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PARLIAMENTARY DEBATES



**THE SENATE**

**PROOF**

**BILLS**

**Constitution Alteration (Local Government) 2013**

**Second Reading**

**SPEECH**

**Monday, 24 June 2013**

BY AUTHORITY OF THE SENATE

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## SPEECH

**Date** Monday, 24 June 2013  
**Page** 8  
**Questioner**  
**Speaker** McKenzie, Sen Bridget

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**Question No.**

**Senator McKENZIE** (Victoria) (10:54): I rise today to speak on the Constitution Alteration (Local Government) Bill 2013—the referendum to recognise local government. I oppose this referendum for the same reasons the Australian people twice voted against the question it seeks to put to the public. We are a sceptical people. We are sceptical of power concentration. And this bill is nothing short of a power grab by Canberra. It is a blatant attempt to take power from the states, it is a crude answer to a difficult problem—it is a vote-buying exercise.

From the outset, though, it is important to note that I do not dispute the fact that there are significant challenges confronting local government, particularly regarding funding and the integral role that local government plays in our nation's governments. As the Joint Select Committee on Constitutional Recognition of Local Government's final report on the expert panel's majority finding noted, when the Constitution was drafted, there was no consideration that the federal government would need to fund local governments. Now, though, the federal government funds councils directly in many areas, as it does in the areas of health, education and other aspects of our national conversation that are explicitly the area of states constitutionally.

There have been High Court challenges which have seen that funding come under some question mark, and local government has been concerned that this funding is not secure going forward. Constitutional experts told the committee that there were serious doubts about the direct funding of local government surviving a constitutional challenge, but we have heard numerous constitutional experts throughout this debate, both in the Senate and within our own states, with counteradvice. This uncertainty is plaguing the decision making of local councils across Australia, and it is hampering their ability to effectively plan for positive sustainable futures for their local constituents.

Councils are at the coalface of our democracy. They have an intimate knowledge of their communities and are dedicated to serving their ratepayers. I know firsthand that there is a strong desire of local councillors to engage with and serve their communities, as I met with the majority of local councils in regional Victoria on coming to this place. Every single one I asked, 'Do you support

constitutional recognition of local government?' and they all answered yes, with varying degrees of strength, to that question. But I also followed that question up with: 'Why do you support that?' They said, 'Because our budgets are struggling,' and this was particularly the case in rural areas, as they have increasing needs and a shrinking ratepayer base. Many rural councils have infrastructure deficits and an insufficient rate base to keep up with the costs, and there is a lot of debate about that in Victoria at the moment.

This proposed referendum, this debate, is not about supporting councils or not supporting local councils. Indeed, it is out of concern for the needs of local government that I am opposing this bill. I do not want them to become the servant of two political masters, and I do not want them to be dictated to by Canberra. While the committee was right in identifying a funding problem, the solution before us today is far from the right one.

My opposition to this bill is based on first principles, when we strip away the layers of secondary arguments and get back to the basics. Conservative philosophy does not advocate weak government but prefers government which is both strong enough to cope with internal and external order and still constitutionally restricted and balanced, a government that is able to function properly to represent and serve its constituents but that does not wield excessive power or control. Our federal government is not in any danger of having not enough power to cope with internal or external order, and therefore the power it does not need must remain with the people or, as in this case, with other levels of government.

Eighteenth century Irish statesman and political theorist Edmund Burke was concerned about the concentration of power in one place and argued that power should be distributed throughout society. To do its job properly, Burke said, the government needed to be strong, but its strength should not be concentrated in one person or—importantly for this debate—in one place. That is why Burke stressed the importance of 'little platoons', or secondary associations. He said that local concerns should be managed at the local level not the national and that, instead of placing all power in government, the authority of other groups should be respected and maintained. The current power-sharing agreement in Australia does precisely this. Power

is shared between various levels of government to prevent its becoming concentrated and to prevent its abuse.

In the context of this bill, this concept is critical. We must regard the granting of further powers to the centralised government with suspicion. If it is not necessary, why grant further power to the federal government? Considering the surrender of further powers to the federal government with scepticism explains why referenda in this country have a historically low success rate. We do not accept that government is always right as a natural assumption. In fact, of the 44 questions put to the people, 36 have been rejected. This is because Australian people have a healthy respect for our Constitution. They know it is a critical document that sets out where power should lie in this country. They are rightfully wary of changing it without very good reason. To change, the referendum question should be immensely important. It should pose a question that is significant, challenging and desired by the people.

In 1967 the Australian people voted to give the Commonwealth the power to make laws for Aboriginal and Torres Strait Islander people. That referendum was symbolic and nation defining. It rectified a significant injustice and set Australia on a path to righting historical wrongs. That is exactly what a referendum should be for. More than 45 years later we have started the process to recognise Aboriginal and Torres Strait Islander people in our constitution. I went to the launch in Melbourne, alongside government, Greens and coalition senators and members—a bipartisan response. In this case building widespread grassroots support to educate the public is part of the plan, and this will maximise the ultimate success of the referendum. The issue at stake is rightfully recognised as one of national importance and is treated accordingly. These examples are a far cry from this government's plan to recognise local government in the constitution before us today.

Not only has Australia traditionally rejected referenda, it has also twice vetoed referenda on the question of recognising local government. Similar questions were put to the people in 1974 and in 1988. In 1974, Australians were invited to support:

An Act to alter the Constitution to enable the Commonwealth to borrow money for, and to grant financial assistance to, local government bodies.

It was lost 53 per cent to 47 per cent and was rejected by five out of the six states. At the time deputy leader of the opposition, the Country Party's Doug Anthony, declared that if the people were asked to participate in a referendum, then it should be clear that the proposition

sought to alter the constitution because it was both necessary and desirable to do so. In opposing the bill, he argued:

In the view of the Australian Country Party it is reasonable to suggest special arrangements to assist the financial position of local government. It is not reasonable to propose fundamental constitutional amendments as being a necessary condition to do this.

In 1988 the question was even simpler: do you want to alter the constitution to recognise local government? Yes or no.

During the debate Nationals leader Ian Sinclair said the National Party had a very real respect for local government, and it does. I think it has been evidenced throughout this debate by the shadow minister for local government, Barnaby Joyce. We understand localism, and Senator Joyce has made a passionate justification for local government's role in our democracy, and I fully support him in that. But back in 1988 Ian Sinclair also said, 'I suggest the Labor Party sees this referendum as a very good opportunity to aggregate power through some new amalgam of local governments.' It is the unintended consequences that are not clear today in the motion before us. The answer to that referendum in 1988 was even clearer: it was rejected in every state and by an overall margin of two to one. That referendum cost \$34 million.

Despite the lessons of history, this government is apparently keen to try its luck at power grabbing once again. It will attempt to further control how money is spent and spread its influence into local council meetings across the country. If it is not this government, then it will be a future government. At present Commonwealth financial assistance grants to local government, which do go through state administrations, are largely untied although a certain proportion of the funding has to be spent on roads. Each state is able to focus on variables in their own funding formula that are specific to their needs. In Victoria we have concerns that any change to that will result in less money going to Victorian councils.

If local governments were to be recognised in the constitution, Canberra would be able to fund local governments 'on such terms and conditions as the Parliament thinks fit'—that is section 96 of the Constitution. If we think of what various governments, including this one, have seen fit to do, we should all be quite concerned about giving that power to a federal government.

Poorer regional councils with a lower rate base and higher infrastructure costs could be disadvantaged, as they would no longer be in a position to refuse

funding with a condition they did not like. Desperate for funding, these councils would be vulnerable to the political will of both the state and federal governments. We should be wary of the concentration of power in one place. Canberra should not be deciding how local councils spend their money. That should be left to the people who know the area best and who act in the best interests of its constituents—the local government and local councillors.

Not only does the federal government seek to unnecessarily increase its power and influence with this bill; it also seeks to unfairly influence public debate on the bill in an effort to ensure the referendum is successful. Just last week came the announcement that the government will fund the yes campaign to the tune of \$10 million of taxpayers' money and only commit \$500,000 to the no case. This is in addition to ratepayers' contribution of an additional \$10 million. So taxpayers at the local and the federal level are committing over \$20 million of their own money to fund a campaign that largely, as Senator Boyce suggested, they do not even have an opinion on. It is un-Australian. It is also unprecedented.

Since legislation was changed in 1999 to allow for funding the arguments for and against referenda questions, there has been just one referendum. In the 1999 referendum, on the question of Australia becoming a republic, both the yes and the no cases were funded equally, as they should have been. A central tenet of democracy is the concept of free and informed debate on issues of importance. If the public is not aware of the pros and cons of a given issue, they cannot make fully informed decisions. When there is such a differential in the weight of advertisement, if you like, that is going to be even more the case. As Thomas Jefferson said:

If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be.

The people cannot be safe without information. Fully understanding the consequences of and reasons for and against a change to the Constitution is certainly an issue of great importance. I welcome the coalition's amendment in that regard. It seems that, for the Gillard government, some sides of an argument are more equal than others.

Voting to change the Constitution is not something that should be done lightly or without good reason. In this case, it is not something that should be done at all. This referendum is not the only possible solution to the problem of local government funding. Other options which the government could pursue include increasing funding to the grants commissions which

administer funding to each state or entering into an agreement under section 96 of the Constitution to allow for the Commonwealth to fund local councils for specific purposes. Both of these options are available and preferable to what the government is proposing now.

Not only is this referendum unnecessary and self-serving; it is also unpopular, something of concern when you are considering going to the people for a vote. The states of New South Wales, Victoria and Western Australia have long been opposed to this move, and, if recent reports are correct, Queensland is also against this move with these particular words. These four states represent the majority of the Federation states that signed up to the Constitution and the majority of the population. In section 128 of our Constitution, detailing how the Constitution can be changed, it says that a majority of people in a majority of states is required for a referendum to pass. It would seem then that there should be, in this the states house, many more senators voting against this bill than for it.

Victoria, in particular, has very good reason for opposing this referendum. Victoria has been through extensive and not always popular reform of local government over the past two decades. The Victorian Minister for Local Government, Jeanette Powell, said last month that there was a strong possibility that Victorian councils would be financially disadvantaged by the change proposed by this referendum. Minister Powell has been a strong champion of local governments, but she is equally strong about saying that this is not the right way to solve the issues confronting local government, particularly around their funding.

The money that this referendum will cost could also be better spent. The \$10 million to fund the yes campaign, the half a million dollars to fund the no campaign and the other \$10 million being donated, if you like, from local councils, who can least afford it, could be spent on a myriad of services within local communities, as could the \$55 million that the referendum is expected to cost. Regional councils like the Loddon Shire in western Victoria, which services a road network of 5½ thousand kilometres, or Mildura Rural City Council, which services about 5,000 kilometres of roads, could instead be the beneficiaries of this money, rather than ratepayers' money heading off to the Australian Local Government Association. It would make more sense than funding a referendum campaign that is ill-founded and, I think importantly, destined to fail when we compare it to how this government is approaching other issues of constitutional change that they are considering, in a bipartisan manner, taking people with them on the journey to come to a consensus so that

we are all on the same page. That is exactly how constitutional change should occur.

Finally, the recognition of local government is an important question for empire building bureaucrats and councillors but it is not relevant to everyday Australians. I doubt it would even be in the top 50 let alone the top 10 issues that affect Australians out there in voter land. Rather, this bill is demonstrative of a government hungry for power and more control over local councils. It is a very blunt and unsophisticated solution to a very complex problem.

I understand the bill has the required numbers to pass in this place as easily as it did in the other. We will have a third referendum on local government on 14 September. My prediction is that it will fail. When we meet here again after the election and ask what went wrong, I will be pointing senators back to the address that I and others have made over the course of this debate.