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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CONSTITUTION ALTERATION (LOCAL GOVERNMENT) 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, the Hon Mark Dreyfus QC MP)

CONSTITUTION ALTERATION (LOCAL GOVERNMENT) 2013

GENERAL OUTLINE

In August 2011 the Australian Government appointed an Expert Panel on Constitutional Recognition of Local Government (the Expert Panel) to identify options for the constitutional recognition of local government. The Expert Panel was chaired by the former Chief Justice of the Supreme Court of NSW, the Hon James Spigelman AC QC.

In December 2011 the Expert Panel presented its final report to the Australian Government. A majority of Panel members concluded that financial recognition by amendment of s 96 of the Constitution was a viable option within the 2013 timeframe indicated by the Panel's terms of reference.

On 1 November 2012 the Commonwealth Parliament established a Joint Select Committee on Constitutional Recognition of Local Government to inquire into and report on the majority finding of the Expert Panel. The Joint Select Committee presented a preliminary report on 24 January 2013 and a final report on 7 March 2013. In both reports the Committee recommended, consistent with the findings of the Expert Panel, that a referendum on financial recognition of local government be held at the 2013 federal election.

OVERVIEW OF PROPOSED CONSTITUTIONAL ALTERATION

The proposed constitutional alteration would amend s 96 of the Constitution of the Commonwealth of Australia to make specific provision in relation to the granting of financial assistance to local government bodies.

FINANCIAL IMPACT STATEMENT

The proposed constitutional alteration would have no financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Constitution Alteration (Local Government) 2013 is not within the scope of the *Human Rights (Parliamentary Scrutiny) Act 2011* and therefore does not require a Statement of Compatibility under that Act.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

1. Clause 1 states that the proposed law to alter the Constitution in relation to financial assistance to local government may be cited as the *Constitution Alteration (Local Government) 2013*.

Clause 2 – Commencement

2. Clause 2 brings the *Constitution Alteration (Local Government) 2013* into force on the date the Act receives the Royal Assent.

Clause 3 – Schedule 1

3. Clause 3 alters the Constitution in accordance with Schedule 1.

Schedule 1

4. Item 1 of Schedule 1 alters the heading to s 96 of the Constitution by including the words ‘and local government bodies’ at the end.

5. Item 2 alters the Constitution by inserting in s 96, after ‘to any State’, the text ‘or local government body formed by a law of a State’. As amended, s 96 would be as follows:

96 Financial assistance to States and local government bodies

During a period of ten years after the establishment of the Commonwealth and thereafter until the Parliament otherwise provides, the Parliament may grant financial assistance to any State, or local government body formed by a law of a State, on such terms and conditions as the Parliament thinks fit.

6. The alteration of s 96 would establish specifically that the Commonwealth may grant financial assistance to local government bodies formed by a law of a State. This financial assistance can be for a wide range of services and facilities and, without limiting the generality of the specific provision, the long title to the Act refers to grants of financial assistance for community and other services typically provided by local government bodies. The Commonwealth would thus no longer need to rely on other, less specific sources of power to provide financial assistance to local government bodies.

7. However, the amendment would not enable the Commonwealth to interfere with the creation or regulation of local government bodies by the States. It would form part of an existing provision – s 96 – which does not involve any grant of power to the Commonwealth beyond the ability to provide financial assistance on terms and conditions. This financial assistance must be optional; that is, recipients must have the option of rejecting the proposed financial assistance and the terms and conditions. The alteration has thus been designed specifically to avoid any suggestion that it might permit interference by the Commonwealth with the creation or regulation of local government bodies by States, or enable the Commonwealth to compel local government bodies to accept funding or terms and conditions.

8. In particular, the Commonwealth could not provide financial assistance on terms or conditions that local government bodies could not meet under State law (just as currently financial assistance cannot be provided to States on terms and conditions which they cannot meet).

9. Further, States would not be prevented from changing their systems of local government should they wish to do so. The amendment would not prevent a State abolishing any local government body, or curtailing the activities or expenditure of a local government body.

10. In providing that financial assistance may be granted to any local government body ‘formed by a law of a State’, the amendment would cover any body formed by or in accordance with primary, delegated or subordinate State legislation.

11. No reference to bodies formed by a law of a Territory (as suggested by the Expert Panel) has been included. Such a reference is unnecessary because grants of financial assistance to the Territories and bodies formed by Territory laws may be made under s 122 of the Constitution, a provision which the Expert Panel was not called on to consider.

12. While the alteration would provide a specific foundation for grants of financial assistance to local government bodies formed by a law of a State, it would not prevent the continuation of grants to States in relation to local government, whether under the *Federal Financial Relations Act 2009* or otherwise. For example, it would not affect the continued payment by the Commonwealth to States of grants under the *Local Government (Financial Assistance) Act 1995*, which provides for Financial Assistance Grants to States for local government purposes.