



AUSTRALIAN
LOCAL GOVERNMENT
ASSOCIATION

Submission

on the Interim Report

Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Peoples

August 2018

The Australian Local Government Association (ALGA) welcomes the opportunity to make this submission on the Interim Report of the Joint Parliamentary Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples.

ALGA is the national voice of local government in Australia, representing 537 councils across the country. In structure, ALGA is a federation of state and territory Local Government associations. This submission should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

General comments

Local governments across Australia are very supportive of constitutional recognition of Aboriginal and Torres Strait Islander Peoples. At the National General Assembly of Local Government (NGA) held in June this year over 800 representatives of local governments voted on motions of national importance to local governments. One of these motions was *That the National General Assembly endorses the constitutional acknowledgement of Indigenous Australians as the first peoples of this land. Furthermore, the National General Assembly call on Federal Parliament to allow a national referendum for Australians to make a determination on this matter.* This motion was strongly supported and the President of ALGA has subsequently written to the Prime Minister to convey Local Government's support for a referendum.

Local governments are also committed to pursuing constitutional recognition of Local Government. On 9 May 2013, the Prime Minister announced the Federal Government's intention to proceed with a referendum to recognise Local Government in the Australian Constitution. The referendum was set to be held on the same day as the Federal election on September 14, 2013 and would ask Australians to cast a vote on the "financial" recognition of Local Government through the amendment of Section 96 of the Constitution. If passed, the amendment would enable the Commonwealth to continue to provide direct funding to Local Government for vital community services and infrastructure, something governments from both sides of politics have been doing for more than a decade.

Legislation to amend the Constitution was passed by the Australian Parliament at the end of June 2013. Unfortunately, the decision to bring forward the date of the Federal Election by a week to 7 September 2013 meant that the referendum was unable to go ahead because pre-polling would have allowed voting on the referendum earlier than the minimum two-month period after the passage of the legislation through Parliament, prescribed by the Constitution.

ALGA would be pleased to share our learnings on preparing for a referendum with the body established to progress the constitutional recognition of Aboriginal and Torres Strait Islander People.

ALGA supports the position that a referendum for constitutional recognition of Aboriginal and Torres Strait Islander Peoples should proceed prior to a referendum for Local Government recognition.

Comments on local government related questions for consultation

National Voice - function and operation

- Should the voice have a say on the provision of services by government (state, territory and local governments)? Constitutional responsibility for local government lies with the state and territory governments not the Commonwealth Government. Consequently, the roles and responsibilities of local government differ from state to state. There is also significant diversity in local governments across urban, regional and remote locations even within the one jurisdiction. Many local governments have little flexibility in their service provision due to financial constraints which may well be exacerbated by policies of their respective state or territory government.

While this may not preclude the National Voice having a say on the provision of local government services it does highlight the complexity of service delivery and the limitations facing individual councils. Local Government along with the state and territories governments would need to consider this proposal in greater depth during the detailed design phase for the National Voice.

National Voice- establishment and implementation

- What is the relationship with state, territory and local government? Should the voice have the power to advise the Council of Australian Governments?

There are 537 local governments across Australia and, as highlighted above, considerable diversity between councils. A direct relationship with all 537 local governments could be highly resource intensive for the National Voice. It may be worth considering engaging the State and Territory Local Government Associations and ALGA rather than relying solely on direct engagement with each council. The associations work jointly with ALGA on matters of national significance. This issue could be discussed in more depth during the detailed design of the National Voice.

The President of the Australian Local Government Association is a member of COAG and as the representative of government closest to the community attempts to ensure that the interests of all communities are considered at the COAG table. ALGA would support COAG consideration of the National Voice having the power to advise COAG on Government/COAG policies and programs that impact upon Aboriginal and Torres Strait Islander Peoples.

Local and Regional Voices – function and operation

- What is their relationship with state, territory and local government?

ALGA anticipates that if established Local and Regional Voices would have a stronger direct relationship with local governments than the National Voice. The type of relationship will ultimately depend upon the role of the Local and Regional Voices and their powers and functions. The Local and Regional Voices could have a role in advising the relevant local governments on service delivery and policies and programs that may impact the Aboriginal and Torres Strait Islander people in the local community. This advice could then be considered by the relevant local government in the design and delivery of services to their local community.

It is worth noting that Aboriginal and Torres Strait Islander councils have been established under a number of different legislative frameworks in Australia. They can be established under the mainstream local government legislation of a (state and territory) or through specific legislation. For example, there are 16 Aboriginal and Torres Strait Island shire councils within Queensland which are Local Government Act 1993 bodies with special features. In addition, Aboriginal and Torres Strait Islander councils can also be 'declared' to be local governing bodies by the Australian Government Minister for Local Government on advice from a state or Northern Territory minister for the purpose of providing funding under the Financial Assistance Grant (FAGs) programme. There are currently five Indigenous local governing bodies recognised under *Local Government (Financial Assistance) Act 1995 (Cth)*.

- Should the voice have a say on the provision of services by government?

Local Governments has a combined annual operating expenditure of around \$35 billion (2015-16) and is responsible for 657,000 km of roads and more than \$400 billion of infrastructure. Local Government however only raises 3.6% of Australia's tax revenue in the form of rates. Rates account for about 38 percent of total revenue with other revenue coming from a variety of sources including user charges and grants from Federal and state/territory governments. For some rural and remote councils, where own-source revenue raising capacity is limited, grants can account for more than 50% of council revenue. In this fiscally constrained environment local governments are increasingly being required to deliver more services and higher quality infrastructure.

Across Australia local communities have a say in what services that their local governments deliver above and beyond basic municipal services. It is then up to the local government to determine the mix of services that are delivered. This decision is made within the legislative and regulatory constraints imposed by the State and Territory Governments and the budgetary constraints of the councils (which may also be impacted for many councils by the State and Territory Government as a result of rate capping/pegging).

Regional and Local Voices could be one input into the broader community say on local government service provision. Expectations would need to be managed however due to the competing demand on local government resources. This expectation management is required for all community members in a local government area.

Local and regional voices – establishment and implementation

- What is the relationship with state, territory, and local governments?

As highlighted above it is anticipated that Local and Regional Voices would be expected to have a stronger direct relationship with local governments than the National Voice. The type of relationship will ultimately depend upon the role of the Local and Regional Voices and their powers and functions. It is reasonable to anticipate that the Local and Regional Voices could have a role in advising the relevant local governments on service delivery and policies and programs that may impact the Aboriginal and Torres Strait Islander people in the local community. This advice could then be considered by the relevant local government in the design and delivery of services to their local community.

We do not anticipate that the local and regional voice would be the only representative structure for Aboriginal and Torres Strait Islander peoples. Local government will continue to consult and work with local Aboriginal and Torres Strait people and organisations in their area as well as the local and regional voice. Wherever possible it will be important to manage these engagements to ensure that there is no consultation fatigue and that the input gained truly reflects local Aboriginal and Torres Strait Islander views.

ALGA Secretariat
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