

The Joint Standing Committee on the Constitutional Recognition of Local Government takes evidence in Sydney in January.  
Photos Paul Hemsley.

# CONSTITUTION WILLING...

Australia's local government sector has spent decades campaigning for recognition in the nation's Constitution to enable adequate funding and secure their future. Yet despite support from Labor, the Coalition, the Greens and Independents, efforts to get a crucial referendum up and running in time for the 14th September Federal Election appear to be faltering on the home stretch. **Julian Bajkowski** looks at why – and what's at stake.

Independent federal Member of Parliament Tony Windsor is angry, and it shows.

On a sunny morning in Sydney, the Member for New England is taking in evidence at the Joint Standing Committee on the Constitutional Recognition of Local Government and it is clear he does not like what he is hearing one bit.

It's 16th January 2013, the middle of school holidays and Parliamentary recess, yet federal politicians are still meeting in an effort to find a way to make a referendum on financial recognition for local government in the Constitution a reality in an election year.

Such an alignment of interests is rare in Australian politics, especially so in the present toxic climate. Yet there is effectively unanimous cross-party support to take a plebiscite to the people at the next poll, which just weeks later is announced to be 14th September.

But in a bombshell that clearly few in Canberra anticipated, the Australian Local Government Association has backed away from a referendum at the next federal election on the





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grounds that there is not enough time to convince a jaded and increasingly cynical public that it's worth voting 'Yes' to a largely technical change to the Constitution.

For those representing local governments at the Committee – on this day ALGA vice presidents Troy Pickard and Keith Rhoades – the fear is as visceral as it is clear: if the electorate doesn't understand what it is voting for in a referendum it will vote 'No'.

History gives ALGA good reason to be wary about rushing into a referendum this year given that the two previous referenda on recognising local government in the Constitution – in 1974 and 1988 – both resulted in electoral rejection.

A key element of their argument is that a public education campaign is essential to success and needs sufficient time to make an impact in the minds of voters.

“We believe that is absolutely fundamental to achieving a successful referendum outcome,” Mr Pickard tells the committee. “It will educate Australians not only about the Constitution and how it has changed but also about the proposed local government change.”

Just days before the committee meets, Keith Rhoades puts it more frankly.

“Holding a referendum, if unsuccessful, will achieve nothing and probably damage the standing of local government in the eyes of the community,” Mr Rhoades told *Government News* in an interview before the committee meeting.

“ALGA has concerns about the limited time now available to complete the legislative requirements at the federal level for the referendum, gain the necessary support of state governments and carry out a successful campaign for constitutional change, especially against the backdrop of a very robust federal election environment.”

Mr Rhoades says that the idea of an amendment to the constitutional needs “oxygen to breathe” and appears prepared

to wait it until another election, or even to go to a referendum outside an election year. “I'd rather take the four year punt than the 50 year punt,” Rhoades says.

At the committee in Sydney, Tony Windsor is having none of it. Calmly, he erupts.

“I am having a bit of difficulty absorbing a no case from the people who have been proposing the yes case,” Windsor tells ALGA. “For the 20 years that I have been involved in politics this issue has been at the forefront of local government.”

He makes it clear that the cross bench support may no longer be there after the election.

“It is because of the nature of this parliament that this issue is being given a chance of being aired in terms of a referendum. I have to say that I am shocked to read some of the arguments in the most recent submission and to listen to those put this morning which almost develop a no case,” Windsor says.

“Not to take advantage of a parliament that is willing to go ahead with your argument – I would suggest the lack of confidence that you have in yourselves and in the Australian people is something that maybe your organisation needs to look at... You may wait another 20 years to get the chance to present it if you become the agent of arguing against your own case.”

The idea of running a referendum separate to an election also suffers a setback. The Australian Electoral Commission gives the committee evidence that its estimate of the cost of running an out of cycle plebiscite will be \$121 million.

In the following weeks, despite ALGA's reservations, the committee delivers a preliminary report that recommends taking a referendum to the next election. At the same time, Coalition committee members issue a dissenting report that ‘reserves’ their position until a final report is due, a move that potentially draws into question the level of support for a referendum from the Opposition.



# The Local

ALGA President **Felicity-ann Lewis** explains why local government needs to be in the Australian Constitution.

**“HOLDING A REFERENDUM, IF UNSUCCESSFUL, WILL ACHIEVE NOTHING AND PROBABLY DAMAGE THE STANDING OF LOCAL GOVERNMENT IN THE EYES OF THE COMMUNITY”**

Nationals Senator and Opposition spokesman on local government, Barnaby Joyce is quick to kick any idea of evaporating Coalition support for a referendum well into the long grass.

“The Coalition policy has remained in support of financial recognition of local government to deal with the issues pertaining to the concerns brought up by the Pape case and the Williams case [in the High Court], we have got to try and resolve that,” Senator Joyce said.

Perhaps predictably, Joyce chides federal local government minister Simon Crean for not propelling the case for referendum hard enough or fast enough.

“[Simon Crean] is letting it wither on the vine,” Senator Joyce tells *Government News*, before issuing a challenge.

“What I am saying to [Simon Crean] is if you are fair dinkum about it, then get out and make it happen rather than just say we are just going to have a referendum,” Senator Joyce said.

In an interview after Prime Minister Julia Gillard names the 14th September election date, Tony Windsor is quick to drive home the point that the long lead time until the poll is an opportunity rather than a threat.

“I think it’s got a very, very good chance of getting up,” Mr Windsor tells *Government News*. “Announcing a date this far out removes objections of time and structure.”

He is also still not buying ALGA’s cautionary position and questions its support.

“A lot of councils are disgusted with the way the executive of the ALGA has operated,” Mr Windsor says, adding that “they [ALGA] were told to get on with it.”

Amid the stand-off, another hearing Joint Standing Committee on the Constitutional Recognition of Local Government is announced for 20th February.

Just what it will bring is hard to predict, even for seasoned operator like Tony Windsor. **GN**

Over the course of the past five years, the Australian Local Government Association (ALGA) has been persistent in its campaign for constitutional recognition of local government.

Continuing this trend, the Association marked the start of the new year by presenting its case for constitutional reform to the Joint Standing Committee on the Constitutional Recognition of Local Government in January.

Last month’s public hearing was the first since the Committee was established by parliament late last year to provide state and territory governments and local government bodies with a platform to put their views to the Committee about the proposed wording for a constitutional amendment to recognise local government bodies as legitimate recipients of direct federal funding.

Since former Prime Minister Kevin Rudd made an election commitment to progress the issue of constitutional recognition of local government in 2007, the ALGA has undertaken extensive work to progress the issue and identify the most appropriate form of recognition for local government in the Australian Constitution.

Local government concluded that financial recognition was the best option and ALGA maintains that this is the only way to protect direct federal funding for community services and infrastructure.

This view was shared by an independent Expert Panel appointed in 2011 by the Federal Government following the commitment of the Gillard Government in 2010 to hold a referendum on constitutional recognition.

It looked at all the options for recognition of local government including recognition in a preamble to the Constitution and more complex changes to confirm local government’s status and role.

In the end it supported financial recognition, which had the broadest political support and the greatest chance of success at a referendum.

# Case for Change

ALGA's submission to the Expert Panel on Constitutional Recognition summarises the long and comprehensive process ALGA has undertaken in determining its position and strategy to achieve constitutional recognition.

ALGA has also previously made submissions to the House of Representatives' Machinery of Referendums inquiry and the Senate Select Committee inquiry into the Reform of Federation.

In 2011, ALGA called for a Joint Standing Committee on Constitutional Recognition of Local Government to be established because we saw it as an essential step on the path to a referendum on the constitutional recognition of local government.

ALGA is pleased that the Committee has been established and we appreciated the opportunity to appear before the Committee on 16 January to outline the option of financial recognition – changing the Constitution to ensure that the direct federal funding of local government can continue without questions of constitutional validity arising.

Amending the Constitution, through a relatively simple change to Section 96, to achieve that objective, has been ALGA's preferred option for recognition for a number of years.

ALGA reached that view following an extensive consultation with councils and subsequently with key stakeholders, leading constitutional experts, strategic advisers and through commissioning independent research on community attitudes.

Importantly, the issues ALGA had identified with direct federal funding were subsequently brought into much sharper relief by the High Court decision in *Pape v The Federal Commission of Taxation* in 2009.

The subsequent High Court case of *Williams v The Commonwealth* in 2012 has simply reinforced the doubts around the validity of direct funding and the uncertainty relating to the Roads to Recovery program.

For five years, ALGA has devoted resources and time to refining an agreed local government position on how local government should be included in the Constitution. ALGA has also devoted effort to mapping out a process for getting to a referendum and then getting that referendum passed.

ALGA has been conscious of the difficulties in this process in terms of getting a referendum and then getting a yes vote. It seems ironic that Australia's Constitution – which certainly has nowhere near the profile or gravitas of the US Constitution – is more difficult to change than the American Constitution. Nevertheless ALGA has been steadfast in its commitment to this change because it is in the interests of every Australian community.

Australia's federation has evolved significantly over the past 112 years. The roles and responsibilities of the three tiers of government have changed and have moved beyond what was envisaged in 1901. Governments, across the board, do more for their constituents but that may be because there is more to be done.

In 1900 we did not have the services, the infrastructure and the social welfare net we now take for granted. We certainly did not have the tax burden. And we did not have the very pronounced vertical fiscal imbalance which sees the Commonwealth collect more than 80 per cent of national tax revenue.

To meet the demands of the public in a modern democracy

requires the three levels of government to work together collaboratively; Commonwealth and State, State and Local, and Local and Commonwealth.

That last partnership is at risk.

It is a partnership that the Commonwealth wants, it is a partnership that local government wants and we believe that it is a partnership that our communities want. And it is a partnership that does not threaten the relationship between the State Governments and their local governments.

The Joint Standing Committee has been tasked with assessing the likelihood of success of a referendum on financial recognition.

From ALGA's perspective, that involves not only an assessment of the levels of support for the proposition – across the political spectrum, within the state and territory governments, and within the broader public – but also an assessment of the timing of a referendum.

ALGA believes that the referendum should be held at a time which maximises the chances for success.

Success for ALGA will be a referendum that is passed by a majority of voters in a majority of states, and a majority of voters overall – the elusive double majority. Holding a referendum, if unsuccessful, will achieve nothing and probably damage the standing of local government in the eyes of the community.

The government has committed to a referendum on the recognition of local government by 2013. ALGA welcomed that commitment but we believe that the promise should only be pursued if holding a referendum this year allows the maximum chance for success and there is adequate time for an effective campaign.

If the pre-requisites for a successful referendum identified by the Expert Panel and ALGA cannot be met in time for a referendum to be held this year then ALGA would call for the referendum to be held in 2014 or 2015 when those pre-requisites can be satisfied.

We accept that it is the Committee's task to make an assessment of whether the pre-requisites have been or can be met, but ALGA has strong concerns about the very limited time now available to complete not just the legislative requirements at the federal level for the referendum, but also the lengthy, complex and costly task of successfully campaigning for a constitutional change, especially against the background of a very vigorous federal election environment.

We make no comment on the expected robust competition at the federal level because it is a good thing for a healthy democracy like ours that campaigns are tough and hard fought.

It is only a problem, however, if opportunities for constitutional change are lost because the merits of the case for change are overwhelmed and the question is never given clear air.

In this regard it may be relevant that the overwhelming majority of previous referendum events were not held at the same time as elections.

**Submissions to the parliamentary inquiry have closed and the committee is expected to release its findings at the end of February. To view the submissions, including ALGA's, visit: <http://www.aph.gov.au>**