

Public Discussion Paper,  
Expert Panel on Constitutional Recognition of Local Government,  
Department of Regional Australia, Regional Development and Local Government.  
Commonwealth of Australia.

Dear Panel members,

This is a submission from a group of people who strongly favour the complete rewriting of the Australian Constitution and the replacement of the federation by a two and a half tier of government based on national and local government levels and a layer of mezzanine type regional councils further explained in a webpage of our website, attached separately.

While welcoming the proposals and options to strengthen local government by recognising it in the existing archaic Australian Constitution as a step in the right direction we wish to indicate our awareness of the enormous difficulties in the way of amending the existing Constitution. This submission will therefore do three things:

1. Demonstrate this awareness and put it to you that these barriers are related to conditions frequently overlooked or deliberately ignored by the major parties and, perhaps even more so, by the general public and informed commentariat.
2. Respond directly to the options proposed in the Discussion Paper.
3. Attach the page of the Republic Now! website which elaborates on the importance of abolishing the states and strengthening local government, city government and regional mezzanine type local government clusters based on existing Regional Organisation of Councils. While this response extends beyond the terms of reference of your expert panel you do invite additional advice.

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## 1. BARRIERS TO CONSTITUTIONAL AMENDMENTS

Some are mentioned in the discussion paper: e.g. the provisions of Section 128. There are several others.

- a. The right of initiative to generate a constitutional amendment lies exclusively with the politicians in Australia. That needs to change urgently.
- b. The Westminster system is based on two adversarial parties as if there are only two sides of politics. Concurrence between these parties on anything is hard to achieve. The failed constitutional referendums in 1988 demonstrated this abundantly. The advocacy that local government should be recognised in the constitution was seen by the federalists as the thin end of the wedge to centralise power in Canberra. The first failure to do anything about this was in 1974 when Whitlam proposed a referendum to ease the restrictive nature of the section 128 procedure.

c. The single-member electoral district system that grossly favours the major parties in that it makes it virtually impossible for smaller parties and Independents to get a foothold in the House of Representatives. The C. W. electoral acts of 1918 and 1924 cemented this system in place. The general realisation of this problem is hardly understood by the people, rarely given attention by scholars and in the media.

Electoral system reform, in particular the introduction of proportional representation would end this situation. Only the Greens have P. R. in their platform. The best form of P. R. is the Open Party List system NOT the Hare Clark system used here for the Senate, the ACT and some upper state houses. This involves a lot of preferencing – and horse trading - that the public rightly distrusts and, again rightly, finds cumbersome.

The adversarial party system is largely result of this electoral system. It ensures that proposals for constitutional amendment need the support of both major parties to be carried. Given the other difficulties this means that very, very few proposals are carried. As a result the inclination, even amongst the politicians, to present amendment initiatives, hardly exists. No proposals have been made since 1977, 34 years ago!! Plainly a ridiculous situation given the archaic nature of the Constitution. Unless the party system is changed, through electoral system reform, it is likely that the totally ineffectual piecemeal tinkering with the Constitution will continue. Surely this is an appalling prospect. This is what you MUST address surely.

## 2. RESPONSES TO THE OPTIONS PROPOSED IN THE DISCUSSION PAPER

There is mention of four ideas to be considered. There is also the realisation expressed that local government is a state concern, is not mentioned in the Constitution itself, and is treated by the High Court, naturally, in that fashion. This is another major reason that the replacement of federation, favoured strongly by Republic Now!, must have priority. There is an end to the capacity of a nation to circumvent the Federal Constitution and an end to High Court judges sensibly interpreting clauses written in the late 1890s and guess what the founding fathers might have meant. Thus the boosting of local government is in itself a major reason why the Constitution has to be REWRITTEN! There are of course NUMEROUS other reasons and I would imagine that the entire expert panel is in fact aware of this.

Yes, Symbolic Recognition nobody could object to that and it may assist the High Court in a small way in borderline cases.

As to Financial Recognition, in practice the most important aspect under the present circumstances for local government, we would support expanding Section 96 as much as possible. Option 2 listed there is the better one in our view weakening the power of states over local government.

As to Democratic Recognition Option 1 is favoured by Republic Now! as it would enhance the democratic nature of local government and weaken state government further. A case could be made to retain the state power to sack a council for corrupt government, in the interim period before abolishing the states altogether.

The final aspect “Recognition through Federation”, while almost a contradiction in terms, naturally is to be supported under the current restrictive circumstances. It was most deplorable that the Rudd Government opted for “cooperative federalism” instead of the replacement of federation. This had failed in the past. Amazingly, the opportunity with seven ALP Governments in place was passed up. It was not even of the agenda of the Australia 2020 Summit but the delegates brought it up themselves as an important issue!

However, is incorrect to say that Australia has “three levels” of government even though there are certainly areas of cooperation between federal, state and local government in practice – some of them of dubious constitutional validity. Local government is a second level of state government constitutionally and unless that changes the restrictions of federation will continue to bedevil local government. Your paper makes mention of several forms of cooperation that have already been declared invalid constitutionally by the High Court.

Nevertheless, the steps proposed in your paper deserve support. Inclusion of measures suggested there, to be included in a Referendum or Plebiscite proposals, should be pursued. If passed but knocked back by a High Court decision subsequently it can only result in further pressure to rewrite the constitution altogether.

### 3. ATTACHMENT OF A PAGE OF THE REPUBLIC NOW WEBSITE

This is the page that deals with local government and our Association’s view of it. It goes further than the above but you have asked for additional input beyond your terms of reference.

Republic Now supporters are MAXIMALIST republicans in that they see the need for much wider reform than merely the replacement of the Head of State. We are trying to answer the essential question: **What kind of Republic?** That is really the more important issue, which has been avoided by the major parties as well as the Australian Republican Movement. Indeed it is one reason why the ARM has failed to inspire the public sufficiently. We recommend that our website be studied by your panel. There are many aspects that would need to be dealt with in a Strategic Plan for constitutional change and a process to go with it. The Government has no such detailed Plan. We must be looking towards other organisations and/or minor parties, such as the Greens and possibly others, to present such a Strategic Plan as well as a Process. Republic Now! has a blueprint in place and we are happy to promote it wherever and whenever the opportunity present itself – like in this submission.

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<http://www.republicnow.org/local-government-role/>

