
Item: 4. Constitutional Recognition of Local Government

REPORT SUMMARY

Local government has for a very long time been seeking recognition under the Australian Constitution. This Minute provides a summary of the campaign status and also the plans of local government to secure recognition as well as to determine the nature of the recognition that should be sought.

RECOMMENDATION

1. That the Minute be noted
2. That Clarence Valley Council expresses a preference for a form of constitutional recognition which guarantees a fixed percentage of income tax collections (i.e. a growth tax) to local government.
3. That the Mayor be council's delegate to the December 2008 National Constitutional Congress.

BACKGROUND

Constitutional Recognition of local government under the Constitution of Australia has been a long held goal of the industry and a priority of ALGA and also LGSA. At the present time local government is established by State and Territory legislation and there is no reference to local government in the Australian Constitution.

The history of securing constitutional change in Australia is that, of 44 referendums since 1906 only 8 have been successful and the last successful referendum occurred 31 years ago. The two previous attempts to secure constitutional recognition for local government in 1974 and 1988 both failed.

Constitutional Conventions as far back as 1973 have recognised the importance of recognising local government. At the National Australian Local Government Assembly which I attended in Darwin last November it was determined to conduct a National Constitutional Recognition Congress to progress this important objective. Since that time the Rudd government was elected to office on a platform which included constitutional recognition of local government.

The ALGA National Congress is to be held in Melbourne in December 2008. At the recent Shires Annual Conference the matter of constitutional recognition was the subject of discussion. The conference did not adopt a position. I contributed to the debate as the issue has been for me a matter of academic study for some years.

From the conference podium during discussion on constitutional recognition, Shires Association President Bruce Miller invited me to membership of a team of 5 delegates of the NSW LGSA to participate in a two day 'Experts Forum' in Canberra on 21st and 22nd August to plan for the December 2008 Melbourne National Congress. I accepted that invitation.

ISSUES

There is no doubt that to secure constitutional recognition, bipartisan support of the major political parties will be necessary. This is where the two previous referendums failed. Given that to succeed a referendum needs the support of 50% of the voting

population plus one, and also the support of a majority of States, bipartisan support of any referendum question is crucial.

To secure that support local government will need to know firstly what it wants to achieve from constitutional recognition in order to be able to build a model that will deliver the desired outcome or outcomes.

The ALGA is suggesting three aspirations from recognition, although there may well be others advanced in the future. The first is symbolic recognition through inclusion of local government in the Preamble to the constitution. This would in my view do very little to assist local government in a practical sense. In 2006 the former Howard government passed motions through the Parliament expressing appreciation for the work and role of local government but such action has had little tangible benefits to the local government sector.

The second type of recognition, which has some support from the councils across the nation that still hold fears of being forcibly amalgamated is Institutional Recognition which would be designed to guarantee a system of local government and/or protection of councils from sacking without due process.

Given 1990's Victorian and South Australian amalgamations and the recent Queensland amalgamations (157 councils reduced to about 79), the Northern Territory council reductions from 63 to 8, and the current Western Australia moves in the direction of amalgamations it is apparent that the amalgamation of councils process is largely completed in a national sense, with the possible exception of New South Wales which has the unfortunate reputation of being the 'slowest fleet in the convoy'. Thus I believe that institutional recognition would be of marginal benefit at best and of no benefit in Clarence Valley given the forced 2004 amalgamations.

Given the critical need for long term financial sustainability of local government, an issue of paramount importance also for Clarence Valley Council, it is apparent that the third and most important aspiration from constitutional recognition is Financial Recognition which would entail direct federal funding to local government in the form hopefully of a fixed percentage of income tax collections, to guarantee local government a growth tax to address its infrastructure and ongoing financial needs in addressing community service expectations.

There are obvious difficulties in securing Financial Recognition. Whilst the Rudd government is pledged to supporting constitutional recognition it has yet to support a fixed share of income tax collections to local government. The opposition has previously opposed constitutional recognition in referendums and is on record as opposing fixed share of income tax collections because of what it articulates as the problems of 'hypothecation' i.e. the fact that dedicated taxes are often subject to unexpected surpluses or shortfalls which can create political pressure to adjust the tax.

My belief is that constitutional recognition for local government must be part of a movement to improve Australian federalism. Local government must lead in designing a proposal for constitutional recognition that fits the purpose or purposes for which it is sought.

It would be unwanted for constitutional recognition to be a further step towards centralisation of power. However as a step in modernising Australian federalism, constitutional recognition would however be welcomed and valued.

I have a keen academic interest in this question and intend to closely follow developments and debate as well as to represent the preferred outcome for Clarence Valley Council.

IAN TILEY
MAYOR
11th June 2008