The public needs to be informed in a factual way about the question** being asked, to be able to cast an informed vote at the ballot box. The official "yes" and "no" cases prepared by

Parliamentarians appear to have no requirement to adhere to facts and it has often been the case that opponents of amendments have distorted and exaggerated the dangers with the precise intention of frightening and misleading voters...ALGA believes that such exaggeration is neither appropriate nor ethical given that public funding is involved in producing and distributing this material...It recommended an independent non-political panel be set up prior to each referendum responsible for a communications strategy, including education materials and how best to distribute them to all voters (ALGA, 2012, page 7).

Comment on the level of State and Territory support.

The Associations support ALGA's comments on the level of State and Territory Government support on pages 8 & 9.

We would particularly like to highlight the following:

ALGA acknowledges that the support of most if not all of the state governments is an important factor in shaping the chances for overall success of a referendum for financial recognition. For this reason ALGA has varied its preferred set of words for an amendment to reinforce its view that the form of financial recognition sought by local government would not have an adverse impact on the powers and interest of the states with regard to local government (ALGA, 2012, page 9).

The Associations wish to expand on the position of the NSW Government as best we understand it. We think we can fairly describe the NSW Government's position as supportive of symbolic constitutional recognition but opposed to financial constitutional recognition unless and until evidence is presented that it is the only course of action to overcome a deep problem.

Up until relatively recently the Associations understood we enjoyed the support of all major parties in the NSW Parliament. In the run up to the 2011 NSW Parliamentary elections the NSW Liberals and Nationals when responding to LGSA priorities said they endorse the proposal from the Australian Local Government Association for a referendum to amend the Australian constitution to give the Australian government the power to fund Local Government and to enshrine people's rights to democratically elect their councils. The position of the NSW Liberals and Nationals on financial recognition has reversed since forming Government in 2011.

When the Expert Panel on Constitutional Recognition of Local Government reported they took the view that the NSW Government had offered in-principle support but were awaiting the panel's findings as to whether constitutional amendments are 'the best way to achieve financial sustainability and enhanced status for local government'.

In support of this general comment they offered the following observations on the nature and level of NSW Government support:

- That there was in-principle support for symbolic recognition – in summary they noted 'In principle the NSW Government supports consideration of symbolic recognition'. However, 'care should be taken to ensure that unintended legal and practical consequences do not arise'; and
- That there were reservations but not explicit opposition to financial recognition - in summary they noted '...there may be options for refining funding arrangements ... that do not require amendments to the Constitution'.

Again at the time of its report the expert panel noted 'no State political figure suggested that they would actively campaign for a 'Yes' vote'. This continues to be the case.

The latest written advice from the NSW Government, conveyed to the Associations in August 2012 by Hon Don Page, Minister for Local Government and Minister for the North Coast reads as follows:

"... the Government supports in principle consideration of symbolic recognition as a way of enhancing the status of local government. The Government considers that such recognition is

timely and appropriate as it would reflect the changing role of local government and its important contribution to the growth and prosperity of Australia's diverse local communities.

This is consistent with *NSW 2021: A Plan to Make NSW Number One*, which aims, among other things, to maximise opportunities for people to improve their neighbourhoods and environments through the enhanced status of local government.

The Government is not in a position to support financial recognition of local government for a number of reasons. These include concerns that an amendment to the Constitution may allow the Federal Government to grant funds directly to local government which could result in *NSW 2021* and other major State Government policies being sidetracked or not given due regard. They also include concerns that financial recognition of local government could raise expectations that the Commonwealth will intervene in local government administration, thereby creating confusion about Federal, State and local government responsibilities and blurring the lines of accountability that exist between governments and their constituents.

While the Government acknowledged that the High Court's decisions in *Pape v Commissioner of Taxation* and *Williams v Commonwealth of Australia and Ors* may have cast some doubt over the legal ability of the Commonwealth to provide funding to local councils other than through the States in accordance with section 96 of the Constitution, the Government is of the view that amendments to the Constitution should not be made in the absence of clear evidence that existing funding arrangements are deficient."

The Associations were very disappointed with the marked change to the negative by the NSW Liberals and Nationals Government. The Associations do not believe that each of the stated concerns either singularly or together warrant opposing financial constitutional recognition. They do not represent a compelling case to resist change when legal opinion acknowledges that Local Government may be one High Court challenge away from losing programs like Roads to Recovery. The fear that the Commonwealth Government granting funds directly to Local Government could result in *NSW 2021* and other major State Government policies being diminished or derailed seems very exaggerated. There has been no evidence that direct funding such as Roads to Recovery over its life, the Nation Building – Economic Stimulus Plan and the Regional and Local Infrastructure Program, has done anything other than allow Local Government to meet local needs in a way that is entirely consistent with the NSW Government plans of the day. The evidence strongly indicates that these programs have complemented State Government plans and assisted Local Government in meeting their obligations under such plans. It should also be noted that the NSW Government (and other state governments) of the day, enthusiastically welcomed these programs.

We struggle to see how the sorts of direct funding that ALGA & the State and Territory Associations continue to lobby for could undermine *NSW 2021* or other plans. The fear that financial recognition could raise expectations that the Commonwealth will intervene in Local Government administration, thereby creating confusion about Commonwealth, State and Local Government responsibilities and blurring the lines of accountability that exist between governments and their constituents, also seems unwarranted. ALGA & the State and Territory Associations have been clear this is not what they seek and have proposed changes to section 96 that can in no way imply such a power. Local Government is not asking for change, we are seeking protection of the Commonwealth's ability to continue to provide direct funding to Local Government as it has done in the past: simply maintenance of the status quo.

The Associations suggest there may be room to convince the NSW Government that there is now clear evidence that existing funding arrangements are deficient. We have again sought to have dialogue with the Premier and senior Ministers on this issue. It is possible the NSW Government can be won over through careful negotiations in the long run. However, this is likely to take longer than the time available between now and a 2013 election.

Comment on potential consequences for Local Government, and States and Territories.

The Associations support ALGA's comments on consequences for Local Government and for State and Territory Governments support on pages 9 to 14.

In particular, we strongly support the following observations by ALGA:

ALGA has strong legal advice and informed commentary from leading constitutional academics that the constitutional validity of the direct federal funding of local government is uncertain.

High Court decisions in the *Pape* case and the *Williams* case support this view (ALGA, 2012, page 9).

Furthermore, NSW Local Government shares ALGA's deep concerns about direct funding such as Roads to Recovery. Again we reinforce ALGA's points:

The importance of direct funding to local government through the Roads to Recovery program should not be underestimated. Over its life so far, the program has provided more than \$3.5 billion of funding to local communities for local roads. The program has been extended until 2018-19 by which time a total of more than \$5.5 billion will have been provided (ALGA, 2012, page 10).

At this point, however, it must be stressed that the Roads to Recovery program has not been challenged in the High Court or declared invalid and there is no reason why funding cannot continue.

Nevertheless, ALGA's expectation is that there will be further challenges in the foreseeable future and inevitably a High Court decision which directly goes to the validity of direct payments to local government (ALGA, 2012, page 10).

The Associations support the analysis on issues relating to Financial Assistance Grants.

The Associations need to stress that in seeking recognition, NSW Local Government does not seek to alter the relationship between itself and the NSW State Government, through setting up Commonwealth processes for intervention or protection from amalgamation or dismissal.

Comment on other matters relevant to the conduct and the timing of any referendum.

The Associations support ALGA's comments other matters on pages 14 to 16.

We strongly support the following:

ALGA is not opposed to holding a referendum simultaneously with an election, but the Board of ALGA is committed to ensuring that the referendum is held at a time which maximises the chances for success. ALGA believes that the referendum should be held when the pre-requisites identified by ALGA in its submission to the Expert Panel, and those identified by the Panel itself, have been met. This will maximise the chances of a successful referendum. There must be a commitment to a set of specific words which can achieve the financial recognition option. These words must provide the reassurance sought by State Governments regarding their Parliament's continued legislative responsibility for local government. There must be a negotiation by the Commonwealth with the States to achieve acceptance of these words and then a commitment to a public education campaign to engage the voting public. At this point ALGA does not believe that these pre-requisites can be achieved in time for a successful referendum to be held in conjunction with a Federal election held between August and November 2013 (ALGA, 2012, page 15).

On the possibility of an early Australian Parliamentary Election in 2013, the Associations also take the view that ALGA, the State and Territory Associations and member councils would not be in a position to support a referendum being held at such an election. We concur with ALGA that the short

time frame would preclude an effective campaign being run by Local Government and insufficient time to educate and inform voters (ALGA, 2012, page 15).

The Associations support ALGA's argument that options to reduce the costs associated with referendums should be explored, including the option of potentially holding a referendum by postal vote or electronic vote. In particular, the use of electronic voting is evolving and its potential use in a referendum may also help to address the concerns around costs. These options do not appear to have been previously considered. They may represent mechanisms which could help the timing of a referendum being determined by the reference to when it might succeed on its merits, rather than being the subject of politicisation as part of a broader election campaign.

Finally, the Associations stress the need for further and significant financial assistance to be provided by the Australian Government to ALGA to assist with funding of a national advertising campaign for the 'yes' case. Whilst councils across Australia are contributing towards the costs for this campaign, ALGA and its member State and Territory Associations simply do not have access to the considerable finance that will be required to fund this type of large scale national advertising campaign. A national advertising campaign to promote the merits of the 'yes' case will need to utilise the full range of communications, media and advertising channels, including a major media buy and a significant public relations and community liaison component. In addition to the significant contributions from individual Local Governments, it is reasonable to suggest, based on other large scale advertising campaigns of similar type that ALGA would require at least \$10 million in Australian Government assistance to mount a credible national advertising campaign on such a critical issue.

Conclusion

Like ALGA the Associations welcome the establishment of the Joint Select Committee.

The Associations remain committed to the financial recognition of Local Government and to a referendum being held at a time which maximises the chances for success and strongly support the work of ALGA on this.

Financial recognition through a change to section 96 of the Constitution is critical to removing uncertainty around the continued direct federal funding of Local Government.

The wording of the amendment to section 96 proposed by ALGA to allow the continuation of direct Australian Government funding of Local Government has been developed to ensure there is no impact on the power of the State Governments to legislate for Local Government.

We support ALGA's case that the chances of success for a referendum to recognise Local Government depend on satisfying the pre-requisites identified by the Expert Panel and ALGA, including:

- Commonwealth negotiation with the States to win their support;
- a publicly funded education campaign on the Constitution, constitutional change and the Local Government question; and
- amendments to the relevant legislation to allow public funding of the "yes" and "no" campaigns.

We agree with ALGA that these pre-requisites have not been met and delays in the process have significantly diminished the chances for a successful referendum in 2013.



ALGWA NSW Branch advice of a motion below that has been passed by Gosford City Council.

We are sending you the motion for consideration at your next council meeting.

Colleen Fuller
President

On being put to the meeting the MOTION WAS CARRIED.

2013/276 **RESOLVED** (Scott/Doyle) that:

- A Council prepare a marketing campaign to encourage Gosford residents to vote for Federal recognition of local government in the Referendum to be held with the Federal Election in September 2013. A report will come back to Council identifying the draft campaign material.
- B A letter be sent to the Premier of NSW, the Hon Barry O'Farrell, asking him to support Federal recognition of local government, as he promised in the last state election campaign.

- C A letter be sent to the Minister for Local Government, the Hon Don Page, asking him to support Federal recognition of local government as he stated on Stateline in September 2011.

- D Copies of both letters be sent to the State members for Gosford, Chris Holstein, the State member for Terrigal, Chris Hartcher, the State member for The Entrance, Chris Spence and the State member for Wyong, Darren Webber, asking for their support in this matter.

The above motion was put to Gosford's Council meeting
Information received from Councillor Vicki Scott Gosford Council 28/05/13.

O'Farrell/Stoner opposed to financial recognition of Local Government in the Constitution

Chronology of what has been said.

Before the election in March 2011, the Coalition wrote to the Local Government and Shires Association stating its support for constitutional recognition of local government. However, since taking office, the O'Farrell Government has declared its opposition to financial constitutional recognition because it "may result in the NSW State Plan and other major State Government policies being side-tracked.

Financial recognition of local government in the Australian Constitution will protect federal funding sources councils rely on. The O'Farrell Government has written to the Federal Government to oppose this move, because it could interfere with the State Plan.

1. "The NSW Liberals & Nationals endorse the proposal from the Australian Local Government Association for a referendum to amend the Australian constitution to give the Australian Government the power to fund Local Government and to enshrine people's rights to democratically elect their councils."
Letter from Coalition to LGSA, 2 March 2011 (pg 6)
2. The NSW Government recognises local government in our Constitution Act and we support recognition in the Federal Constitution. But I don't want these types of issues to dominate discussions here. **Don Page, 17 August 2011, [Speech to NSW Local Government and Shires Association \(LGSA\), Destination 2036 Workshop.](#)**
3. *"The NSW Government recognises local government in our Constitution Act and we support recognition in the Federal Constitution...I think it's important to recognise that the Federal Government is making the right noises: it is supporting constitutional recognition..."* **Don Page, 17 August 2011, [Speech to NSW Local Government and Shires Association \(LGSA\), Destination 2036](#)**
4. "I as a Minister in the Government support the idea of local government being recognised in the Constitution. Particularly if that support leads to financial arrangements that enable the Federal Government to give local government money directly rather than having to come through the State, as is the case at the moment. I think we'd get better use of the money coming from the taxpayers' money coming from the Feds going to local government. And I think also the financial situation with local councils across the state, if they can tap into a source of revenue, whether it be GST - that's probably the most practical one - a percentage of GST revenue, that would be very helpful to local government." **Don Page 7:30 NSW 16/09/11 (Download clip from [Yousendit](#))**
5. "The government supports . . . consideration of symbolic recognition as a way of enhancing the status of local government. Such recognition is timely and appropriate as it would reflect the changing role of local government and its important contribution to the growth and prosperity of Australia's diverse local communities.

"Financial recognition of local government in the Australian Constitution is not supported for a number of reasons"

Spokesperson for Don Page, The Australian, 12/03/2013

<http://www.theaustralian.com.au/national-affairs/state-politics/biggest-states-torpedo-creans-referendum-push-on-local-councils/story-e6frqczx-1226595078863>

MEDIA RELEASE

Thursday 16 May 2013

Stop scaremongering on referendum

Local Government NSW completely rejects the Minister for Local Government's misleading and ill-informed claims that financially recognising Local Government in the Australian Constitution will lead to pork-barrelling.

Joint President of Local Government NSW, Cr Ray Donald, said the Howard Coalition Government initiated direct federal funding to local councils more than a decade ago.

"This financially-specific relationship between Canberra and councils has helped thousands of community projects get off the ground right across NSW, regardless of the politics of individual councils.

"This referendum seeks a modest change to our Constitution to guarantee the continued flow of direct Commonwealth funding to local communities without fear of a High Court challenge jeopardising these much needed funds," said Cr Donald.

"Given the recent TCorp Report into NSW council finances, it's astounding the NSW Coalition Government won't support a practical change to the Constitution securing tens of millions of dollars each year for NSW communities and their infrastructure."

"Our governments should be working together to provide a solid base for improving and maintaining the lifestyles and economic futures of our communities, and I call on the NSW Government to change its position on this crucial referendum for communities."

Joint President of Local Government NSW, Cr Keith Rhoades AFSM, said there are at least 96 million reasons why the O'Farrell Government and Minister Page should support this referendum – and that's the total Roads to Recovery funding provided to NSW councils for 2012/13.

"The comments made by Don Page, who continually claims to be the Minister 'for' Local Government, are baseless and equate to nothing more than a scaremongering campaign!"

"It seems a tad contradictory for the NSW Coalition Government to trumpet criticism of councils' financial sustainability, then fail to support a referendum which would protect federal grants for the most basic community needs, like local roads."

"The upcoming federal referendum will not erode the power of the NSW Government or change its relationship with NSW councils."

"The proposed amendment has been carefully crafted with expert advice from constitutional lawyers to ensure it does not reduce or remove the State's constitutional oversight of Local Government."

"Minister Page should stop misleading the people of NSW and get on with the job of being the Minister for Local Government."

For more information go to: <http://www.lgnsw.org.au/key-initiatives/constitutional-recognition-local-government>

Note: Cr Keith Rhoades AFSM and Cr Ray Donald will both carry out the duties of Joint President of the LGNSW Interim Board until the election of the first LGNSW President and Board in October 2013.

Media Enquiries

Cr Keith Rhoades, AFSM

Cr Ray Donald

Alex Power

Joint President: 0408 256 405

Joint President, Local Government NSW: 0438 699 910

LGNSW Senior Media Officer: 0408 603 093

Sophie Cotsis MLC

Shadow Minister for Local Government



Friday May 17, 2013

O'FARRELL GOVERNMENT'S BROKEN PROMISE TO SUPPORT COUNCIL REFERENDUM

The O'Farrell Government has broken a key election promise to support a referendum into the constitutional and financial recognition of Local Government, Shadow Minister for Local Government Sophie Cotsis said today.

"Barry O'Farrell's Local Government Minister said yesterday that financial recognition of local government would create confusion and lead to pork-barrelling. This is a breathtaking backflip and it will mean local services and road funding will suffer from Sydney to the Northern Tablelands," Ms Cotsis said. **(See audio of Minister Page's comments attached).**

In 2011, the Coalition recognised that direct funding of local government from the Commonwealth would be beneficial for councils and the services they provide:

"The NSW Liberals & Nationals endorse the proposal from the Australian Local Government Association for a referendum to amend the Australian constitution to give the Australian Government the power to fund Local Government and to enshrine people's rights to democratically elect their councils."

- **Letter from Coalition Headquarters to LGSA, 2 March 2011**

"I as a Minister in the Government support the idea of local government being recognised in the Federal Constitution ... I think we'd get better use of the money ... coming from the Feds going to local government. And I think also the financial situation with local councils across the State, if they can tap into a source of revenue, whether it be GST - that's probably the most practical one - a percentage of GST revenue, that would be very helpful to local government."

- **NSW Local Government Minister Don Page Stateline 7:30 NSW 16/09/11**

"This is a blatant broken promise from Minister Page," Ms Cotsis said.

"Eighteen months ago, Minister Page wanted councils to receive a carve-up of Federal GST. Now he's happy to kill them off.

"Clearly, Minister Page doesn't want anything interfering with his agenda of forcing councils to amalgamate by depriving them of funds.

"NSW Labor is a strong supporter of constitutional and financial recognition of local government.

"My recent tour of councils in the Northern Tablelands has only strengthened my determination that they need financial certainty above all else."

Media Contact: Sophie Cotsis 0407 945 914



Submission to the Joint Select Committee Inquiry into Constitutional Recognition of Local Government	
-----------------------------------------------------------------------------------------------------------------	--

Date	January 2013
-------------	---------------------

Opening:

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community.

The Associations are pleased to be invited to respond to the request from the Joint Select Committee on Constitutional Recognition of Local Government and make a submission to the Joint Select Committee's Inquiry into Constitutional Recognition of Local Government

Executive Summary:

The Associations have been long-term advocates for recognising Local Government in the Australian Constitution given its critical role as the sphere of government operating at the local scale.

The Associations are unequivocal in our support for holding a referendum to make a simple change to section 96 of the Constitution to allow the continuation of direct funding of Local Government by the Australian Government, when that referendum is winnable.

Owing to the lack of support amongst many State and Territory Governments, the slim level of the majority support amongst the voters, and the nature of the next election, the Associations do not believe 2013 is the time to win such a referendum.

The Associations believe the best option is to postpone the proposed referendum to a time in the course of the next Parliament and decouple it from an election if at all possible.

As the Associations have been actively involved in the development of the Australian Local Government Association's long-term position on Constitutional Recognition of Local Government, and its response to the Joint Select Committee on Constitutional Recognition of Local Government, **the Associations strongly support ALGA's submission to the Joint Select Committee.**

Purpose:

The Associations understand that the Terms of Reference read as follows:

(1) a Joint Select Committee on Constitutional Recognition of Local Government be appointed to inquire into and report on the majority finding (financial recognition) of the Expert Panel on Constitutional Recognition of Local Government including by amending section 96 of the Constitution, and in conducting its inquiry, the Committee will assess the likelihood of success of a referendum on financial recognition, and will take into account the following matters:

- a) the report of the Expert Panel on constitutional recognition of Local Government, including preconditions set by the Expert Panel for the holding of a referendum;
- b) the level of State and Territory support;
- c) the potential consequences for Local Government, States and Territories of such an amendment; and
- d) any other matters that the Committee considers may be relevant to a decision on whether to conduct a referendum, and the timing of any referendum.

The Associations note the membership of the Joint Select Committee on Constitutional Recognition of Local Government was finalised on 28 November 2012. We appreciate that the Joint Select Committee moved swiftly holding its first meeting on 29 November 2012 and resolved to immediately call for submissions.

The Associations recognise that the Joint Select Committee will be consulting on the form of words proposed by the Expert Panel on Constitutional Recognition of Local Government and other issues including the timing of the proposed referendum. The Expert Panel proposed an amendment to s96 of the Australian Constitution as follows (proposed new words in italics):

The Parliament may grant financial assistance to any State *or to any local government body formed by State or Territory Legislation* on such terms and conditions as the Parliament sees fit.

We acknowledge submissions must be received by 15 February 2013, but that the Joint Select Committee is keen to receive submissions ahead of the first public hearing to be held in Sydney on 16 January 2013.

Given the Associations have been actively involved in the development of the ALGA's long-term position on Constitutional Recognition of Local Government, and its response to the Joint Select Committee, the Associations strongly support ALGA's submission to the Joint Select Committee (namely Australian Local Government Association *Submission to the Joint Select Committee on the Constitutional Recognition of Local Government* December 2012.)

Therefore the Associations will reiterate pertinent parts of ALGA's submission, and add NSW perspectives where that is useful.

The Associations support ALGA's opening comments on pages 2&3 and reinforce the following points:

The Board's preferred option is now that Section 96 be amended to read:

Parliament may grant financial assistance to any state **or local government body formed by or under a law of a state or territory** on such terms and conditions as the Parliament sees fit.

In reaching this position ALGA was mindful of the need to pursue its preference for financial recognition while acknowledging the need to address state government concerns. (ALGA, 2012, page 3)

In framing the actual question that is taken to the voters in the eventual referendum it will be important to ensure that it is written in the plainest language possible.

The Associations would also like to emphasise our support for the following:

It is important to stress that ALGA's decision to pursue constitutional recognition and the subsequent decision to support financial recognition have been the product solely of local government's own long standing vision for inclusion in the Constitution, the developments in the High Court since 2009 with the *Pape* and *Williams* cases and a realistic appraisal by the sector, over a period of more than five years, that any constitutional change needs to be practical, simple and justified.

ALGA's proposal is not aimed at supporting a centralisation of power in the hands of the Federal Government... (ALGA, 2012, page 3)

Comment on the report of and preconditions set by the Expert Panel on constitutional recognition of Local Government.

The Associations support ALGA's comments on the report of and preconditions set by the Expert Panel on pages 3 to 8 and reinforce the following points:

ALGA considers the first precondition, that the Commonwealth negotiate with the States to achieve their support for the financial recognition option, to be absolutely critical for a successful referendum. Local government operates within legislative frameworks created by State Parliaments and ALGA accepts that the inclusion of local government in the Constitution is an important matter for the state governments. In addition, the Constitution establishes the framework for Federation and how the Commonwealth and States will work together. ALGA has always considered the support of the great majority, if not all, of the States to be essential for a referendum on the recognition of local government...

ALGA is not aware that the Commonwealth has entered into any negotiations with the states for financial recognition and indeed the Government has yet to indicate publicly whether it supports the proposal... (ALGA, 2012, page 4)

We support ALGA's conclusion about the second precondition, namely:

The establishment of the Joint Select Committee is clearly a major step forward, but there has been a substantial delay in appointing the Committee and the time frame for the Committee's report is extremely short and certainly well short of the six months ALGA considered necessary. ALGA is concerned that this will limit the Committee's ability to elicit submissions, hold public hearings and come to a carefully considered view about the timing and form of a referendum. ALGA also now believes it will not be possible for local government to run the most effective campaign in 2013, given the lack of time after a Committee report at the end of March and a subsequent parliamentary process to develop and pass a Bill... (ALGA, 2012, page 5)

We reiterate ALGA's points on what is essential to maximise success at the referendum:

- **Bipartisan support** is essential to ensure the best chance of success for a referendum proposal. With the lack of understanding in the community about the Constitution, voters rely on the political parties to formulate their opinions. Australian constitutional history demonstrates that unless there is broad bipartisan support, referendums are unlikely to succeed (ALGA, 2012, page 5&6).
- **The Government needs to take the lead** on the issue and demonstrate its support publicly to champion the change. The Government needs to take the opportunity to raise the issue above politics and avoid the temptation of using a referendum question opportunistically. The Australian public's lack of knowledge of constitutional matters, conservatism when it comes to changing the Constitution, and susceptibility to misinformation, requires the Government championing the change to be a trusted source of information on the need for, and consequence of, the change (ALGA, 2012, page 6).
- **The public needs to be informed about our Constitution**, and how to change it (ALGA, 2012, page 6).
- **The public needs to be informed in a factual way about the question** being asked, to be able to cast an informed vote at the ballot box. The official "yes" and "no" cases prepared by

Parliamentarians appear to have no requirement to adhere to facts and it has often been the case that opponents of amendments have distorted and exaggerated the dangers with the precise intention of frightening and misleading voters...ALGA believes that such exaggeration is neither appropriate nor ethical given that public funding is involved in producing and distributing this material...It recommended an independent non-political panel be set up prior to each referendum responsible for a communications strategy, including education materials and how best to distribute them to all voters (ALGA, 2012, page 7).

Comment on the level of State and Territory support.

The Associations support ALGA's comments on the level of State and Territory Government support on pages 8 & 9.

We would particularly like to highlight the following:

ALGA acknowledges that the support of most if not all of the state governments is an important factor in shaping the chances for overall success of a referendum for financial recognition. For this reason ALGA has varied its preferred set of words for an amendment to reinforce its view that the form of financial recognition sought by local government would not have an adverse impact on the powers and interest of the states with regard to local government (ALGA, 2012, page 9).

The Associations wish to expand on the position of the NSW Government as best we understand it. We think we can fairly describe the NSW Government's position as supportive of symbolic constitutional recognition but opposed to financial constitutional recognition unless and until evidence is presented that it is the only course of action to overcome a deep problem.

Up until relatively recently the Associations understood we enjoyed the support of all major parties in the NSW Parliament. In the run up to the 2011 NSW Parliamentary elections the NSW Liberals and Nationals when responding to LGSA priorities said they endorse the proposal from the Australian Local Government Association for a referendum to amend the Australian constitution to give the Australian government the power to fund Local Government and to enshrine people's rights to democratically elect their councils. The position of the NSW Liberals and Nationals on financial recognition has reversed since forming Government in 2011.

When the Expert Panel on Constitutional Recognition of Local Government reported they took the view that the NSW Government had offered in-principle support but were awaiting the panel's findings as to whether constitutional amendments are 'the best way to achieve financial sustainability and enhanced status for local government'.

In support of this general comment they offered the following observations on the nature and level of NSW Government support:

- That there was in-principle support for symbolic recognition – in summary they noted 'In principle the NSW Government supports consideration of symbolic recognition'. However, 'care should be taken to ensure that unintended legal and practical consequences do not arise'; and
- That there were reservations but not explicit opposition to financial recognition - in summary they noted '...there may be options for refining funding arrangements ... that do not require amendments to the Constitution'.

Again at the time of its report the expert panel noted 'no State political figure suggested that they would actively campaign for a 'Yes' vote'. This continues to be the case.

The latest written advice from the NSW Government, conveyed to the Associations in August 2012 by Hon Don Page, Minister for Local Government and Minister for the North Coast reads as follows:

"... the Government supports in principle consideration of symbolic recognition as a way of enhancing the status of local government. The Government considers that such recognition is

timely and appropriate as it would reflect the changing role of local government and its important contribution to the growth and prosperity of Australia's diverse local communities.

This is consistent with *NSW 2021: A Plan to Make NSW Number One*, which aims, among other things, to maximise opportunities for people to improve their neighbourhoods and environments through the enhanced status of local government.

The Government is not in a position to support financial recognition of local government for a number of reasons. These include concerns that an amendment to the Constitution may allow the Federal Government to grant funds directly to local government which could result in *NSW 2021* and other major State Government policies being sidetracked or not given due regard. They also include concerns that financial recognition of local government could raise expectations that the Commonwealth will intervene in local government administration, thereby creating confusion about Federal, State and local government responsibilities and blurring the lines of accountability that exist between governments and their constituents.

While the Government acknowledged that the High Court's decisions in *Pape v Commissioner of Taxation* and *Williams v Commonwealth of Australia and Ors* may have cast some doubt over the legal ability of the Commonwealth to provide funding to local councils other than through the States in accordance with section 96 of the Constitution, the Government is of the view that amendments to the Constitution should not be made in the absence of clear evidence that existing funding arrangements are deficient."

The Associations were very disappointed with the marked change to the negative by the NSW Liberals and Nationals Government. The Associations do not believe that each of the stated concerns either singularly or together warrant opposing financial constitutional recognition. They do not represent a compelling case to resist change when legal opinion acknowledges that Local Government may be one High Court challenge away from losing programs like Roads to Recovery. The fear that the Commonwealth Government granting funds directly to Local Government could result in *NSW 2021* and other major State Government policies being diminished or derailed seems very exaggerated. There has been no evidence that direct funding such as Roads to Recovery over its life, the Nation Building – Economic Stimulus Plan and the Regional and Local Infrastructure Program, has done anything other than allow Local Government to meet local needs in a way that is entirely consistent with the NSW Government plans of the day. The evidence strongly indicates that these programs have complemented State Government plans and assisted Local Government in meeting their obligations under such plans. It should also be noted that the NSW Government (and other state governments) of the day, enthusiastically welcomed these programs.

We struggle to see how the sorts of direct funding that ALGA & the State and Territory Associations continue to lobby for could undermine *NSW 2021* or other plans. The fear that financial recognition could raise expectations that the Commonwealth will intervene in Local Government administration, thereby creating confusion about Commonwealth, State and Local Government responsibilities and blurring the lines of accountability that exist between governments and their constituents, also seems unwarranted. ALGA & the State and Territory Associations have been clear this is not what they seek and have proposed changes to section 96 that can in no way imply such a power. Local Government is not asking for change, we are seeking protection of the Commonwealth's ability to continue to provide direct funding to Local Government as it has done in the past: simply maintenance of the status quo.

The Associations suggest there may be room to convince the NSW Government that there is now clear evidence that existing funding arrangements are deficient. We have again sought to have dialogue with the Premier and senior Ministers on this issue. It is possible the NSW Government can be won over through careful negotiations in the long run. However, this is likely to take longer than the time available between now and a 2013 election.

Comment on potential consequences for Local Government, and States and Territories.

The Associations support ALGA's comments on consequences for Local Government and for State and Territory Governments support on pages 9 to 14.

In particular, we strongly support the following observations by ALGA:

ALGA has strong legal advice and informed commentary from leading constitutional academics that the constitutional validity of the direct federal funding of local government is uncertain.

High Court decisions in the *Pape* case and the *Williams* case support this view (ALGA, 2012, page 9).

Furthermore, NSW Local Government shares ALGA's deep concerns about direct funding such as Roads to Recovery. Again we reinforce ALGA's points:

The importance of direct funding to local government through the Roads to Recovery program should not be underestimated. Over its life so far, the program has provided more than \$3.5 billion of funding to local communities for local roads. The program has been extended until 2018-19 by which time a total of more than \$5.5 billion will have been provided (ALGA, 2012, page 10).

At this point, however, it must be stressed that the Roads to Recovery program has not been challenged in the High Court or declared invalid and there is no reason why funding cannot continue.

Nevertheless, ALGA's expectation is that there will be further challenges in the foreseeable future and inevitably a High Court decision which directly goes to the validity of direct payments to local government (ALGA, 2012, page 10).

The Associations support the analysis on issues relating to Financial Assistance Grants.

The Associations need to stress that in seeking recognition, NSW Local Government does not seek to alter the relationship between itself and the NSW State Government, through setting up Commonwealth processes for intervention or protection from amalgamation or dismissal.

Comment on other matters relevant to the conduct and the timing of any referendum.

The Associations support ALGA's comments other matters on pages 14 to 16.

We strongly support the following:

ALGA is not opposed to holding a referendum simultaneously with an election, but the Board of ALGA is committed to ensuring that the referendum is held at a time which maximises the chances for success. ALGA believes that the referendum should be held when the pre-requisites identified by ALGA in its submission to the Expert Panel, and those identified by the Panel itself, have been met. This will maximise the chances of a successful referendum. There must be a commitment to a set of specific words which can achieve the financial recognition option. These words must provide the reassurance sought by State Governments regarding their Parliament's continued legislative responsibility for local government. There must be a negotiation by the Commonwealth with the States to achieve acceptance of these words and then a commitment to a public education campaign to engage the voting public. At this point ALGA does not believe that these pre-requisites can be achieved in time for a successful referendum to be held in conjunction with a Federal election held between August and November 2013 (ALGA, 2012, page 15).

On the possibility of an early Australian Parliamentary Election in 2013, the Associations also take the view that ALGA, the State and Territory Associations and member councils would not be in a position to support a referendum being held at such an election. We concur with ALGA that the short

time frame would preclude an effective campaign being run by Local Government and insufficient time to educate and inform voters (ALGA, 2012, page 15).

The Associations support ALGA's argument that options to reduce the costs associated with referendums should be explored, including the option of potentially holding a referendum by postal vote or electronic vote. In particular, the use of electronic voting is evolving and its potential use in a referendum may also help to address the concerns around costs. These options do not appear to have been previously considered. They may represent mechanisms which could help the timing of a referendum being determined by the reference to when it might succeed on its merits, rather than being the subject of politicisation as part of a broader election campaign.

Finally, the Associations stress the need for further and significant financial assistance to be provided by the Australian Government to ALGA to assist with funding of a national advertising campaign for the 'yes' case. Whilst councils across Australia are contributing towards the costs for this campaign, ALGA and its member State and Territory Associations simply do not have access to the considerable finance that will be required to fund this type of large scale national advertising campaign. A national advertising campaign to promote the merits of the 'yes' case will need to utilise the full range of communications, media and advertising channels, including a major media buy and a significant public relations and community liaison component. In addition to the significant contributions from individual Local Governments, it is reasonable to suggest, based on other large scale advertising campaigns of similar type that ALGA would require at least \$10 million in Australian Government assistance to mount a credible national advertising campaign on such a critical issue.

Conclusion

Like ALGA the Associations welcome the establishment of the Joint Select Committee.

The Associations remain committed to the financial recognition of Local Government and to a referendum being held at a time which maximises the chances for success and strongly support the work of ALGA on this.

Financial recognition through a change to section 96 of the Constitution is critical to removing uncertainty around the continued direct federal funding of Local Government.

The wording of the amendment to section 96 proposed by ALGA to allow the continuation of direct Australian Government funding of Local Government has been developed to ensure there is no impact on the power of the State Governments to legislate for Local Government.

We support ALGA's case that the chances of success for a referendum to recognise Local Government depend on satisfying the pre-requisites identified by the Expert Panel and ALGA, including:

- Commonwealth negotiation with the States to win their support;
- a publicly funded education campaign on the Constitution, constitutional change and the Local Government question; and
- amendments to the relevant legislation to allow public funding of the "yes" and "no" campaigns.

We agree with ALGA that these pre-requisites have not been met and delays in the process have significantly diminished the chances for a successful referendum in 2013.



Draft Submission to the Expert Panel on Constitutional
Recognition of Local Government

November 2011

Executive Summary:

The Local Government Association of NSW and Shires Association of NSW strongly support the constitutional recognition of Local Government.

Our preference is for the financial recognition of Local Government, with inclusion in a Preamble if one is to be developed as well.

We support ALGA's observation in its submission that the Australian federal system of government established in 1901 has many strengths. But we appreciate that the Australian nation and the responsibilities of all spheres of government have changed significantly since 1901. If the federal system and the Constitution are to reflect contemporary Australian societal values and governance and political practice, there needs to be periodic amendments.

The constitutional recognition of Local Government has been the subject of a series of resolutions passed by councils at National General Assemblies of Local Government, Conferences of the Local Government Association of NSW, and Conferences of the Shires Association of NSW over the years. We have worked to support the work led by ALGA in response to those calls, examining the issue and determining an agreed position for an appropriate amendment to the Australian Constitution to meet Local Government's and the Australian community's needs.

While it will be a significant challenge, we believe there is evidence that the public will support the constitutional recognition of Local Government if it is designed to resolve a practical problem and deliver practical results in local communities, and if it is preceded by dispassionate information how the Constitution works and what a 'yes' case means.

Our preference for financial recognition reflects the increased use of direct funding of Local Government in recent years by the Australian Government to achieve national objectives and the continuing doubts about the constitutional validity of such direct funding.

We support ALGA in the view that the High Court decision on *Pape v Commissioner of Taxation* (2009) highlights the need for an appropriate amendment to ensure that the Australian Parliament may, if it so determines, 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. Moreover, the Associations and ALGA's preferred option reflects the view that a change to Section 96 of the Constitution to provide for financial recognition is a simple proposal that will resonate with the broader community and garner the necessary support to succeed at a referendum.

Opening:

The Local Government Association of NSW and Shires Association of NSW (the Associations) are the peak bodies for NSW Local Government.

Together, the Local Government Association and the Shires Association represent all the 152 NSW general-purpose councils and the special-purpose county councils. Further, representatives of the NSW Aboriginal Land Council are members of the Local Government Association of NSW.

The mission of the Associations is to be credible, professional organisations representing Local Government and facilitating the development of an effective community-based system of Local Government in NSW. In pursuit of this mission, the Associations represent the views of councils to NSW and Australian Governments; provide industrial relations and specialist services to councils and promote Local Government to the community.

The Associations thank the Expert Panel on Constitutional Recognition of Local Government for the opportunity to make a submission concerning the Constitutional Recognition of Local Government. The Associations have a long standing and vital interest in the matter.

As the Associations have been closely and actively involved in the development of the Australian Local Government Association's long-term position on Constitutional Recognition of Local Government, and its response to the Expert Panel, the Associations strongly support ALGA's submission to the Expert Panel. Therefore the Associations will reiterate pertinent parts of ALGA'S submission, and add NSW perspectives where that is useful.

Purpose:

This submission will examine the case for, support for, and possible types of Constitutional Recognition of Local Government.

The Associations are aware of and support the Australian Government commitment to pursue the recognition of Local Government in the Australian Constitution.

We note that the Australian Government has established an independent Expert Panel to consult with stakeholder groups and the community on the level of support for constitutional recognition of Local Government and to identify possible forms that recognition could take. The Expert Panel will report to Government in December 2011.

We recognise that the Terms of Reference for the Expert Panel are as follows:

The Expert Panel should, report on and make recommendations regarding:

- the level of support for constitutional recognition among stakeholders and in the general community; and
- options for that recognition.

The Expert Panel will have regard to the benefits and risks of the different options as well as outcomes that may be achieved for key stakeholders through constitutional recognition of Local Government.

In conducting its inquiry, the members of the Expert Panel will consult:

- Local Governments and their representative bodies, including the Australian Council of Local Government and the Australian Local Government Association (ALGA);
- State and Territory Governments;
- Federal parliamentarians;
- Subject matter experts, such as constitutional reform, Local Government and regional government experts; and
- Interested members of the Australian community.

Background:

Before we turn to our comments on the level of support for constitutional recognition among stakeholders and the options for reform we would like to acknowledge and support the narrative spelt out in *ALGA's process – how we got to where we are* having been part of that process.

In 2007 the ALGA Board, supported by all State and Territory Local Government Associations, identified Constitutional reform as a major strategic priority within the sector. Local Government has for some decades sought this objective.

After a period of consultation and research ALGA developed a range of materials to assist councils to understand the complexity of constitutional reform and to consider options that might be pursued.

Councils were encouraged to conduct a 'council conversation'. These conversations were designed to engage councils on the issues and to assist them to determine the priority of constitutional reform and develop initial views on the nature of reform that should be pursued. We encouraged NSW Government to engage in this process.

In December 2008 ALGA convened a special Constitutional Summit of Local Government, where delegates more formally examined options for the form of constitutional recognition that could be sought by Local Government. Again we supported this summit and encouraged participation by our member councils throughout NSW. ALGA worked with a panel of constitutional law experts to develop detailed materials and inform debate, including Professor George Williams, Associate Professor Anne Twomey, Mr Scott Bennett and Mr Kerry Corke.

The outcome of the Summit was a 'Declaration' which was unanimously agreed by delegates. The Summit endorsed three core principles as the basis of any referendum on Local Government:

- The Australian people should be represented in the community by democratically elected and accountable Local Government representatives;
- The power of the Commonwealth to provide direct funding to Local Government should be explicitly recognised; and
- If a new preamble is proposed, it should ensure that Local Government is recognised as one of the components making up the modern Australian federation.

Local Government delegates further accepted that in seeking recognition, the form of any proposed referendum *should not seek to remove the nexus between State/Territory Governments and Local Government*.

Following the Summit, ALGA agreed on a comprehensive strategic framework to achieve the inclusion of Local Government in the Constitution. Work to-date has focused on:

- a) Identifying and building sectoral support for a preferred proposition;
- b) Convincing all major political parties of the need for and merit of constitutional recognition of Local Government;
- c) obtaining Government agreement to conduct a referendum on an appropriate form of recognition;
- d) encouraging the Government to establish an appropriate process to take a referendum forward successfully; and
- e) preparing to conduct a coordinated national campaign to support the 'yes case' for the referendum

Over the past two years ALGA has met with key decision-makers to discuss the importance of constitutional reform, the implications arising from national research commissioned by ALGA, and a proposed pathway for a referendum during the term of this parliament. ALGA believes that the end of 2013 offers the best option for a referendum to include Local Government in the Constitution.

In the time since the 2007 election, the Australian Government has placed the issue on the agenda of the Australian Council of Local Government, and has consulted ALGA closely on the process required. In June 2010 it provided a grant to ALGA of \$250,000, to be spent over two years, to raise the profile of constitutional recognition of Local Government, particularly in local communities, and to assist the Australian Local Government Association to support councils in engaging their communities on this issue.

ALGA notes each of the key national political parties have indicated support for progressing a referendum to recognise Local Government. We can add that the situation in NSW is positive. In the 2011 NSW elections, the Associations sought responses from the parties contesting the election on where they stood on our priority that the incoming government 'Support the national Local Government campaign to recognise Local Government in the Australian Constitution, to ensure the Australian Government can directly fund Local Government nationwide'. The NSW Liberals and Nationals, NSW Labor, the Greens and the Christian Democratic Party all expressed support for this proposition.

Local Government has long supported the inclusion of financial recognition in a constitutional reform package, based not only on the profile of the issue as a result of the 1974 referendum but also more recently on the increasing importance of direct funding programs to Local Government and the Australian Government's increasing propensity to rely on such funding mechanisms to achieve national objectives. Over the past decade, Australian 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. We support ALGA's view that without the mechanism of direct funding, these initiatives would not have been implemented.

The Associations agree with ALGA, that the 2009 the High Court decision in *Pape v Commissioner of Taxation* (2009) served only to crystallise the strength of the financial recognition issue (see further discussion below under consideration of options).

Level of Support

The Expert Panel is charged with assessing the level of support for constitutional recognition among stakeholders and in the general community.

Support amongst stakeholders

We are aware that support amongst Local Government sector stakeholders is very high. Local Government is committed to supporting constitutional change to allow the Australian Government to fund Local Government directly.

Over the past 7 months, almost 80% of councils across Australia have pledged their support for constitutional recognition of Local Government – specifically financial recognition. Almost 440 of the 560 councils nationwide have passed resolutions at their council meetings to support financial recognition and inclusion in a Preamble if one is proposed. In NSW 14? of the 152 councils have passed these resolutions.

Councils believe this 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. In response to community demand, Local Government is filling gaps never envisaged in the Australian Constitution, but without being adequately resourced to do so. 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 Pricewaterhouse 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. The report recommended that Local Government seek funding security through (a) a Local Community Infrastructure Renewals Fund of around \$200m - \$250m per annum, (b) more secure and adequate Financial Assistance Grants funding from the Commonwealth, as well as recommending that councils undertake internal reforms to ensure that the sector is maximising its operational and financial effectiveness.

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

ALGA and State and Territory Associations research shows 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 Australian Government clearly sees merit in providing support to local communities because it has done so for the past 30 years. Over the past decade, the Australian 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 formalise and secure what has been occurring for the past ten years to give financial security to communities.

Support in the general community

Notwithstanding the high level of sector support, neither ALGA nor State and Territory Associations, underestimate the size of the task involved in seeking any amendment to the Constitution.

History shows that achieving constitutional change in Australia is an enormous challenge and does not happen easily.

We support ALGA's view that this referendum will be supported by the Australian people and will be successful. Independent research commissioned by ALGA in 2011 shows that when prompted support for direct funding of Local Government increased was supported by 68% of respondents nationally. (By prompted we mean that respondents in this research were informed that the Australian constitution currently does not recognise and protect the existence of Local Government and funding for Local Government only occurs through the states according to convention.)

In 2009 ALGA commissioned national research to gain a deeper understanding of Australians' attitudes to the different levels of government; to explore the level of understanding Australians have about the Australian Constitution and the process by which it can be changed; to seek an understanding of Australians' perceptions of Local Government; and to identify any differences in these factors across the states.

ALGA's research showed positive support for the general concept of constitutional recognition of Local Government. 61% of respondents said yes when asked the simple question of whether the Australian Constitution should recognise and protect the existence of Local Government. Support was strongest in the rural (69%) and regional and provincial areas (65%) compared with the outer metropolitan (62%) and inner metropolitan (55%) areas.

However, ALGA's research also highlighted, a lack of understanding amongst voters about the Constitution and processes to change it. Only 76% of Australians of voting age recognise that Australia has a Constitution, with the most informed group being males over 50 years of age and the least informed group being females between 18 and 24. Similarly, only 22% of those surveyed understood that constitutional change required the support of a majority of voters in a majority of states and 25% admitted they did not know the requirements.

Less than half of respondents were aware that State Governments were recognized in the Constitution. In terms of Local Government, 19% thought that Local Government was already recognised in the Constitution and 21% did not know.

The lack of understanding about constitutional issues, the conservative nature of the voting public and the reasons for the low success rates for referenda have been the subject of several reviews (e.g. Scott Bennett, John Warhurst, Prof Cheryl Saunders). These findings and the findings of ALGA's own research indicated that it is crucial that more effort is directed towards better informing the Australian public around what is involved in constitutional change.

ALGA's research showed that regardless of age, people need to be convinced if the merits of any referendum question. Nationally 69% of those surveyed said would make up their mind depending on the particular issue and a further 15% were very cautious about changing the Constitution, with only 7% being enthusiastic about changing the Constitution. ALGA's submission to the House of Representatives' Inquiry into the Machinery of Referendums in

2009, highlighted the need for much greater effort to inform Australians about their Constitution and how it can be amended, if they are to be fully and meaningfully engaged in any referendum debate.

On the basis of its research, ALGA recommended to the committee that before any proposals to amend the Constitution can be put to the Australian people, there needs to be a nationally funded education campaign on the nature of the Constitution and the process for constitutional change. ALGA's preferred model is for a national program run by the Australian Electoral Commission which focuses on the role of the Constitution, the mechanism by which it can be changed and the role of individual voters.

The House of Representatives Committee's report *A Time for Change: Yes/No?* recommended sweeping changes to the way in which Australians are provided with information leading up to a referendum. It concluded that material made available to electors should inform the voter of the purpose and ramifications of change because "if a proposal for change is not fully understood, it is more likely that a voter will vote 'no' and the defeat of a proposal may reflect voter misunderstanding or fear of change rather than a true assessment of the proposal" (December 2009, page 54). It considered that education of the public is vital to ensure that voters have the capacity to make an informed decision, saying that the Yes/No arguments alone are insufficient to adequately prepare voters to exercise their democratic right and responsibility in a referendum. A national civics education program was recommended by the Committee to improve the knowledge and understanding of Australians about the Australian Constitution prior to each referendum (December 2009, page 60)

It also called for the establishment of an independent, non-partisan Referendum Panel prior to each referendum, which would be responsible for developing an overarching communications strategy for the referendum, including identifying education material and methods of distributing this material.

The record of reform to date supports the view that the current process for change does not encourage participation or a positive outcome, thereby disadvantaging legitimate proposals for amendment. ALGA believes the implementation of these public education measures would result in voters having a better understanding of the referendum process, therefore leading to a better understanding of the question or questions being put at a referendum, and more informed public engagement and voting.

In February 2011 ALGA commissioned follow-up research to its 2009 survey. The 2011 findings reinforce the earlier findings. The predominant finding was that confidence in the capacity of Australian and State governments had dropped post-global financial crisis. Local Government had increased in importance, ostensibly as a result of lost confidence in Australian and State governments.

Fifty nine percent (59%) rated Local Government as very or somewhat important, compared with 62% for State Government and 64% for Australian Government. Importantly, there had been a change to the perception of which sphere of government was on the right track. Forty two percent (42%) thought Local Government was on the right track (up from 37% in 2009), 39% thought the Federal Government was on the right track (down from 56% in 2009) and 33% considered the State Governments to be on the right track (32% in 2009). Of all the spheres of government, Local Government is currently perceived as being most on track.

The importance of Local Government has increased from 55% to 73% in rural areas since 2009 and amongst women from 59% to 65%. Women in the 35-49 age group saw the biggest increase, rising by 12 points.

Overall, 57% of voters thought the Australian Constitution should recognise and protect the existence of Local Government, a little down on the 2009 figure. A significant finding in the new research, however, is that when prompted with the fact that currently the convention is for Australian Government funding to occur through the States rather than directly to councils, support for constitutional recognition rose 11 points to 68%.

Voters' knowledge of the Constitution, or awareness of whether Local Government was recognised or not, showed virtually no change since 2009. This is not surprising, as there was no attempt to increase this knowledge. The findings reinforce the need for education and communication in the lead up to a referendum.

Consideration of the Options

The Associations note that in its considerations, the Expert Panel is looking for ideas on constitutional recognition that will:

- make a practical difference,
- have a reasonable chance at a referendum, and
- resonate with the public.

We recognise that the panel has identified four ideas that appear to satisfy these three criteria and is looking for specific feedback on each of them.

We note these four ideas are as follows:

- Symbolic recognition,
- Financial recognition,
- Democratic recognition, and
- Recognition through federal cooperation.

We shall cover each in turn below.

Symbolic recognition

The Expert Panel notes that 'symbolic recognition of Local Government would seek to enhance the status of Local Government in the Australian Federation in a way that has minimal or no legal effects'.

The Expert Panel poses the following question:

- Do you think that, if the Constitution is changed to include a preamble or statement of values, Local Government should be referred to in either

Like ALGA, the Associations do not support symbolic recognition as a stand-alone option. Symbolic recognition in a new Preamble to the Constitution was one of the options considered by Local Government.

The Constitutional Convention in 1998 discussed a new Preamble if Australia became a Republic. It discussed the possible content of a new Preamble, recommending that it should make reference to the origins of the Constitution and Australia's evolution into an independent, democratic and sovereign nation; recognise Australia's federal system of representative democracy and responsible government; affirm the rule of law; and

acknowledge the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders. It rejected two different proposals for the inclusion of a reference to Local Government in the Preamble.

The Preamble is currently only four lines long and has no legal force and it is doubtful whether mention of Local Government would have any real effect on constitutional interpretation.

According to leading experts including Professor George Williams (2010) and Professor A J Brown there are several problems with inclusion in the Preamble alone: the change would be symbolic at best, would not make any substantial change to the position of Local Government, and would be unattractive to voters.

In order to vote yes, the public must be convinced of the significance of an amendment in real terms and they are unlikely to vote yes for symbolic recognition alone. However, along with ALGA, we accept, that extensive public consultation could enhance the chances of success of a preamble, especially if recognition is presented as part of a broader change.

Nevertheless, ALGA's independent research indicates that the public is unlikely to support a symbolic change. The majority of people across all age groups need to be convinced of the merits of any referendum question, with around 70% saying they would make up their mind depending in the particular issue. Research indicates that voters are more likely to vote for substantive forms of recognition which clearly go towards helping reform Local Government and improve its effectiveness, and where benefits to themselves are demonstrable.

ALGA's consultation process and research supports the view that symbolic recognition in a Preamble would not gain the acceptance of voters, neither would it be likely to gain bipartisan support. In order to rectify the problems which have been identified in the High Court's *Pape* decision, there needs to be a substantive change to the Constitution to allow the direct funding relationship between the Australian Government and Local Government, which has existed for the past decade, to continue. This can only be achieved through financial recognition.

However, in addition to financial recognition in the Constitution, if a new Preamble is proposed, we support ALGA in seeking that Local Government be mentioned as a sphere of government in the Australian Federation.

Financial recognition

The Expert Panel notes that 'many councils rely on funding, from both their State Government and the Commonwealth Government, to supplement income from rates and other charges and to provide essential services and infrastructure in their communities'.

The Expert Panel suggests amendments to section 96 could be made in the following two ways (new words are in *italics*):

1. ... the Parliament may grant financial assistance to any State *or to any Local Government body formed within the limits of a State or Territory* on such terms and conditions as the Parliament thinks fit.
2. ... the Parliament may grant financial assistance to any State *or to any Local Government body* on such terms and conditions as the Parliament thinks fit.

They go on to say: ‘the first of these two ideas more clearly affirms that the establishment of the system of Local Government is a matter for State and Territory legislation.’

The Expert Panel poses the following questions:

- Should the Constitution be changed to explicitly say that the Commonwealth Government can provide funding directly to local councils?
- Do you agree with either of the suggested changes to section 96 of the Constitution?

Like ALGA, the Associations support financial recognition in the Australian Constitution. We wholeheartedly support ALGA’s preferred position, to seek financial recognition in the Australian Constitution. This position has been determined after a comprehensive process, including extensive consultation, over several years.

ALGA commissioned Professor George Williams to examine in detail the three broad options for constitutional recognition of Local Government identified at the 2008 Summit:

- Recognition in a Preamble to the Constitution;
- Institutional recognition; and
- Financial recognition.

Professor Williams investigated each of these options as well as more general questions about the necessary preconditions for a successful referendum. It is worth noting that Prof. Williams’ advice was provided prior to the legal challenge by Bryan Pape to the Australian Government’s ability to provide a one-off bonus payment to eligible Australian taxpayers during the 2008-09 Global Financial Crisis. ALGA subsequently asked Professor Williams to provide an opinion on the implications of the High Court decision on *Pape v Commissioner of Taxation*.

Professor Williams’ original advice was that although the Australian Government used s81 of the Constitution to provide payments directly to Local Government, the need for an amendment to the Constitution to recognise Local Government remained the same as in 1974 – and while there was yet to be a successful challenge to such payment in the High Court, uncertainly remained about whether the Constitution in fact allowed the direct funding of Local Government by the Australian Government. The purpose of amending the Constitution would be to resolve the continuing uncertainty surrounding the Australian Government’s ability to continue to provide direct funding.

The findings of the High Court decision in *Pape v Commissioner of Taxation* (2009) 257 ALR 1, have brought to a head the question of whether the Australian Federal Parliament can appropriate money for any purposes it wishes under Section 81.

This is the third time that this question has come before the High Court.

The first instance was in 1945, involving the Pharmaceutical Benefits Scheme *Attorney-General (Vic): Ex rel Dale v Commonwealth (First Pharmaceutical Benefits Case)* (1945) 71 CLR 237. The High Court upheld the challenge by the Medical Society of Victoria that the Act was not authorised by the power of appropriation in Section 81 of the Constitution, but the meaning of “the purposes of the Commonwealth” was not clearly resolved. The second instance, in 1975, *Victoria v Commonwealth and Hayden (AAP Case)* (1975) 134 CLR 338 was for the expenditure of \$5.97m for the Australian Assistance Plan to establish Regional Councils for Social Development throughout Australia. The High Court rejected the challenge 4:3, while again leaving the question of the power of the Commonwealth

unresolved. Since the AAP Case the Commonwealth has proceeded on that a broad view of its power is correct, and it may fund whatever it wishes.

The case of *Pape v Commissioner of Taxation* [2009] HCA 23 unanimously rejected the Commonwealth's broad view of its power and resolved the legal uncertainty of the first two cases. Professor Williams' advice was that the decision was a clear rejection of the Australian Government's wide view of its own spending power and that there was no express or implied provision in the Constitution which grants the Commonwealth responsibility over Local Government. Consequently the Australian Government has no general power to directly fund Local Government bodies or activities under section 81 of the Constitution. The Australian Government is only able to directly fund Local Government bodies where this can be tied back to a federal power such as corporations power, nationhood and incidental powers or other powers (such as quarantine, marriage and territories). The Australian Government's tax bonus payment was upheld by a narrow majority based largely on the exceptional nature of the global financial crisis. It was determined that a combination of the executive power in Section 61, applied through its incidental power in Section 51(xxxix) provided the basis for making the payments.

The implication of this is that funding to Local Government will need to be assessed on each and every occasion against whether it falls under Commonwealth power. The Nation Building Roads to Recovery Program, first funded in 2001 is likely to 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 Community Infrastructure Program, cast as part of the Australian Government's Nation Building Economic Stimulus Plan in response to the global financial crisis, is likely to be upheld on the same basis as the tax bonus. However, as the economic crisis lessens, there will be a point where further funding will need to be justified as falling under another head of power.

The problems foreshadowed by the *Pape* case can be resolved by constitutional amendment. A precedent has been set by a constitutional amendment and referendum in 1946, to overcome the situation of the *First Pharmaceutical benefits Case*. In a similar way to inserting a new power in Section 51 (xxiiiA) to allow the Parliament to legislate with respect to "the provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorise any form of civil conscription), benefits to students and family allowances", 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."

The importance of the *Pape* case in identifying the limits of the Australian Government's powers has been subsequently underlined by the reliance on *Pape* as authority by the States and Territories in the case of *Williams v Commonwealth of Australia and Others* – currently before the High Court – concerning the National Schools Chaplaincy Program.

Following the *Pape* decision, Professor Williams' further advice was that the legal uncertainty was largely resolved by the High Court Decision, which clearly rejected the Australian Government's wide view of its own spending power and held that it can only fund specific Local Government bodies where this is tied back to a federal power. The

consequence is that past funding may be constitutionally invalid. Professor Williams concludes that the only long-term means of ensuring general direct funding is to bring about change to the Constitution by way of a referendum.

Democratic recognition

The Expert Panel notes that ‘councils, like the Commonwealth and State Governments, are democratic bodies that are answerable to their communities. Many Australians expect to be able to elect their local council, and vote out a council they do not agree with, in the same way as they can for Commonwealth and State Governments.’

But they note ‘there is no guarantee at a national level that local councils must be elected. Most State constitutions describe local councils as elected bodies, but whether and how that is achieved in practice depends on a normal Act of Parliament. The relevant section in the State constitution can also usually be amended simply by an Act of Parliament. Therefore, the final decision about whether local councils are elected or not lies with the State parliament, not the people.’

The Expert Panel continues on to note: ‘State Governments and parliaments have extensive powers to dismiss local councils and appoint administrators or replacements. The limits on these powers vary between the different States.’

The Expert Panel suggests two possible proposals for inclusion in the Constitution are as follows:

1. Each State shall, and each Territory may, establish and maintain a system of Local Government bodies directly chosen by the people.
2. Each State shall, and each Territory may, provide for the establishment and continuance of a system of Local Government elected in accordance with the laws of the State or Territory.

The Expert Panel poses the following questions:

- Should democratic elections for Local Governments be guaranteed by the Constitution?
- If so, which of the proposed provisions should be included in the Constitution?

Like ALGA, the Associations do not support tackling democratic recognition in the way suggested or at this time.

As ALGA highlights the 1988 Local Government referendum proposed the recognition of the “institution” of Local Government – namely the establishment and continuance of a system of government, with Local Government bodies elected in accordance with the laws of a State and empowered to administer and make laws for their respective areas in accordance with the laws of the State.

This proposal was resoundingly defeated with only 33.6% of Australians voting in favour of the proposal and failing to obtain a majority in any State. The ‘no’ case argued that it would further centralise government and erode the power of the State governments. It was also argued that it would stop dismissals or amalgamations of Local Government.

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. The terminology in the majority of State Constitutions currently allow the ‘appointment’ (as

opposed to the election) of Local Government representatives. The NSW Constitution, for example, provides that they be “duly elected or duly appointed”.

Any proposal to restrict the power of the States to dismiss or amalgamate Local Government bodies, would attract fierce opposition from the States, similar to that in 1988. Moreover, the December 2008 Constitutional Summit Declaration unanimously agreed that in seeking recognition, Local Government did not seek to break or change the relationship between itself and the State and territory governments, nor seek protection from dismissal or restructure.

We would add from our own work in our *modernising Local Government* project, there is little support amongst councils for making it a priority to seek change to the NSW *Constitution Act* to ensure councils are elected as opposed to appointed – and therefore by extension most councils would not see it as priority for action regarding changes to the Australian Constitution. Amongst the conclusions we reached earlier in 2011, after significant consultation with members were the following two:

- Overall councils support the need for the NSW Constitution to guarantee that councils are elected by local residents (not appointed, except in cases of extreme corruption or dysfunction). However, this should not be a high priority to campaign on in contrast to other initiatives covered later (in the report) (LGSA, 2011); and
- Generally councils object in principle to councils being dismissed by the NSW Government and being replaced by administrators. However if the practice must be maintained in cases of extreme corruption or dysfunction, the period of administration should be limited to no more than 2 years. Again this should not be considered a high priority for action in contrast to other initiatives covered later (LGSA, 2011).

Under both the proposals outlined by the Expert Panel to achieve democratic recognition, the Panel notes that “it is probable that State and Territory governments would not be able to exercise their executive powers to dismiss local council, as they have done in the past. Nor could they pass legislation authorizing themselves to do so either by legislative or executive order.” The Discussion Paper also notes that authority for State Governments to dismiss a council would require the addition of specific wording to that effect – similar to existing provisions in the Victorian Constitution.

We support ALGA’s view that this recognition option would not succeed at referendum. It would not be acceptable to State and Territory Governments, it would not gain bipartisan support and it is questionable whether it would resonate with voters. The Australian Constitutional Values Survey by Dr A J Brown in May 2008 indicated that only 46% of respondents were in favour of constitutional change that made it harder for Local Government bodies to be dismissed or amalgamated – fewer than those interested in purely symbolic recognition.

Democratic or institutional recognition will not have any real effect on, or seek to rectify, the problem highlighted by the High Court’s *Pape* decision to provide financial certainty for Local Government and its communities.

Recognition through federal cooperation

The Expert Panel notes that ‘a fourth idea is to change the Constitution to explicitly encourage cooperation between governments. In any such amendment, the role of Local Government could be expressly recognised in the context of improving the relationship between all three levels of government.

They continue on to note: ‘the three levels of government cooperate on many issues. However, the High Court has determined that some forms of cooperation, upon which the Commonwealth and all State Governments and parliaments had agreed, are not legally possible under the Constitution...’

The Expert Panel poses the following question:

- If the Constitution is changed to refer to the desirability of cooperation between the Commonwealth and the States, should Local Government be included in any such provision?

Like ALGA, the Associations do not support tackling collaborative federalism in the way suggested.

The Expert Panel qualifies the option of collaborative federalism, by saying that these matters go beyond the Expert Panel’s terms of reference and to consider this possibility would require a more extensive process of consultation that the Panel is able, or qualified, to undertake. Along with ALGA we accept this view.

This option was not seriously pursued by ALGA at the Constitutional Summit, or proposed as an option for Local Government constitutional reform by Professor George Williams.

However, Professor Williams has indicated in a number of forums, including his submission to the Senate Select Committee into the Reform of the Australian Federation, that Australia’s federal system is in need of fundamental reform, rather than small amendments around the edges.

In order to achieve optimal policy outcomes, a stronger framework for collaborative federalism needs to be established. According to Prof. Williams many substantial reforms can be accomplished by agreement or through statute rather than through the more difficult process of constitutional change.

Local Government, as a sphere of government, should be recognised in the Australian Constitution to more accurately reflect the role it plays in contemporary Australian society. However, along with ALGA we believe it is appropriate for Local Government to be recognised under the Constitutions of the States and Territories, and remain under their jurisdiction.

Local Government needs greater legal certainty about direct funding through financial recognition, and that recognition of Local Government can occur independently of a wider review of the need for collaborative federalism and reform in this area.

Conclusion

We wholeheartedly concur with ALGA that Local Government has proven itself to be competent, reliable, innovative, adaptable and flexible in changing environments and is committed to progressing national objectives in collaboration with the other spheres of government. Local Government believes that its growing role in the Federation must be supported through constitutional reform to recognise it as a sphere of government and provide the capacity for direct funding from the Australian Government so that it can continue to meet the needs of the communities it serves.

Along with ALGA and our sister Associations, the Local Government Association of NSW and Shires Association of NSW welcome the commitment of the Australian Government to hold a referendum on the recognition of Local Government by 2013 and the appointment of the Expert Panel as the mechanism to assess support for the recognition of Local Government and make recommendations on possible specific changes to the Constitution.

We strongly support the option of financial recognition reached by Local Government following the processes conducted by ALGA nationally and the Associations in NSW as the only option likely to gain the necessary support for a successful referendum. This view is based on research which shows that the population will support change where it has merit and where it will achieve a concrete outcome.

References:

House of Representatives Legal and Constitutional Affairs Committee	<i>A Time for Change: Yes/No?</i> Report of the House of Representatives Legal and Constitutional Affairs Committee into the Machinery of Referendums, December 2009
Local Government and Shires Associations of NSW	<i>Modernising Local Government: consultation report</i> April 2011
Professor George Williams and Nicola McGarrity,	'Recognition of Local Government in the Commonwealth Constitution' (2010) 21 <i>Public Law Review</i> 164
Professor George Williams,	<i>Advice re Pape v Commissioner of Taxation and direct federal funding of Local Government</i> , 6 August 2009

APPENDIX 1: Extracts from Associations' Policy Statements

Extract from Local Government Association of NSW Policy Statements

Constitutional and legislative basis of Local Government

Local Government, individually and jointly through representative bodies, has an independent role in the Australian system of government. This role, and the necessary powers to fulfil it, should be clearly defined and protected.

The Australian and NSW Constitutions should provide for legal recognition of a duly elected system of Local Government as a separate tier of Government.

The Local Government system should be based on the democratic principle of election of the governing body from, and by, the community at large.

Voting at Local Government elections should be compulsory for residents.

Local Government elections should be conducted under the preferential system where one or two positions are to be filled. Where more than two positions are to be filled, election should be conducted on the proportional systems. Provided preferential and proportional systems are used as outlined in this policy, Local Government supports uniform voting systems for all three spheres of Government.

...

There should be a high commonality of electoral systems followed by the three levels of government...

Extract from Shires Association of NSW Policy Statements

Constitutional and legislative basis of Local Government

Local Government, individually and jointly through representative bodies, has an independent role in the Australian system of government. This role, and the necessary powers to fulfil it, should be clearly defined and protected.

The Australian and NSW Constitutions should provide for legal recognition of a duly elected system of Local Government as a separate tier of Government in proper recognition and respect for the sovereignty of the people to elect their representatives.

The Local Government system should be based on the democratic principle of election of the governing body from, and by, the community at large.

Voting at Local Government elections should be compulsory for residents.

Local Government elections should be conducted under the preferential system where one or two positions are to be filled. Where more than two positions are to be filled, election should be conducted on the proportional systems. Provided preferential and proportional systems are used as outlined in this policy, Local Government supports uniform voting systems for all three tiers of Government.

...

There should be a high commonality of electoral systems followed by the three levels of government. A special review committee consisting of the Local Government and Shires Associations, Institute of Municipal Management, Electoral Office and Department of Local Government should agree upon administrative and other arrangements...