

## 10.4 Local Government - Constitutional Recognition

AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION



Cr Phillip Silver  
Mayor  
Ballina Shire Council  
PO Box 450  
BALLINA NSW 2478



Dear Mayor Silver,

### **Constitutional Recognition of Local Government – A role for Councils**

In June last year, following the 2010 National General Assembly of Local Government, Geoff Lake wrote to you providing an update of progress on the Australian Local Government Association's (ALGA's) campaign for a referendum on the constitutional recognition of local government and providing copies of fact sheets and a brochure designed to highlight the importance of local government to local communities. I am now writing to advise you of further progress and to invite your council to become directly engaged in the campaign for constitutional recognition.

Following the 2010 Federal Election, Prime Minister Gillard committed to holding a dual referendum on the constitutional recognition of local government and the recognition of Indigenous Australians. The referendum will most likely be held in conjunction with the 2013 Federal Election. The challenge for local government is now threefold: to ensure the referendum is held; to ensure that the type of recognition sought meets our requirements; and to make sure we have a positive result in the referendum itself.

ALGA has devoted considerable resources over the past three years to developing the case for constitutional reform and the need for reform. That need was highlighted in stark terms in 2009 by the decision of the High Court in *Pape v Federal Commissioner of Taxation*. In that case the High Court set out the limitations of the Australian Government's powers and, in doing so, clearly indicated that the Australian Government does not have the power to fund local government directly.

It is obviously in the best interests of local communities that Federal Governments, whatever their political persuasion, have the capacity to fund councils directly to achieve national objectives. This is why our preference is for a pragmatic and simple change to the Constitution (most likely to Section 96) which would allow direct funding to continue. ALGA's research shows that this simple and pragmatic change is most likely to garner the necessary public support. ALGA has not ruled out recognition of local government in a Preamble to the Constitution if one is proposed but such limited recognition alone would not meet local government's requirements and address the uncertainty highlighted by the *Pape* case.

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The form of financial recognition of local government proposed by ALGA, which will not impact on the relationship between councils and state governments, has been endorsed by your local government association and all other state and territory local government associations. ALGA believes it is now important that this position also be endorsed by all councils to demonstrate to Federal and state governments, oppositions and political parties that the position has widespread support within local government.

I am therefore writing to all councils to ask them to pass a resolution in council chambers in the first few months of 2011 endorsing the position that a referendum be held by 2013 to change the Constitution to allow direct funding of local government bodies by the Commonwealth Government and also to include local government in any new Preamble to the Constitution if one is proposed. I have attached the draft text of a possible resolution for your assistance.

It is ALGA's intention that a Constitutional Declaration for Councils will be submitted for signature by council representatives at the conclusion of the 2011 National General Assembly of Local Government on 22 June 2011. ALGA's objective is that all councils will be in a position to sign the Declaration supporting financial recognition at that time.

As part of local government's campaign, it is also important to ensure that national political leaders are left in no doubt about our commitment to constitutional recognition. I am therefore also asking that councils write to the Prime Minister, the Leader of the Opposition and their local Federal Member of Parliament to advise them of councils' support for recognition after councils have passed a resolution in council chambers. I have enclosed some suggested text for such letters which you might find useful.

I will be writing to you again in the coming months with further materials which will help council in a campaign to win broad public support for constitutional recognition. While the challenge of reform is substantial, I have no doubt that by working together we can overcome any obstacles and bring about a much more sustainable and secure future for councils and local communities throughout Australia.

Yours sincerely



Cr Genia McCaffery  
President

**TEXT OF POSSIBLE COUNCIL RESOLUTION ON CONSTITUTIONAL  
RECOGNITION**

**[insert name of council] declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.**

DRAFT LETTER TO PRIME MINISTER

The Hon Julia Gillard MP  
Prime Minister  
Parliament House  
CANBERRA ACT 2600

[Insert date]

Dear Prime Minister

**Constitutional Recognition of Local Government**

The Government's announcement to hold a referendum into the constitutional recognition of local government by 2013 is welcomed by [insert name of council].

Councils throughout Australia play a vital role in the provision of essential services and infrastructure at the local and regional level including at times of natural disasters.

I am writing to advise you of a resolution passed recently by Council supporting the constitutional recognition of local government and to seek your support for Council's position.

The importance of the constitutional recognition of local government has been highlighted in stark terms by the 2009 decision of the High Court in the case of *Pape v Federal Commissioner of Taxation* which raises legal doubt over the Commonwealth's powers to fund local government directly.

Council strongly supports constitutional recognition as an essential step in ensuring that local communities receive the services and infrastructure they deserve. Council considered and passed the following resolution on [insert date].

**[insert name of council] declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.**

Council urges you to support the constitutional recognition of local government and I look forward to your response.

Yours sincerely

Mayor

DRAFT LETTER TO LEADER OF THE OPPOSITION

The Hon Tony Abbott MP  
Leader of the Opposition  
Parliament House  
CANBERRA ACT 2600

[Insert date]

Dear Mr Abbott

**Constitutional Recognition of Local Government**

Bipartisan support for a referendum proposal is essential for its success. The leaders of the Liberal Party and National Party both publicly supported the constitutional recognition of local government at the 2010 National General Assembly of Local Government. The recent announcement by the Federal Government to hold a referendum into the constitutional recognition of local government by 2013 is an important step in the process of reform.

Councils throughout Australia play a vital role in the provision of essential services and infrastructure at the local and regional level including at times of natural disasters.

I am writing to advise you of a resolution passed recently by Council supporting the constitutional recognition of local government and to seek your support for Council's position.

The importance of the constitutional recognition of local government has been highlighted in stark terms by the 2009 decision of the High Court in the case of *Pape v Federal Commissioner of Taxation* which raises legal doubt over the Commonwealth's powers to fund local government directly. This needs to be resolved once and for all.

Council strongly supports constitutional recognition as an essential step in ensuring that local communities receive the services and infrastructure they deserve. Council considered and passed the following resolution on **[insert date]**.

**[insert name of council] declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.**

Council urges you to support the constitutional recognition of local government and I look forward to your response.

Yours sincerely

Mayor

DRAFT LETTER TO YOUR LOCAL MP  
Mr/Ms X, MP  
Member for [insert name of electorate]  
Parliament House  
CANBERRA ACT 2600

[Insert date]

Dear Mr/Ms X

### **Constitutional Recognition of Local Government**

At the 2010 National General Assembly of Local Government, leaders of the major political parties – Labor, Liberal, National and Greens - publicly supported the constitutional recognition of local government. History has shown that bipartisan support is essential for any referendum proposal to succeed. Each parliamentarian will cast a vote on the referendum proposal and as the local Member for [insert name of electorate] I am writing to seek your support and the support of your party.

Councils throughout Australia play a vital role in the provision of essential services and infrastructure at the local and regional level including at times of natural disasters.

I am writing to advise you of a resolution passed recently by Council supporting the constitutional recognition of local government and to seek your support for Council's position.

The importance of the constitutional recognition of local government has been highlighted in stark terms by the 2009 decision of the High Court in the case of *Pape v Federal Commissioner of Taxation* which raises legal doubt over the Commonwealth's powers to fund local government directly. This needs to be resolved once and for all. Financial recognition of local government will enable the Federal Government to directly fund local government.

Council strongly supports constitutional recognition as an essential step in ensuring that local communities receive the services and infrastructure they deserve. Council considered and passed the following resolution on [insert date].

**[insert name of council] declares its support for financial recognition of local government in the Australian Constitution so that the Federal Government has the power to fund local government directly and also for inclusion of local government in any new Preamble to the Constitution if one is proposed, and calls on all political parties to support a referendum by 2013 to change the Constitution to achieve this recognition.**

Council urges you to support the constitutional recognition of local government. I am keen to discuss the issue with you further and I look forward to your response.

Yours sincerely

Mayor