

31 January 2013

Mr Glenn Worthington
Secretary
Joint Select Committee on Constitutional Recognition of Local Government
PO Box 6021
Parliament House
CANBERRA ACT 2600
via email: jsclg@aph.gov.au

Dear Mr Worthington

**ALGA SUPPLEMENTARY SUBMISSION TO JOINT SELECT COMMITTEE
ON THE CONSTITUTIONAL RECOGNITION OF LOCAL GOVERNMENT**

The Australian Local Government Association (ALGA) welcomed the opportunity to provide a submission and to appear before the Select Committee on Wednesday 16th January 2013. The hearing provided an invaluable opportunity to engage with the Committee and to hear the views of other parties, including Constitutional experts and Federal Government agencies. ALGA also welcomed the advice of the Committee that any additional material, including supplementary submissions, should be provided by 31 January 2013.

During the hearing a number of issues arose which ALGA believes require both clarification and correction, and ALGA wishes to take this opportunity to put the following information on the record.

Preconditions to Maximise the Chances for a Successful Referendum

During the hearing, a number of Committee members referred to ALGA's pre-requisites for a successful referendum and on one occasion the Chair of the Committee asserted that they were ALGA's prerequisites for supporting a referendum. From the line of questioning, it would also appear that some members of the Committee were of the view that the pre-conditions were hurdles created to defer the advancement of the referendum. This is absolutely not the case.

ALGA notes the Committee's Terms of Reference which include '...the need to assess the likelihood of success of a referendum on financial recognition, taking 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.'

These are not ALGA's prerequisites or preconditions alone. They are preconditions which have been identified variously by a combination of the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Machinery of Referendums, the Expert Panel on the Constitutional Recognition of Local Government, the Expert Panel on Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution, ALGA and highly regarded Constitutional Law Experts.

In its submission and in the hearing ALGA highlighted the following prerequisites or preconditions which have been identified for a successful referendum:

- Strong public bipartisan support (a precondition accepted by all leading authorities and the Expert Panel on Local Government Recognition);
- The Commonwealth negotiating with the States to achieve their support for financial recognition (a precondition identified by the Expert Panel on Local Government Recognition);
- A public education campaign to achieve informed and positive public engagement (identified by the former House of Representatives Inquiry, both Expert Panels and ALGA); and
- Public funding of the Yes and No Case in proportion to the vote of the House of Representatives on the proposal (sought by ALGA).

ALGA Vice President Mayor Troy Pickard clearly stated in the hearing that it would be the Committee's task to make an assessment of whether the preconditions have been, or can be, met in time for a referendum to be held in 2013. ALGA is not responsible for putting in place those preconditions. We have, however, taken account of the proposition raised by the Committee Chair that ALGA seek a bipartisan view on the financial recognition referendum from the Prime Minister and the Leader of the Opposition and I have written to both (copies attached) asking them to make a joint supportive statement.

I have also written to the Minister for Regional Australia, Regional Development and Local Government, the Honourable Simon Crean MP, seeking his advice of the Government's intentions regarding the preconditions (copy attached).

On the issue of engagement and negotiation with the states to achieve their support, it is regrettable that only one state, South Australia, was able to appear before the Committee. The representative from the South Australian Government noted that the issue of constitutional recognition had been discussed with the Local Government Association of South Australia but that there had been no engagement on the issue by the South Australian Government with the Federal Government.

The Use of Section 96 grants to replace direct funding

During the hearing, statements were made that the funds provided under the Roads to Recovery program had been siphoned off from the identified roads component of the Financial Assistance Grants (page 15) and that originally the Roads to Recovery funding was given to local government through grants to the states. It is important that this error be corrected. The Roads to Recovery funding is additional funding which was not siphoned off from the Financial Assistance Grants nor did it ever go through the states.

The Financial Assistance Grants for local government provide untied general revenue support for councils and are significantly different from the direct funding through programs such as Roads to Recovery which is tied to achieving a national objective such as expenditure on local roads to improve productivity and road safety outcomes. They are also different to the many hundreds of grants to individual councils or groups of councils for projects undertaken under numerous Commonwealth Government initiatives.

ALGA notes the statements during the hearing from Commonwealth officers that the Federal Government uses a variety of different funding mechanisms to address different problems and needs flexibility in its expenditure programs.

The actions of Local Government Associations to advance the case for and likely success of a referendum on constitutional recognition

During the hearing, Members of the Committee sought information on what ALGA and its state association members had been doing to contribute to a successful referendum on the constitutional recognition of local government.

It should first be acknowledged that while the Government's commitment to hold a referendum on the constitutional recognition of local government by 2013 was strongly welcomed and supported by local government, the Government's commitment was general in nature and unspecified. It was not a commitment to a referendum on financial recognition. ALGA and the state and territory local government associations have been responsible for ensuring that the referendum is focused on financial recognition and aimed at the continuation of direct federal funding of local government. To achieve this, ALGA worked with state and territory local government associations to achieve unified support for financial recognition within the local government sector, ALGA actively engaged with the Expert Panel and made ALGA's research available to the Expert Panel. That research reveals that a referendum focused on other types of recognition, such as symbolic or broader institutional recognition, will not have the necessary public support.

From an ALGA perspective our push for a referendum has taken five and a half years and involved the direct expenditure (exclusive of staffing costs) of more than \$850,000, the single biggest expenditure on a policy issue by ALGA during this time. Of this total, \$236,000 was provided by the Federal Government in the form of a grant. This funding was welcomed and

acknowledged by ALGA although clearly it is not comparable to the sum of \$10 million provided to proponents of the Constitutional Recognition of Aboriginal and Torres Strait Islander people to build community awareness and public support for change.

The state and territory local government associations have also made substantial investments in activities aimed at increasing the likelihood of a successful referendum. This has included ongoing state-based campaigns to improve the profile and standing of local government and its services in all jurisdictions and extra targeted campaigns in advance of a referendum in Queensland, Western Australia, Tasmania and the Northern Territory, and planned targeted campaigns in South Australia and New South Wales.

The Western Australian Local Government Association has run a series of campaigns to raise awareness of local government and raise the profile and perception of the sector since 2005. The campaigns were underpinned by annual research and advertisement tracking.

The Local Government and Shires Association of NSW has engaged research consultants to develop a Brand Strategy for NSW which will form the basis of a communications and profile raising campaign in the 2012/2013 and 2013/14 financial years.

The Local Government Association of Queensland commenced an image building campaign in 2011, featuring a 30 second TV commercial which reached a state audience of 2.5 million viewers. Market research by Newspoll shows that the campaign has helped improve public opinion and shows that the majority of Queenslanders would support a referendum to recognise local government in the Constitution. The latest campaign in 2012 included online display advertising, links to the website, a facebook page and twitter account, in addition to television advertising.

The Local Government Association of the Northern Territory has run advertisements on commercial television promoting the activities and career opportunities in local government in late 2011/early 2012 and has completed a communications strategy to raise the awareness and profile of local government.

The Local Government Association of Tasmania (LGAT) has also promoted local government activities and career opportunities through a 2 year television campaign, which has been extended for a further 2 years. LGAT has commissioned a public affairs company to assist in raising the profile of local government in Tasmania.

The Local Government Association of South Australia (LGASA) is currently finalising its State-level awareness campaign which will involve vignettes of council employees in television advertising to raise awareness of local government. The LGASA has received commitments from 95% of its councils to contribute to the national referendum campaign.

The Municipal Association of Victoria has an ongoing campaign to raise the profile of local councils in Victoria focusing on the role of councils and the important services provided to communities.

All state and territory associations have met to brief their respective Premiers and Local Government Ministers on local government's constitutional recognition campaign, but in most instances received the response that Premiers were waiting on the form of words to be proposed before they form a view. This was confirmed by the Expert Panel.

All state and territory local government associations have also agreed to contribute funding for a campaign to support the Yes case.

The need for a successful referendum

ALGA remains strongly committed to supporting a referendum for the financial recognition of local government to ensure the continuation of direct federal funding of local government through programs such as Roads to Recovery. The decisions in the Pape and Williams cases have cast doubt on the validity of such funding and ALGA believes it is inevitable that there will be a future challenge to direct funding programs. The only way to resolve the constitutional uncertainty of this funding is through a successful referendum.

ALGA has urged the Government to put in place the preconditions identified for a successful referendum. If the Committee does not believe those preconditions are in place and that a referendum is not likely to be successful in 2013, we urge the Committee to recommend that a referendum be held as soon as practicable after 2013 when those precondition have been met.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Felicity-ann Lewis', written in a cursive style.

Felicity-ann Lewis
President