



AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION

**SUBMISSION TO THE SENATE SELECT COMMITTEE INQUIRY INTO
REFORM OF THE AUSTRALIAN FEDERATION**

20 AUGUST 2010

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Committee Secretary
Select Committee on the Reform of the Australian Federation
PO Box 6100
Parliament House
CANBERRA ACT 2600

Submitted by online upload

Dear Sir/Madam

Inquiry into the Reform of the Australian Federation

The Australian Local Government Association (ALGA) represents the national interests of more than 560 local government authorities across Australia. Its membership is made up of the associations of local government in each state and territory, and the ACT Government is also a member in its role as the local authority in the Australian Capital Territory.

ALGA welcomes the Senate Select Committee's examination of the reform of the Australian Federation and strongly believes that reforms must be made to the Australian Federation to support local government play its role for local and regional communities throughout Australia.

Local government in Australia is a dynamic and extremely diverse sector with councils ranging in size from the Brisbane City Council (population close to 1 million and expenditure of \$1.4 billion in 2005-06) to councils like Jerilderie Shire (population less than 2,000 people and an annual expenditure of less than \$7 million).

As a collective, local government has an annual expenditure of some \$24 billion, which represents around 2 per cent of the national Gross Domestic Product (GDP) or 6 per cent of public sector spending. In employment terms, local government accounts for about 178,000 employees, or nearly 10 per cent of the public sector workforce nationwide, drawn from around 400 professions including engineers, town planners, aged care workers, rangers, building surveyors, librarians, youth workers, social workers, waste collectors and many more, all working for their local community.

In this submission, ALGA describes the role that local government has played in Australia before and since Federation in 1901, and highlights the increasing relevance of local councils in the provision of services and infrastructure to Australian communities. The submission notes that the constant expansion of its roles and functions, particularly in recent decades, means that local government provides key services and infrastructure that serve as the foundation for local and regional communities; it is often the only institutional presence in rural, regional and remote communities, and one of the key drivers of economic activity. Local government is the level of government closest to Australians, best able to identify the local needs of the communities it represents.

In highlighting these strengths, ALGA's submission also seeks to outline the challenges local government faces in the current Australian Federation. The absence of a formal place for local government in our nation's Constitution is a critical obstacle in the effective functioning of our modern Australian Federal system, and has serious implications for the future of local services and community infrastructure. It is why local government is advocating reform to the Constitution.

The funding of local government is also a critical challenge, as the role of local government in Australian communities undergoes constant expansion and external funding sources fail to keep pace with these demands. It is why ALGA also calls in this submission for a Parliamentary inquiry into the external funding of local government.

Local government is a key partner in the Australian Federation, which should be formally recognised and adequately supported. ALGA would be happy to elaborate on any aspect of this submission before the Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adrian Beresford-Wylie', written in a cursive style.

Adrian Beresford-Wylie
Chief Executive

INTRODUCTION

The Australian Local Government Association (ALGA) welcomes the opportunity to make a submission to the Senate Select Committee Inquiry on the Reform of the Australian Federation. In the 160 years since the first local council was formed in Australia, the roles and responsibilities of each level of government in Australia have evolved and expanded, and Australians' expectations about what government(s) can or should do for them have undergone similar change.

In this submission, ALGA addresses each of the Committee's Terms of Reference, highlighting the key issues and priorities for local government in respect of:

- The distribution of constitutional powers between the Commonwealth and the States;
- Financial relations between the three levels of government;
- Possible constitutional reforms, including recognition of local government;
- Processes, including the Council of Australian Governments and the referral of powers for enhancing co-operation between the levels of Australian government; and
- Strategies for strengthening Australia's regions and the delivery of services through regional development committees and regional grant programs.

ALGA notes that the Committee's Terms of Reference ultimately centre on the question of whether Australia's federal system of government, left unamended, can adequately deliver for Australians in the 21st century. ALGA believes that this is not the case and that the Federation is in need of reform, in terms of both the financial relationships between the levels of government and the Constitution. This reform has been an objective of ALGA for many years and continues to be a central part of the Association's policy priorities.

About the Australian Local Government Association (ALGA)

ALGA is the national voice of local government in Australia, representing 565 councils across the nation. In structure, ALGA is a federation of state and territory local government associations, and includes the Government of the Australian Capital Territory in recognition of its combined state and local government functions. This submission has been prepared in consultation with ALGA's members.

ALGA was established in 1947 and throughout its history has been closely involved in issues of national significance affecting the local government sector. ALGA has enjoyed a close, productive working relationship with the Commonwealth Government for many years; through the ALGA President, it is a member of the Council of Australian Governments and 13 other Commonwealth-State Ministerial Councils¹. The ALGA President is the Deputy Chair of the Australian Council of Local Government, established by the Australian Government, in 2008.

¹ Some of the Ministerial Councils that ALGA is a member of include: the Cultural Ministers' Council; the Online & Communications Council; the Housing Ministers' Conference; the Environment Protection and Heritage Council; the Local Government and Planning Ministers' Council; the Ministerial Conference on Ageing; and the Australian Transport Council.

In addition to its representative role on these key Commonwealth-State bodies, ALGA participates in Australian Government policy reviews, provides submissions to, and appears before, Federal Parliamentary inquiries, and seeks out opportunities for local government to inform the development of national local government policies and program initiatives. For example, over the past eighteen months ALGA has made substantial submissions to the Australian Future Tax System Review (the Henry Tax Review), the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Machinery of Referendums and the Carbon Pollution Reduction Scheme Green Paper.

About local government

The 'legal standing' of local government

The Australian Constitution does not contain any reference to local government. Local government is established in Australia under the constitutions of the states and territories (excepting the ACT) and its structures, powers and functions are determined by state/territory legislation.

In each of the states and territories in the last 10-15 years, the relevant legislation creating and regulating local government has been reviewed and significantly amended, or replaced with new legislation, to give local councils greater powers consistent with the principles of 'general competence'. For most jurisdictions, this was the first time in the past 50 years that the legislation creating and regulating local government had been substantially reviewed and modernised.

In general, these changes have enabled local governments to provide a wider range of services and to undertake functions that enable them to be more responsive to the needs of local and regional communities.

Local government is an elected level of government

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.

In a recent survey report Australians felt a greater connection and sense of community with the local government. This illustrates why local government is often said to be the level of government 'closest to the people'.²

Amongst its many functions, local government:

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

The fact that it is elected by the community and responsible for a broad range of services in a clearly defined geographic area means that local government is well placed to understand and meet local needs and respond to those needs in ways that are most appropriate to local conditions. Within its jurisdiction of general competence, local government is multifunctional and, unlike other spheres of government, is able to combine and integrate services to best satisfy community expectations.

This also means that local government is a highly diverse sector. Its diversity has been acknowledged by the Productivity Commission³ and is apparent in councils' differing powers and functions, history and culture, level of financial resources, population, geographic area, location and human resources.

²As an example, in the 2009 report *Interacting with Government* survey report commissioned by the Australian Government, "focus group participants explained that they felt a greater connection with local government offices. Participants were more likely to feel a sense of community with the local government" (p.45 of the report on Australians' use and satisfaction with e-government services provided through the internet and telephone, at <http://www.finance.gov.au/publications/interacting-with-government-2009/docs/interacting-with-government-2009.pdf>). In addition, Griffith University's Federalism Project, noted in a speech by Terry Moran to ANZSOG in 2008, noted that over half of those surveyed also agreed with the principle of subsidiarity, being that decision-making power should be devolved to the lowest competent level of government. Mr Moran explained that 'while some Australians did support wholesale abolition of one or more levels of government, almost one-third supported the addition of a new regional level. Almost 60 per cent, given the choice, said they would prefer to have three or more levels of government. When asked to consider all current levels of government, 50 per cent of Australians rate the Commonwealth Government as the most effective at 'doing its job'. In contrast, only 18.1 per cent rate the state level as the most effective, and 19.9 per cent rate the local level of government as the most effective'. See http://www.dpmc.gov.au/media/speech_2008_09_12.cfm. The study results are described in more detail at <http://www.austlii.edu.au/au/journals/UNSWLawJl/2008/27.pdf>

³ Productivity Commission study, *Assessing Local Government Revenue Raising Capacity*, April 2008, at <http://www.pc.gov.au/projects/study/localgovernment/docs/finalreport>, page xxi.

Local governments have a measure of choice over the range of non-statutory functions they may exercise, as well as the manner in which they interpret their statutory functions, and this results in a considerable range of differences across local councils, both within and between jurisdictions. These differences reflect the geographic and socio-economic variability that exists in Australia but they raise considerable challenges and policy tensions for councils in their delivery of services and infrastructure to local communities.

Distribution of constitutional powers between the Commonwealth and the states

The Australian Constitution mentions only two levels of government for Australia, being the Commonwealth Government, and the governments of the states and territories. Yet, local government has existed in Australia since 1840⁴: that is, some 60 years prior to Federation. It even pre-dates the establishment of some colonial governments in Australia.⁵

Although it is not recognised under the Australian Constitution local government is significantly affected by the distribution of powers between the Commonwealth and the States as set down in that document. This is most evident in the context of Australia's federal fiscal relations, which will be described in more detail under the heading '*Financial Relations Between the Levels of Government*' (below).

Just as the roles and functions of the Australian Government and state/territory government have evolved over the last century the roles and responsibilities of local governments have also evolved. Whilst local government continues to fulfil its traditional role of 'roads, rates and rubbish',⁶ over recent decades the size, scope and role of local government have expanded dramatically.⁷ This has been acknowledged in a number of independent reports. In 2001, the Commonwealth Grants Commission observed that the composition of services being provided by local government over the period from 1961-62 to 1997-98 had 'changed markedly,' adding that there had been 'a move away from property-based services to human services; a decline in the relative importance of road expenditure; an increase in the relative importance of recreation and culture, and housing and community amenities; and an expansion of education, health, welfare and public safety services.'⁸

⁴ The first Australian local council was the Adelaide City Council.

⁵ Some academics have noted that many of the participants of the Constitutional conventions were councilors and that local government was left out of the constitution more by omission than by design.

⁶ Whilst these are the traditional functions attributed to local government, ALGA's submission to the Henry Tax Review 2008, at http://www.alga.asn.au/policy/finance/ALGA_submission_to_the_Henry_review.pdf explains that the role of local government in Australia has never been amenable to strict definition.

⁷ Local government has increasingly become involved in the delivery of human services, such as community care, health care, welfare services, aged care and childcare services.

⁸ Commonwealth Grants Commission, 2001, *Review of the Operation of the Local Government (Financial Assistance) Act 1995*, Canberra, p.53.

In 2008, the Productivity Commission reinforced this observation when it found that the majority of local government spending was no longer exclusively in the areas of ‘property-related services and roads’ but also in the areas of ‘recreation, health and welfare services.’⁹ Indeed, the Henry Tax Review found that local governments have come to play an important role in the delivery of government services in Australia¹⁰ and that ‘given the expertise that local governments have in the delivery of some goods and services, [payments to local government for specific purposes] can represent value for money for higher levels of government.’¹¹

There are many reasons why local government’s role and responsibilities, as well as the range of services and infrastructure provided by it, have been evolving and expanding more into human services over recent decades. The impact of changing community demands and expectations prompted by demographic change (such as ageing populations), changing settlement patterns (‘sea’ and ‘tree’ changers, as well as the growth of mining communities) and different economic conditions explains why local government has often chosen to expand its service types and levels within its general powers.

At other times, functions have been devolved to local government by other levels of government. Sometimes this has been done in a transparent manner with appropriate funding support. In other cases, another level of government has raised the requirements associated with the services being delivered by local government, or has changed the operating environment in which local government services are delivered. On many occasions in the past, devolution of responsibilities to local government has simply been caused by another sphere of government engaging in responsibility and/or cost shifting.

In 2003, the House of Representatives Standing Committee on Economic, Finance and Public Administration issued its report (the Hawker Report) into local government funding and observed that ‘there is no doubt that local government has, over a number of years, been on the wrong end of cost shifting, largely by state governments.’¹² The Committee accepted ALGA’s estimate that previous cost shifting to the sector is costing the sector between \$500 million and \$1 billion per annum. The result of previous cost shifting has been to place upward pressure on local government’s own-source revenue, which has had to absorb the new and ongoing cost, sometimes at the expense of other functions that communities want and need.

⁹ Productivity Commission 2008, op cit at 3 above, p.7.

¹⁰ Dr Henry report on Australia’s Future Taxation System, issued 2 May 2010, at <http://www.taxreview.treasury.gov.au/Content/Content.aspx?doc=html/home.htm>, see p.689.

¹¹ Op cit at 10 above, page 696.

¹² Standing Committee on Economic, Finance and Public Administration, 2003, Rates and Taxes: A Fair Share for Responsible Local Government, Canberra, Foreword.

Throughout Australia's modern history, local government has always been involved as a key partner in the Federal system of government, and has acquitted itself well in assisting the other levels of government to respond to new challenges and implement solutions that respond to the changing needs of local and regional communities. For example, local government is now more typically involved in the economic and social development of communities, local environmental management and adaptation to climate change (as well as human services) than occurred in previous decades. One of the hallmarks of local government in Australia has been its willingness to take on new functions or increase levels of service, provided they are underpinned by appropriate funding and agreements.

While it is clearly evident that the roles and responsibilities of local government have evolved over the past century, there have been no corresponding changes to the legal and financial institutions in the Federation. As a consequence, there has been a growing mismatch between responsibilities and funding and a growing reliance on funding mechanisms for local government which raise questions of constitutional validity.

Financial relations between the three levels of government

Local government has annual revenue and expenditure of approximately \$24 billion, with most of that revenue (in excess of 80 per cent across all councils) raised through its own sources rather than provided through inter-governmental transfers. State and territory laws provide local government with the ability to raise its own revenue. Its 'own-source' revenue raising powers include powers to raise revenue from rates and charges on property; user fees and charges; fines and penalties; interest earned on accounts; and developer contributions and charges.

In 2008, the Productivity Commission reviewed the capacity of local government to raise its own revenue and found that on average, it is raising about 88 per cent of its theoretical own source revenue-raising capacity benchmarks.¹³ This is a very high level of own-source revenue raising effort compared with Commonwealth or state and territory own-source revenue raising efforts.

Of local government's own sources of revenue, rates are the largest component, accounting for 40 per cent of total local government revenue. Rate revenue also constitutes around 3 per cent of Australia's total taxation revenue per annum,¹⁴ which compares with the share of total taxation raised by the states of 15 per cent and 82 per cent for the Commonwealth. ALGA notes that rates were found by the Productivity Commission to represent around 1.7 per cent of disposable income for the majority of households and were assessed by the Henry Taxation review to be a fair, efficient, simple and well-designed tax.¹⁵

¹³ Productivity Commission, 2008, op cit at 3 above, p.77.

¹⁴ Productivity Commission, 2008, op cit at 3 above, p.28, see Table 2.5. The Table shows that local government's taxation revenue has been a relatively stable proportion of total Australian taxation revenue since 1990-91, whilst Commonwealth total taxation revenue has been increasing.

¹⁵ Op cit at 10 above, page 258.

Rates however, are under significant pressure. As the only form of taxation that local government can raise under Australia's federal fiscal system, rates were originally expected to support services related to property, primarily roads and rubbish. Yet they are increasingly being called upon as a source of funds from which local government is expected to meet the costs of much more expensive and non property-based services, like human and welfare services.

Local government rates are also under further pressure where state or territory governments have (such as in NSW and the NT) imposed rates caps on councils, which restrict the ability of councils to support property-based services, and/or where state and Commonwealth governments have exempted particular land from rating even though councils are expected to provide municipal services to them (mining leases¹⁶, land used for charitable purposes and indigenous lands are often exempt). Concessions mandated by state/territory governments for types of ratepayers, such as seniors, are not always fully reimbursed by them either.¹⁷ These forms of rate 'carve outs' combine to affect the fiscal capacity of local government rates and in the case of rates capping in particular, are significantly distortionary.

The Henry Tax Review report found that local governments should have more autonomy in the rates they set. This is consistent with local government's desire to be seen and treated as an accountable level of government in the Federal system, with local government's own endorsement of the principle of accountability as a key element in the delivery of services and infrastructure to local communities.

However, even without these constraints on rates and notwithstanding the importance of other own-sources of revenue such as user fees and charges, the Productivity Commission has found that some local governments will always be dependant on grants from the Commonwealth. Local government believes that external sources of funding are very important in allowing local government to deliver the services and infrastructure that is needed in local and regional communities and grants from the other two levels of government are a particularly important component of total local government revenue.

Whilst it is difficult to gauge the precise level of grants, particularly from the state sphere, local government derives around 17 per cent of its total revenue from intergovernmental grants, divided in roughly equal shares between the Commonwealth and the states.¹⁸

¹⁶ Note subsection 154(2)(e) of the LG Act (Vic) states that land exclusively used for mining is not rateable. For electricity generators, there is a section in the Electricity Act that requires them to pay councils an amount in lieu of rates, which is determined by KW hour.

¹⁷ NSW reimburses local councils about 55 per cent of the total, compared to 100% paid by the other states.

¹⁸ See Productivity Commission, 2008, op cit at 3 above, p.xxii, Figure 2, for breakdown in percentage terms.

ALGA would note it has significant concerns with data regarding grants, and from state governments in particular. This is due to a range of factors including that some states do not identify grant separately in state budget documentation, which ALGA drew to the attention of the Senate Select Committee on State Finances in 2008, the lack of uniformity in how or whether all local councils report grants received, and definitional differences in ABS data. Some of these issues were expanded upon in ALGA's 2008 submission to Senate Select Committee on State Government Financial Management, which recommended that 'the Australian Government impose more stringent requirements on state governments having regard to the identification of Commonwealth funds flowing through states to local government'. See further, Senate Select Committee on State Government Financial Management report, September 2008, Recommendation 11.

The majority of state ‘grants’ represent reimbursements for concessions mandated by them on the sector or contract payments for the maintenance of state government-owned roads.¹⁹ In comparison, the majority of Commonwealth funding to local government is for general purposes, in the form of untied Financial Assistant Grants (FAGs). There are also other significant Commonwealth grants though, such as the very successful Roads to Recovery program (currently funded at \$350 per annum to 2013-14).

Historically in Australia, both the state and local government sectors have needed to be supported by distribution mechanisms that provide a national equalisation of public services. As outlined in its submissions to the Henry Taxation Review,²⁰ ALGA considers that it is economically most efficient for the national government to continue to collect relatively more revenue than the other levels of government, given administrative efficiencies, incentive effects and the nature of the Australian Constitution. ALGA also contends that reflecting the distribution of powers in the Constitution, including the power to raise taxation revenue, it is the Australian Government that should be responsible for the re-distribution of income and wealth and not the other levels of government.

In this context, ALGA acknowledges that the Commonwealth has long understood the need to distribute taxation revenue to the local government sector, in order to support local councils’ key functions of building and strengthening local and regional communities. Since 1974-75, the Australian Government has provided FAGs to local government. FAGs were also provided to the states until the introduction of the GST resulted in their abolition. Accordingly the states now have access to a growth tax which reflects the growth in the economy. Between 1976 and 1985, local government FAGs were set as a proportion of net personal income tax collections.

From 1986 to 1995, they generally increased at a rate equal to the increase in general purpose payments to the states. Since 1995, the rate of increase has generally been equal to growth in population and the consumer price index (CPI), with the exception of 1997-98 when they were escalated only for the CPI. The total amount of funding is escalated each year to maintain the real per capita value of the FAGs. Commonwealth general purpose grants represented around 5.2 per cent of total local government revenue in 2006-07 and represent around 7 per cent of local government’s total income per annum (or just under \$1.9 billion in 2008-09). They are the largest single component to the sector of externally sourced revenue.

¹⁹ There is some evidence that grants from the states to the local government sector are falling.

²⁰ ALGA Submission to the Review of Australia’s Future Tax System, 2008, at http://www.alga.asn.au/policy/finance/ALGA_submission_to_the_Henry_review.pdf

The Australian Government provides FAGs as a form of Specific Purpose Payment under the *Local Government (Financial Assistance) Act 1995* (the Act) and they comprise two components: general purpose grants (approximately \$1.3 billion in 2008-09), which are divided among the states on a population basis; and identified but untied roads grants (just under \$0.6 billion in 2008-09), which for historical reasons are allocated to the states on the basis of fixed shares. It is then for the states to distribute the funds to local councils in accordance with recommendations made by local grants commissions, which each have their own methodology but must adhere to the seven national principles for distribution as set out in the Act. These are replicated in the Box below:

Box 1 National principles for allocation of financial assistance grants

The State grants commissions are required to observe the National Principles relating to grants allocation under the *Local Government (Financial Assistance) Act 1995* (Commonwealth):

- *Horizontal equalisation* — this principle requires that each local governing body in a jurisdiction is able to function, by reasonable effort, at a standard not lower than the average standard of other local governing bodies in that State. Further, it takes account of differences in the expenditure requirement and revenue-raising capacity of local governing bodies.
- *Effort neutrality* — the revenue and expenditure policies of individual local governing bodies shall not, as far as practicable, affect grant determination through the assessment of revenue-raising capacity and expenditure requirements.
- *Minimum grant* — the minimum general purpose grant allocation for a local governing body is to be no less than 30 per cent of its per person share of the total amount of general purpose grants available for allocation among local governing bodies in the States or Territory.
- *Other grant support* — this principle requires recognition of other relevant grant support to local governing bodies to meet any expenditure needs.
- *Aboriginal peoples and Torres Strait Islanders* — financial assistance shall be allocated to councils in a way which recognises the needs of Aboriginal peoples and Torres Strait Islanders within their boundaries.
- *Council amalgamation* — where two or more local governing bodies are amalgamated into a single body, the general purpose grant provided to the new body for each of the four years following amalgamation should be the total of the amounts that would have been provided to the former bodies in each of those years if they had remained separate entities.
- *Identified road component* — the identified road component of the financial assistance grant should be allocated on the basis of the relative needs of local governing bodies for road expenditure. Relative needs should be determined based on length, type, and usage of roads in each local governing area.

Source: DOTARS (2007); CGC (2001).

Clearly, general purpose grants are supposed to supplement the ability of local government to support functions. However, FAGs have been reducing over time as a proportion of overall Commonwealth taxation revenue. The Productivity Commission has observed that the current level of FAGs is insufficient to achieve horizontal fiscal equalisation²¹ and grants commissions have reported that general purpose funding at current/recent levels is not achieving horizontal fiscal equity. Further, in the State of the Regions 2006-07 report commissioned by ALGA, National Economics concluded that:

‘...the quantum of grant availability only compensates approximately 30 per cent of the amount required to equalise resources available to councils because of inequalities in revenue available for standard effort.’²²

The Productivity Commission has recently said that ‘there is a case to review the provision of Australian Government general purpose grants to local government’ (finding 5.6). This confirms ALGA’s long-held view that the FAGs funding must be reconsidered if local government’s role as an integral partner in Australia’s Federal system of government is to be maintained and adequately supported.

ALGA has long called for an increase in the level of FAGs funding for local government to return it to the relative levels applying in 1996 when the grants represented around 1.01% of Commonwealth taxation revenue (excluding the GST). By 2008-09 the grants had fallen to the equivalent of just 0.68 per cent of Commonwealth taxation revenue. To highlight this growing problem, ALGA called on both political parties in the recent federal election to support a Parliamentary inquiry into the funding of local government, and we are looking to the Committee to support ALGA’s calls for this course of action.

ALGA proposes that any Terms of Reference for a Parliamentary inquiry includes examination of the impacts of state and territory laws on local government own-source revenue raising capacity, and the impact this in turn has on FAGs and other Commonwealth funding to local government. ALGA notes that including these issues in the scope of an inquiry into FAGs funding for local government would also be consistent with the Henry Tax Review report which found that the states should allow local governments a substantial degree of autonomy to set the tax rate applicable to property within their municipality.²³

The capacity of the Commonwealth to directly fund local government without relying on the need to pass funds through the state and territory governments has been cast very clearly into doubt by the decision of the High Court in *Pape v Commissioner of Taxation* (2009) 257 ALR1. In that case the Court found that the scope of Section 81 of the Constitution which allows the Commonwealth to appropriate funds for the purposes of the Commonwealth was much narrower than thought by the Commonwealth. As a consequence there must be doubts about the validity of the Roads to Recovery program which relied on a broad interpretation of Section 81. The decision in *Pape* strongly supports the need for constitutional reform.

²¹ Productivity Commission, 2008, op cit at 3 above, p.23.

²² State of the Regions 2006-07, op cit at 22 above, p.82.

²³ Op cit at 10 above, recommendation 120.

Possible constitutional amendments including recognition of local government

Although it is not recognised in the nation's Constitution, attempts to amend the Constitution so that local government has a formal standing under it, have been put to the Australian people. Two separate referenda were put to the Australian people in 1974 and again in 1988.

The 1974 referendum was designed to allow the Australian Government to directly fund local government rather than require it to first pass the funds through state and territory governments; the 1988 referendum sought to require state governments to maintain a system of local government. Both referenda failed to produce either a majority of voters or a majority of voters in a majority of states.

Because local government is not recognised under the Constitution, there are significant legal doubts about the extent to which the Commonwealth can constitutionally provide financial support directly to local government. The recent High Court of Australia case of *Pape v Commissioner of Taxation* (2009) 257 ALR 1 and its implications for the Commonwealth's ability to fund activities it believes are in the national interest, clearly illustrate the growing divergence between the black letter law of the Constitution and the need in Australia for a flexible and modern system of government reflected in the nation's Constitution. In the absence of referenda to bring about sensible and necessary constitutional change, it appears that the High Court is the only mechanism by which change can be promoted. This leaves local government, and the Federal system more generally, in a precarious position that does not necessarily reflect the modern Australian democracy.

In recent years ALGA has committed to reinvigorate the goal of constitutional reform to recognise local government. This goal was given new impetus when the current Australian Government promised during its 2007 election campaign to advance the process for achieving constitutional recognition of local government. In the time since that 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. It has also recently provided a grant to ALGA of \$250,000 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 local councils in engaging their communities on this issue. Further, each of the key political parties has indicated support for progressing a referendum to recognise local government: the National Party and the Greens have each stated their support for the constitutional recognition of local government, and the leader of the Liberal Party has supported recognition in principle.²⁴

In a special Constitutional Convention of local government, convened by ALGA in December 2008, delegates closely examined options for the form of constitutional recognition that could be sought by local government. Delegates agreed that the basis of any referendum on local government should observe and uphold three core principles:

²⁴ See in particular the statements made by the respective parties at the 2010 National General Assembly of Local Government, some of which are at <http://nga.alga.asn.au/event/2010/speakers.html>

- 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;
- should not guarantee the protection of any individual council from dismissal or restructure; and
- should not guarantee any level of funding for local government.

Following the Convention, ALGA engaged a strategic adviser to develop a framework for moving to a referendum to include local government in the Constitution; ALGA has also 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 the next parliament. ALGA believes that the end of 2012 or 2013 offer the best options for a referendum to include local government in the Constitution.

The challenge of changing the Constitution

The Australian Constitution sets out the framework for the governance of the Australian Federation. Since 1901, 44 referenda have been put to the Australian people, and only 8 have succeeded. The last successful referendum was in 1977 and in the 33 years since then, there have been 3 referenda on 6 questions, with none of them being successful.

ALGA believes that the Constitution is a document that needs to be amended from time to time to enhance the effectiveness of government in contemporary times and to keep pace with the changing Australian society. It is ALGA's view that the Federation would be improved by including local government in the national Constitution and that its effectiveness could be enhanced by including the machinery that has evolved since Federation to support intergovernmental relations between the three levels of government, such as the operation of the Council of Australian Governments (COAG).

ALGA believes that the Australian Parliament made significant progress towards this goal when it passed a motion in both Houses about local government in 2006. The motion states that :

“That the House/ Senate:

- (a) recognises that local government is part of the governance of Australia, serving communities through locally-elected councils;
- (b) values the rich diversity of councils around Australia, reflecting the varied communities they serve;
- (c) acknowledges the role of local government in governance, advocacy, the provision of infrastructure, service delivery, planning, community development and regulation;
- (d) acknowledges the importance of cooperating and consulting with local government on the priorities of their local communities;
- (e) acknowledges the significant Australian Government funding that is provided to local government to spend on locally determined priorities, such as roads and other local government services; and
- (f) commends local government elected officials who give their time to serve their communities.”

Independent research commissioned by ALGA

ALGA does not 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.

ALGA therefore commenced a strategic campaign in 2009 to pursue the constitutional recognition of local government in accordance with the principles outlined by local government at the special constitutional assembly. As an early step in the campaign, 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 Australian’s perceptions of local government; and to identify any differences in these factors across the states.

The results from ALGA’s research are detailed more fully in its 2009 submission to the House of Representatives Inquiry into the Machinery of Referendums but the Committee may wish to note that the research revealed that only 76 per cent of Australians of voting age recognise that Australia has a Constitution; only 22 per cent of Australians surveyed understood that constitutional change required the support of a majority of voters in a majority of states; less than half the total number of respondents were aware that state governments were recognised in the Constitution; and 19 per cent of respondents thought that local government is recognised in the Constitution.

As ALGA highlighted in its 2009 submission to the Inquiry into the Machinery of Referendums, much more effort is needed 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. ALGA further believes on the basis of its research 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 for an education program, which is aimed primarily at informing voters in advance of a referendum vote, 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. This should be designed as a factual campaign involving pamphlets and television and radio advertisements. It should be approved by Parliament and the Auditor-General to ensure its acceptance as legitimate public advertising.

ALGA accordingly supports the findings of the Inquiry report *A Time for Change: Yes/No?*, tabled on 8 February 2010, which recommended sweeping changes to the way in which Australians are provided with information leading up to a referendum.

The two key recommendations were that a Referendum Panel be established prior to each referendum, with the Panel being independent of government and responsible for developing an overarching communications strategy for the referendum, and that a national civics campaign be conducted prior to each referendum, so as to improve Australians' understanding of their Constitution.

ALGA believes that constitutional reform is an important part of the evolution of Australia's system of government. The record of reform to date supports the view that the current process for change presents a very high, although not insurmountable, hurdle. ALGA has suggested a number of changes which could be made to the processes for reform, in particular, the development of proposals for reform, the education of the public about their Constitution and referenda, and public funding for the 'yes' and 'no' cases. ALGA has also extensively outlined its recommendations to enhance the content of the 'yes' and 'no' cases and its strong view that their texts should be approved by Parliament.

ALGA believes that these 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. ALGA would therefore request that the Committee take these recommendations into account in its consideration of possible reforms to the Constitution, whilst also urging the Committee to recognise the considerable disadvantages and uncertainties for local and regional communities that flow from local government's exclusion from the Constitution.

Processes, including the Council of Australian Governments and the referral of powers for enhancing cooperation between the various levels of Australian government

Notwithstanding its exclusion from the Australian Constitution, local government is seen as Australia's 'third arm of government'.²⁵ It is increasingly called upon to assist in the delivery of Commonwealth Government initiatives at the local level, and through its membership of COAG, 13 other Ministerial Councils and the Australian Council of Local Government, is closely consulted on national policies and programs that affect local and regional communities.

²⁵ See then Prime Minister Rudd and Minister for Infrastructure and Local Government Albanese joint media release of 18 September 2008 joint media release, 'First meeting of Australian Council of Local government: a new partnership with local government'.

This is consistent with the Commonwealth-Local Government Accord of 14 November 1995, under which the Commonwealth committed to local government representation on COAG and other intergovernmental fora, as well as to the goal of constitutional recognition of local government.

At the national level, local government has been increasingly called upon as a partner in the delivery of initiatives that foster Australians' wellbeing. In response to the Global Financial Crisis, the Australian Government's National Stimulus Package 2009 provided more than \$1 billion directly to local government as a means of promoting economic activity across the nation. Local government is also working in partnership with the Commonwealth in areas as diverse as: the new Healthy Communities Initiative, overseen by the Department of Health and Ageing; Natural Disaster Emergency Management; the promotion of the digital economy under the Online & Communications Council Framework for the Collaborative Development and Use of Broadband in Australia²⁶; and climate change adaptation and mitigation strategies.

One of the most successful partnerships between the Commonwealth and local councils has been the Roads to Recovery program. Since its inception in 2001, this program has delivered on national objectives directly through local government, benefiting local communities and enhancing economic capacity, particularly in rural and regional areas. The recent Australian Government initiatives to enhance local government's overall performance and assist in its considerable asset management task (respectively the Centre of Excellence for Local Government and the \$25 million Local Government Reform Fund) are welcome additions that will help improve the ability of local government, in partnership with the Commonwealth, to deliver effective services and infrastructure to the Australian community.

There are also less formalised but equally beneficial arrangements involving local government and the Commonwealth, such as regular liaison between government officials and ALGA, and representation on stakeholder groups dealing with specific policy issues. The level of consultation with ALGA and councils on the roll-out of the National Broadband Network is a prime example.

As ALGA proposed in its 2010 Federal Election 10-point plan,²⁷ these partnerships and collaborative arrangements with the Commonwealth should be maintained and expanded so that:

- policies and programs are designed in consultation with local government to ensure they directly respond to local and regional community aspirations and support diversity;
- policies and programs are more cost effective and avoid duplication;
- policies and programs reflect community feedback and are responsive to present and future community needs; and
- the design and administration of policies and programs is transparent.

²⁶ www.occ.gov.au/current_issues/framework_for_the_collaborative_development_and_use_of_broadband_in_australia

²⁷ See <http://www.alga.asn.au/federalection/>

Direct partnerships between the Commonwealth and local government can achieve a number of key outcomes:

- renewal of regional and local infrastructure, including local sporting facilities, cultural and community venues, and roads and transport infrastructure;
- assessment of the impacts of climate change and the delivery of local mitigation and adaptation programs to achieve national objectives at the local level;
- implementation of water initiatives at the local level—including infrastructure projects,
- water conservation programs, and community education;
- delivery of sustainable regional economic development outcomes;
- security and social cohesion;
- development and enforcement of national food standards;
- implementation of public and environmental health strategies;
- delivery of national objectives in the areas of children’s and aged care services; and
- delivery of community cultural development programs and the arts.

There are also numerous co-operative arrangements with local governments at the state level. These include arrangements under which councils are to be consulted by state government on issues that affect them, such as the Victorian State–Local Government Agreement which gives effect to *Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters* (IGA).²⁸

Given the numerous points of intersection between the three levels of government and in particular between the Commonwealth and local government, ALGA supports intergovernmental agreements that help to identify roles and responsibilities across the levels of government and that establish co-operative working level agreements between them. Intergovernmental agreements are important in assisting all three levels of government to:

- achieve uniformity in the administration of a common functional area;
- avoid overlapping in the provision of administrative services;
- respond to the situation of vertical fiscal imbalance whereby the Commonwealth has the funding but the States have the functional power;
- cope with the mobility of resources, human and financial, across state boundaries;
- ensure accessibility to public resources for all Australians, no matter where they live;
- disseminate information, or even exhortation, on vital areas of public interest, including where national solidarity is essential; and

²⁸ See

[http://www.dvc.vic.gov.au/Web20/rwpgslib.nsf/GraphicFiles/VSLGA++Negotiating+Guidelines/\\$file/VSLGA+-+Negotiating+Guidelines.pdf](http://www.dvc.vic.gov.au/Web20/rwpgslib.nsf/GraphicFiles/VSLGA++Negotiating+Guidelines/$file/VSLGA+-+Negotiating+Guidelines.pdf)

- pool resources between governments for challenges too big for one level to undertake, including major research efforts and, potentially, involving complementary action between the levels (as with the handling of emergencies. See Wiltshire 1977, 1980; ACIR 1981).²⁹

These agreements and partnerships are the cornerstone to ensuring that local government is appropriately resourced for the tasks it is expected to undertake on behalf of other levels of government, and is appropriately consulted about them.

Earlier in this submission, ALGA referred to the effects of cost shifting onto the local government sector and the impacts this has had on local and regional communities. ALGA believes that progress has been made in addressing the issues through the establishment of the tri-level Intergovernmental Agreement ‘Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters,’ (IGA) signed in April 2006.³⁰ The IGA sets out a framework within which services and functions delivered to the community at the local level on behalf of another sphere of government are to be funded.

The IGA was signed by the Australian Government, all State and Territory Governments and the Australian Local Government Association (ALGA). The IGA establishes principles to guide the relationship between the three levels of government and avoid cost shifting onto local government. Parties to this IGA are committed to abiding by the principles of the IGA in their working relationships. The IGA will be reviewed in 2011 by the Local Government and Planning Ministers Council.

Strategies for strengthening Australia’s regions and the delivery of services through regional development committees and regional grant programs

Local government is committed to delivering policies, programs and measures for its communities that are effective, appropriate and responsive. In 2006, a report commissioned by ALGA and conducted by PriceWaterhouseCoopers (PwC) concluded that largely due to past cost shifting,³¹ local government now confronts serious questions about its financial sustainability: The PwC report found that between 10 per cent and 30 per cent of councils would face financial sustainability challenges without reform to their revenue or expenditure patterns. In particular, the PwC report found that councils have deferred infrastructure renewals expenditure to meet recurrent service deliver costs and that there is a growing backlog in infrastructure renewals which had reached a total of \$14.5 billion in 2006.

²⁹ See ANU E Press, *Federalism and Regionalism in Australia*, edited by Edited by A.J. Brown and J.A. Bellamy, Chapter 12 *Reforming Australian Governance: Old States, No States or New States*, at <http://epress.anu.edu.au/anzsog/fra/html/frames.php> and http://epress.anu.edu.au/anzsog/fra/mobile_devices/ch12s04.html

³⁰ A copy of the IGA is available at www.lgpmcouncil.gov.au/publications/charter.aspx.

³¹ See the National Financial Sustainability Study of Local Government report by PriceWaterhouseCoopers (2006), at <http://www.alga.asn.au/policy/finance/pwcreport/>

The PwC report recommended that local government (a) seek a Local Community Infrastructure Renewals Fund of around \$200 million - \$250 million per annum, (b) seek more secure and adequate FAGs funding from the Commonwealth and (c) embark upon internal reforms to ensure that the sector is maximising its operational and financial effectiveness.

ALGA strongly argued for a community infrastructure fund throughout 2007 and 2008 and in November 2008 the Australian Government established the Regional and Local Community Infrastructure Program which has provided more than \$1.1 billion in funding to local government. This is an important program which addresses an essential need in local communities and ALGA has called for ongoing funding for community infrastructure.

The Productivity Commission study in 2008 noted that many of Australia's rural and more remote local councils will always be dependant on Commonwealth FAGs funding, irrespective of their revenue raising capacity efforts, and highlighted many of the cost burdens experienced by these categories of councils. Consistent with the PwC recommendations, ALGA strongly supports strategies for cost sharing and streamlining of operations among councils, where these strategies are voluntarily initiated and continue to meet the needs and expectations of local and regional communities. Resource sharing that involves partnerships of councils working together to achieve benefits for their communities through more cost effective and efficient use of their individual resources is to be encouraged, particularly in local government areas that comprise significant land mass but low density populations.

Councils in regional areas have for some time commonly joined together in forms such as shared administrations, co-operatives, partnerships, alliances, joint ventures and in service level agreements. Regional Organisations of Councils (RoCs) have been established to ensure that objectives common to a region can be fostered and implemented. This has helped to achieve co-ordinated and targeted outcomes in areas such as tourism, skills training, attraction and retention of expert labour, and business investment and the sharing of council offices, financial management services such as accounts payable, accounts receivable, bank reconciliation, financial reporting, payroll, asset and facilities accounting, information and records management and information technology.

In addition, in the Northern Territory, legislation requires shire councils to identify and implement Local Government Regional Management Plans (RMP). The Central Australian Region RMP requires shire councils to respond to the challenge of delivering services to residents in scattered communities across regional and remote areas of the Northern Territory, sharing different cultural backgrounds and languages, and where, in most cases, people are living in circumstances of severe social and economic disadvantage.

As with many co-operative strategies struck by local councils, the RMPs are predicated on the philosophy that joining with like councils will help strengthen the ability of councils in a region to administer services and develop service delivery improvements, lobby and influence government policy, negotiate major projects with public agencies and private interests for the achievement of regional development outcomes, and build capacity supports in new and emerging policy areas.

The Central Australian Region councils of Barkly, MacDonnell Shire, Central Desert Shire and Alice Springs Town Council have noted the benefits for them of the RMP include:

- The potential to have a strong Central Australian voice on the Territory and national stage advocating for infrastructure and other improvements that will lead to a stronger region
- The potential to put in place regional, shire and community plans that are driven and monitored using shared technology.
- Joint procurement arrangements (possibly through LGANT) to the local government National Procurement Network have the potential to reduce the high costs of delivering services.
- A regional approach to community safety, including Night Patrols, could greatly enhance safety for residents, visitors and tourists in the region.
- Opportunities to establish other regional models of service delivery, from waste management policies and practices to youth, sport and recreation program delivery models.
- Joint approaches to networking, training, and professional support.

In addition, the Remote Service Delivery arrangements for Indigenous communities in Australia is a good example of strategies which involve all three levels of government joining together to achieve a national outcome – closing the gap. Under the National Partnership Agreement³², coordination and delivery of services in remote locations is to be improved at all levels of government. The allocation of responsibilities is stipulated under the Agreement and all levels of government are accountable to COAG for performance under it.

Conclusion

In this submission, ALGA has detailed the important and expanding role of local government in the modern Australian Federal system of government and has highlighted its critical role in meeting the increasingly diverse needs of its local and regional communities. It is submitted that the role and functions of local government are increasingly relevant to Australians as they progress further into the 21st century. However, it is subject to considerable uncertainties because it has no formal place in the nation's Constitution. These uncertainties are compounded by inadequate recognition and funding support for local and regional communities from the other levels of government, and various restrictions that are placed upon it by its state and territory government masters.

³² <http://www.healthinfonet.ecu.edu.au/closing-the-gap/key-facts/what-are-the-national-partnership-agreements-and-how-do-they-fit-in>

Local government is the oldest form of government in Australia. It has proven itself to be competent, reliable, innovative, adaptable and flexible in changing policy environments and is committed to progressing national objectives in collaboration with the other levels of government. Local government believes that its growing role in the Federation must be supported through constitutional reform to recognise it as a level of government and provide the capacity for direct funding from the Commonwealth, and through more increased (and adequate) funding so that it can continue to meet the needs and expectations of local and regional communities.