Councils are Unconstitutional!

The premise that rates are unconstitutional because local government is not recognised in the *Commonwealth Constitution* is a false one, and many have lost their homes attempting this. The main problem with this argument is the fact that we are a Federation, and that legislative powers are divided between the Commonwealth and the States, ***as explained in the chapter on state legislative powers.***

There are EXCLUSIVE powers, CONCURRENT powers, and RESIDUAL powers, and Local Government is a State matter which falls under the latter. The attempts by the Commonwealth to include Local Government within the scope of the CONCURRENT powers, and thereby increase their legislative ability, was rejected by referendum several times, so it remains within the state RESIDUAL powers.

Rossiter v Adelaide City Council [2020] SASC 61 (at 42):

> *"Ground 6 is a complaint that there is no constitutional recognition of local government. This has been tried by others before. (See Glew v Shire of Greenough [2006] WASCA 260, [22]-[24] (Wheeler JA); Glew v Shire of Greenough [2007] HCATrans 520, "entirely lacking in legal merit" (Gummow J); McDougall v City of Playford [2017] SASC 169, [2]-[6] (Nicholson J). It is without merit. Because the 1988 constitutional referendum failed, local government remains a matter within the residual power of the States. The failure of the constitutional amendment says nothing about the legal existence and validity of local government entities such as the Adelaide City Council, and their capacity to regulate parking and prosecute parking offences. (See, for example, Local Government Act 1999 (SA), s 6.)"*

Nibbs v Devonport City Council [2015] TASSC 34 (at 10, 15-16):

> *"The argument ignores completely the sovereign authority of the Parliament of Tasmania, derived from imperial legislation and confirmed in the Australian Constitution to make laws binding within the territorial jurisdiction of Tasmania. The defendant's argument does not accept the legitimacy and authority of such law that this Court is bound by and must enforce and apply such law. The Local Government Act is such a law. It creates a liability in the defendant to pay the rates in question.*
>
> *The appellant fails because, as the magistrate rightly said, the argument fails to acknowledge the basic nature of a federation in the form which the Commonwealth of Australia takes. It is true*

that local government, as a tier of government in Australia, is not referred to in the Constitution. However, the States of Australia are sovereign states: see ss 106 and 107 of the Constitution. Section 109 renders invalid State laws to the extent that they are inconsistent with a law of the Commonwealth. There is nothing to prevent States from legislating about local government. Whilst s 51(ii) enables the Commonwealth Parliament to make laws with respect to taxation, a State government is not thereby precluded from making such laws, provided there is no inconsistency.

Section 45A of the Constitution Act 1934 (Tas) establishes in Tasmania a system of local government with municipal councils elected in such manner as Parliament may from time to time provide. Subsection (2) provides that each municipality shall have such powers as Parliament may from time to time provide, being such powers as Parliament considers necessary for the welfare and good government of the municipal area. The provisions of Pt 3 and Sch 3 of the Local Government Act establish the Devonport municipality and the Devonport City Council."

Stuart v City of Belmont [2016] WASCA 5 (at 21, 27):

*"Magistrate Heaney dismissed the application on the basis that the defence that the appellant wished to advance was an absurdity ... the grounds upon which that review order was sought were wholly without merit. The appellant's argument that the respondent had no authority to impose fines due to a lack of provision for local government in the Commonwealth Constitution and the failure of the 1988 referendum to recognise local government in the Commonwealth Constitution had been rejected in numerous other cases: His Honour referred to: **Glew v Shire of Greenough [2006] WASCA 260** [22]–[25] **Van Lieshout v City of Fremantle [No 2] [2013] WASC 176**; **Pennicuik v City of Gosnells [2011] WASC 63**; **Hargreaves v Tiggemann [2012] WASCA 92**; **Glew v City of Greater Geraldton [2012] WASCA 94**."*

Glew v Shire of Greenough (2006) WASCA 260 (at 24-25, 29):

"So far as the 1988 referendum is concerned, the proposition appears to be that, because that referendum was defeated, there arises some prohibition upon the State which would preclude it from passing legislation setting up local government authorities. That proposition misunderstands the referendum process. The 1988 referendum contained a proposal to amend the Commonwealth Constitution by inserting a proposed s 119A, which proposed section would have required each State to provide for the establishment and continuance of a system of local government. Because it was defeated, there is no Commonwealth constitutional requirement that a State provide a system of local government. However, the absence of a requirement to establish a system of local government does not imply any absence of power to do so. Each State has always had, pursuant to the power to legislate for the peace, order and good government of that State, a power to set up a system of local government as the State sees fit.

In Western Australia, s 52 of the State Constitution imposes a positive duty on the State government to maintain a system of local governing bodies. The appellants, as I understand it, assert that s 52 is invalid, because it was not passed by referendum. There seems to me to have been no constitutional requirement that it be passed by referendum. However, even if it were invalid, there would still remain power pursuant to s 2 of the State Constitution to set up a system of local government, such as that contained in the Local Government Act 1995 (WA).

> *As his Honour Magistrate King recognised, the appellants' submissions are based on a misunderstanding of the Commonwealth and State Constitutions and are entirely lacking in legal merit."*

https://freemandelusion.com/wp-content/uploads/2020/08/glew-v-shire-of-greenough-2006-wasca-260.pdf

This decision was appealed to the High Court in ***Glew v Shire of Greenough*** **[2007] HCATrans 520** where leave was rejected, agreeing that it is *"entirely lacking in legal merit"*.

History

As a second source of the Colonies' consolidated revenue funds, land taxes were introduced: first in Victoria in 1877, and then in Tasmania in 1880, South Australia in 1884, New South Wales in 1895, Western Australia in 1907, and Queensland in 1915. Each legislated to enable their local authorities to raise their finances by rates on the unimproved capital value of land, either as a compulsory alternative to or local option for the English system of Annual Value Rating.

In New South Wales, the ***Land and Income Tax Assessment Act 1895*** received assent on 12 December 1895. The Act established a system of direct taxation by means of a tax on land and a tax on income. It provided for the appointment of officers for the levying, assessment, and collection of such taxes and provided for appeals from assessments.

Section 51 of the New South Wales Constitution Act 1902:

> *"There shall continue to be a system of local government for the State under which duly elected or duly appointed local government bodies are constituted with responsibilities for acting for the better government of those parts of the State that are from time to time subject to that system of local government. The manner in which local government bodies are constituted and the nature and extent of their powers, authorities, duties and functions shall be as determined by or in accordance with laws of the Legislature."*

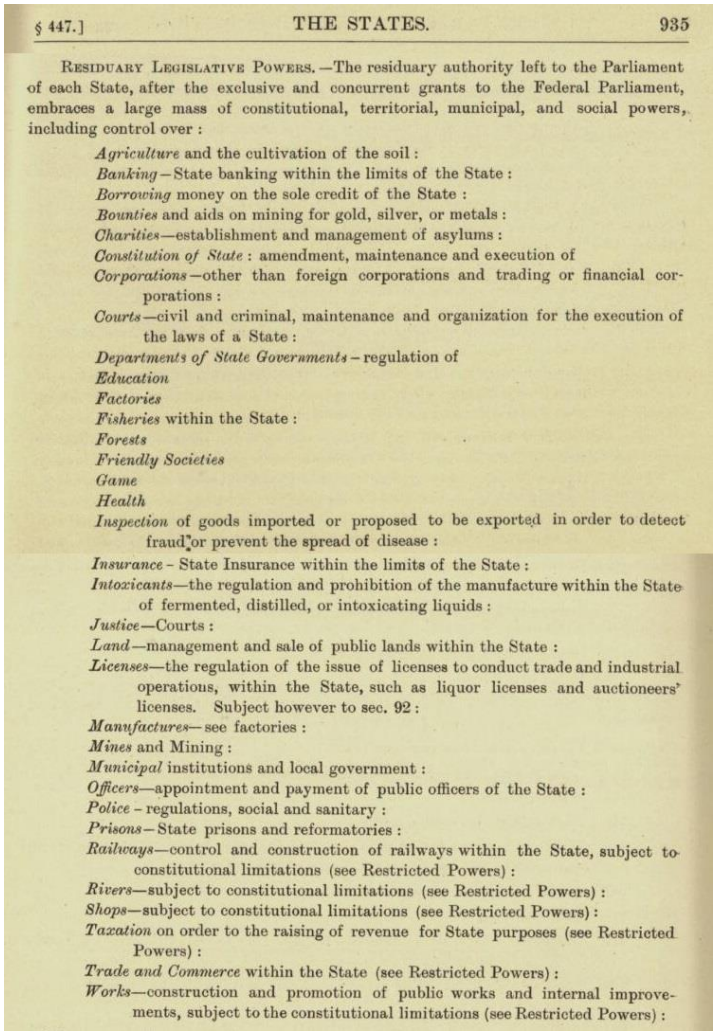
Local government was within state provisions, and well established at the time of federation. In New South Wales there was the ***1833 Parish Roads Act***, and ***Roads and Streets Act***, the ***1867 Municipalities Act***, the ***1840 The Parish Roads Trust Act***, the ***1842 Constitution Act***, and ***Sydney City Incorporation Act***, and shortly after federation, local government was a section of the the ***New South Wales Constitution Act 1902***, then the ***1905 Local Government (shires) Act***, and the ***1919 Local Government Act***.

The 1901 *Commonwealth Constitution* did not (and still does not) contain any reference to Local Government. ***McGarrity and Williams note*** that while local government was mentioned in the Federation Convention debates in the 1890s, there was *"no meaningful discussion*" of it being recognised in the *Constitution.* Most of the founding fathers, including Sir Samuel Griffith, saw local government as purely a domestic responsibility of the individual states which had no relevance to federal discussions. Local government was controlled by the colonial Parliaments, and was therefore regarded as "creatures" of those Parliaments. Local government was still in the early stages of development in some colonies in the 1890s when the Commonwealth Constitution was drafted. At this time, there was no consensus

among the colonies about the role, powers and functions of local government. One future Prime Minister, Alfred Deakin, tentatively suggested at the ***Australasian Federal Convention (1897)*** that some individual 'localities' might be funded directly by the Commonwealth, but another future Prime Minister, Edmund Barton, expressed what many other colonial politicians thought of this proposal:

> *"The revenue and the financial position of the various colonies would be so impaired and hampered that they would become municipalities instead of self–governing communities."*

Barton's response reflected the consensus that Federation was an agreement between the future states to create a nation on mutually agreed principles. The notion of local government as the 'third tier' of Australian governance was yet to take hold. Nevertheless, a large minority of the first federal parliamentarians elected in 1901 had served in local government - 29.7 per cent according to one estimate. The fact that there were so many former local councilors elected to federal parliament suggests that the popular status of local government was reasonably high by the time of Federation. ***Pages 935 and 936*** of Quick & Garren's *Annotated Constitution of the Australian Commonwealth,* refers to the *RESIDUAL POWERS OF THE STATES*. Note that *"Municipal Institutions and Local Government*" are under these RESIDUAL legislative powers of the states, as opposed to the EXCLUSIVE or CONCURRENT powers of the Commonwealth:



§ 447.] THE STATES. 935

RESIDUARY LEGISLATIVE POWERS.—The residuary authority left to the Parliament of each State, after the exclusive and concurrent grants to the Federal Parliament, embraces a large mass of constitutional, territorial, municipal, and social powers, including control over :

Agriculture and the cultivation of the soil :
Banking—State banking within the limits of the State :
Borrowing money on the sole credit of the State :
Bounties and aids on mining for gold, silver, or metals :
Charities—establishment and management of asylums :
Constitution of State : amendment, maintenance and execution of
Corporations—other than foreign corporations and trading or financial corporations :
Courts—civil and criminal, maintenance and organization for the execution of the laws of a State :
Departments of State Governments—regulation of
Education
Factories
Fisheries within the State :
Forests
Friendly Societies
Game
Health
Inspection of goods imported or proposed to be exported in order to detect fraud or prevent the spread of disease :
Insurance—State Insurance within the limits of the State :
Intoxicants—the regulation and prohibition of the manufacture within the State of fermented, distilled, or intoxicating liquids :
Justice—Courts :
Land—management and sale of public lands within the State :
Licenses—the regulation of the issue of licenses to conduct trade and industrial operations, within the State, such as liquor licenses and auctioneers' licenses. Subject however to sec. 92 :
Manufactures—see factories :
Mines and Mining :
Municipal institutions and local government :
Officers—appointment and payment of public officers of the State :
Police—regulations, social and sanitary :
Prisons—State prisons and reformatories :
Railways—control and construction of railways within the State, subject to constitutional limitations (see Restricted Powers) :
Rivers—subject to constitutional limitations (see Restricted Powers) :
Shops—subject to constitutional limitations (see Restricted Powers) :
Taxation on order to the raising of revenue for State purposes (see Restricted Powers) :
Trade and Commerce within the State (see Restricted Powers) :
Works—construction and promotion of public works and internal improvements, subject to the constitutional limitations (see Restricted Powers) :

The Referendums

There have been two failed attempts to recognise local government in the *Constitution*: in 1974 and in 1988. The ***1974 referendum*** arose out of the States' rejection of the Whitlam Government's proposal for local government to be represented on the Loan Council, and to be able to borrow money from the Commonwealth.

Two changes to the *Constitution* were put to voters: An amendment to section 51 to enable the Parliament to make laws in respect of:

> *"the borrowing of money by the Commonwealth for local government bodies"*

A new section 96A, providing that:

> *"the Parliament may grant financial assistance to any local government body on such terms and conditions as the Parliament thinks fit".*

The Federal Opposition strongly opposed this change and the bill was rejected twice by the Senate, thus becoming a double dissolution trigger for the 1974 election. The States opposed the referendum.

Anne Twomey has summarised the official Yes/No case as follows:

> *"The official 'Yes' case for this referendum proposal stressed the need for increased funding for better roads, sewerage, health and childcare services, recreation facilities and cleaner rivers and beaches, without increasing rates. It argued that it is 'unnecessary for national money to be provided to local government through middle-men, the States, particularly as this only increases administrative costs'. It concluded that the Commonwealth should be able to 'deal with local government on the same terms as with the States'.*
>
> *The official 'No' case stressed that grants to local government would be made on 'terms and conditions' allowing 'Canberra's bureaucratic fingers into every one of Australia's 1,000 Council Chambers'. It claimed that such an amendment would require the creation of another expensive administration in Canberra that would examine the affairs of 1000 municipalities to ascertain how much assistance they needed. The 'No' case accepted that local government needed more money, but argued that it should be done under the current mechanism of section 96 of the Constitution, with grants passing to local government via the States. It concluded that the Commonwealth should seek 'co-operation instead of confrontation'. Nationally, only 46 per cent of people voted in favour of the changes and a majority was achieved in only one State (NSW).*
>
> *The Hawke Government's **1988 referendum** on local government had its origins in a recommendation from the First Report of the Constitutional Commission. Instead of being a proposal about financial assistance, the proposal was for new provision stating: "Each State shall provide for the establishment and continuance of a system of local government, with local government bodies elected in accordance with the laws of a State and empowered to administer, and make by-laws for, their respective areas in accordance with the laws of the State". The Federal Opposition again campaigned against this proposal, arguing that the proposal was mere tokenism but also that it would centralise power. The referendum failed by an even greater*

margin than in 1974. Nationally, only 33 per cent of people voted in favour of the proposal and a majority was not achieved in any of the States and Territories."

https://freemandelusion.com/wp-content/uploads/2018/07/cru-report-3-local-government-a-twomey.pdf

Can the States raise taxes?

Australia is a federation and legislative power is distributed between the Commonwealth and the States. Although the text of the *Constitution* allows both States and the Commonwealth to raise revenue, subsequent constitutional interpretation and political developments have limited state taxing powers.

Prior to 1942, consistent with the concurrent power in Section 51(ii) of the *Commonwealth Constitution*, the states also collected income tax. The Commonwealth also levied tax. However, in 1942 the Commonwealth attempted to gain a monopoly on income taxes by passing the ***Income Tax Act 1942*** and the ***States Grants (Income Tax Reimbursement) Act 1942***. The first act purported to impose Commonwealth income tax. The latter act said Commonwealth funding would be provided to the States only if they imposed no income tax. This latter act was premised on ***Section 96*** of the *Commonwealth Constitution.*

The High Court has interpreted these 'terms and conditions' very broadly. In ***South Australia v Commonwealth (First Uniform Tax Case) (1942) 65 CLR 373*** the scheme was upheld. The scheme was again upheld on the basis of Section 96, in ***Victoria v Commonwealth (Second Uniform Tax Case) (1957) 99 CLR 575***. As Section 51 and other provisions of the constitution (such as section 52 and section 90) prescribe only limited legislative powers to the Commonwealth, Australian states have considerable obligations. For example, primarily, Australian states fund schools and hospitals.

Wayne Glew also raised the assertion that the States cannot collect tax in ***Glew v Shire of Greenough (2006) WASCA 260***. The court responded (at 7-8):

> *"So far as legislative power was concerned, s 51 of the Commonwealth Constitution listed most of the legislative powers of the Commonwealth. Those powers were not expressed to be exclusive. That is, the Commonwealth Constitution contemplated that both State and Commonwealth Parliaments would be able to make laws in relation to the matters set out in that list. It was only where the Commonwealth had passed a law in relation to one of those listed subject matters, and a State law was inconsistent with the Commonwealth law, that the State law would become invalid or inoperative (s 109). That would not be because the State lacked constitutional power to pass the law, but simply because the Commonwealth legislation was, to the extent that the Commonwealth had passed law, paramount. There is a short list of powers which are exclusive to the Commonwealth Parliament. They include, for example, the power to make laws with respect to the seat of government of the Commonwealth (s 52(i)).*
>
> *Taxation, which is referred to in s 51(ii), is a non-exclusive power, so that both State and Commonwealth Parliaments can pass laws dealing with taxation. However, because of the existence of s 109 of the Commonwealth Constitution, it is possible for the Commonwealth Parliament to give priority to its own taxation law, and/or to impose taxation at a rate such that the practical effect would be that it would not be politically possible for a State to tax the same*

subject matter. This was the effect achieved in relation to income tax in a case to which the appellants refer, South Australia v The Commonwealth (1942) 65 CLR 373. In other areas of taxation, where the Commonwealth has not legislated, it remains both politically and practically possible for the States to impose taxation; an example of such a tax would be land tax."

Are local councils 'corporations'?

In the case of The ***Australian Workers' Union of Employees, Queensland v Etheridge Shire Council [2008] FCA 1268,*** the Federal Court considered whether the Etheridge Shire Council in Queensland could enter into a workplace agreement with its employees under the Federal industrial relations system. Under the ***Workplace Relations Act 1996 (Cth)***, the agreement could only be made if the Council was a constitutional corporation, that is, a trading or financial corporation formed within the limits of the Commonwealth.

The Federal Court determined that local councils are NOT constitutional corporations and therefore not 'employers' for the purposes of the Workplace Relations Act 1996 (Cth). Justice Spender held that, in determining whether the Council was a trading or a financial corporation, the primary focus is on the activities of the Council. There was evidence that the Council's activities included providing a tourism centre, road works for the Department of Works, private works (services to residents and organisations), hostel accommodation, childcare centres, office space rental, residential property rental, sale of land, hire of halls, sale of water and services to the Federal Government. The court suggested that it was "*inconceivable*" that the drafters of the *Constitution* intended local government, which is a body politic of a State government, would be subject to Commonwealth powers in the area of workplace relations. In finding the Council was not a trading corporation, Justice Spender held that:

> *"All of the above activities "entirely lack the essential quality of trade" Almost all activities ran at a loss. All activities were directed to public benefit objectives In monetary terms they were so inconsequential and incidental to the primary activity and function of the Council as to deny the Council the characterisation of a 'trading corporation or a financial corporation'."*

https://freemandelusion.com/wp-content/uploads/2018/07/australian-workers-union-of-employees-queensland-v-etheridge-shire-council-2008-fca-1268.pdf

The decision meant that local councils could not enter into workplace agreements under the Federal industrial relations system and were not employers for the purposes of the Federal unfair dismissal

provisions. This is due in part to legislative amendments made to the ***Local Government Act 1993 (Qld)*** in March 2008 which expressly provided that councils are not corporations.

Similarly in New South Wales, ***section 220 of the Local Government Act 1995*** provides:

LOCAL GOVERNMENT ACT 1993 - SECT 220

Legal status of a council

220 Legal status of a council

(1) A council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual, both in and outside the State.

(2) A council is not a body corporate (including a corporation).

(3) A council does not have the status, privileges and immunities of the Crown (including the State and the Government of the State).

(4) A law of the State applies to and in respect of a council in the same way as it applies to and in respect of a body corporate (including a corporation).

However, for councils that have implemented Federal workplace agreements, such as in Western Australia, the Federal Court's decision is likely to cause significant uncertainty. In New South Wales, the government legislated to shield some public sector employees from Federal industrial relations law, but not council employees. However, councils have not sought to enter into Federal agreements and the issue in *Etheridge* has not arisen.

In ***Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail [2015] HCA 11***, the High Court held that Queensland Rail is a trading corporation within the meaning of section 51(xx) of the *Constitution*; and that Queensland Rail and its employees governed by federal Industrial Relations law and not Queensland Industrial Relations laws. What does the High Court decision in Queensland Rail case mean for Local Government?

> *"Whether a local council "…is said to be a 'body politic of the State' but 'not a body corporate', the question of whether the council is a constitutional corporation must be answered by looking to whether – as a matter of substance, not form – it has the characteristics of a corporation for the purposes of s 51(xx)". (¶64 of the Cth submissions)*

In those instances the question that will need to be asked is whether the trading activities at the council in question forms a sufficiently significant proportion of the council's overall activities, a matter of substance, not form.

In finding that the *City of Burnside* was not a trading corporation in ***Mr Martin Cooper [2017] FWC 5974***, Deputy President Anderson of the Fair Work Commission made the following observations:

> *"A corporation is a financial corporation if its principal purpose or purposes include banking or finance or if banking or finance activities are a not insubstantial component of its operations. (**State Superannuation Board of Victoria v Trade Practices Commission (1982) 150 CLR 28**) On the evidence before me, the City of Burnside is not established for banking or finance purposes nor operating in that industry. It does not undertake activities that could be said to involve the provision of finance or banking services. I find it is not a financial corporation. The approach of*

*courts and tribunals to the meaning of a "trading corporation" was conveniently summarised by Steytler P in **Aboriginal Legal Service (WA) Inc v Lawrence (No 2) (2008) 252 ALR 136** at [68]) in the following terms:*

*(1) A corporation may be a trading corporation even though trading is not its predominant activity: **Adamson [1979] HCA 6** (239); State Superannuation Board (303 - 304); **Tasmanian Dam case [1983] HCA 21** (156, 240, 293); **Quickenden [2001] FCA 303** [49] - [51], [101]; **Hardeman [2007] NSWIRComm 189; 166 IR 196** [18].*

*(2) However, trading must be a substantial and not merely a peripheral activity: Adamson (208, 234, 239); State Superannuation Board (303 - 304); **Hughes v Western Australian Cricket Association Inc (1986) 19 FCR 10**, 20; **Fencott [1983] HCA 12** (622); Tasmanian Dam case (156, 240, 293); Mid Density (584); Hardeman [22].*

*(3) In this context, 'trading' is not given a narrow construction. It extends beyond buying and selling to business activities carried on with a view to earning revenue and includes trade in services: Ku-ring-gai (139, 159 - 160); Adamson (235); **Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd (1982) 150 CLR 169**, 184 - 185, 203; **Bevanere Pty Ltd v Lubidineuse (1985) 7 FCR 325**, 330; Quickenden [101].*

(4) The making of a profit is not an essential prerequisite to trade, but it is a usual concomitant: St George County Council (539, 563, 569); Ku-ring-gai (140, 167); Adamson (219); E (343, 345); Pellow [28].

(5) The ends which a corporation seeks to serve by trading are irrelevant to its description: St George County Council (543, 569); Ku-ring-gai (160); State Superannuation Board (304 - 306); E (343). Consequently, the fact that the trading activities are conducted is the public interest or for a public purpose will not necessarily exclude the categorisation of those activities as 'trade': St George County Council (543) (Barwick CJ); Tasmanian Dam case (156) (Mason J).

(6) Whether the trading activities of an incorporated body are sufficient to justify its categorisations as a 'trading corporation' is a question of fact and degree: Adamson (234) (Mason J); State Superannuation Board(304); Fencott (589); Quickenden [52], [101]; Mid Density (584).

(7) The current activities of the corporation, while an important criterion for determining its characterisation, are not the only criterion. Regard must also be had to the intended purpose of the corporation, although a corporation that carries on trading activities can be found to be a trading corporation even if it was not originally established to trade: State Superannuation Board (294 - 295, 304 - 305); Fencott (588 - 589, 602, 611, 622 - 624); Hughes (20); Quickenden [101]; E (344); Hardeman [18].

(8) The commercial nature of an activity is an element in deciding whether the activity is in trade or trading: Adamson (209, 211); Ku-ring-gai (139, 142, 160, 167); Bevanere (330); Hughes (19 - 20); E (343); Fowler; Hardeman [26]."

> *This summary was subsequently adopted by the Full Court of the Federal Court in **Bankstown Handicapped Children's Centre v Hillman (2010) 182 FCR 483** at [48] and has been cited with approval by the Commission in matters arising in the anti-bullying jurisdiction. (For example, **Re McInnes [2014] FWC 1395** at [26] per Commissioner Hampton) Also relevant are the recent observations of a Full Bench of the Commission in **Lim v Trade & Investment Queensland [2016] FWCFB 6615**:*
>
> *"A corporation may be a trading corporation within the meaning of paragraph 51(xx) of the Constitution if it is constituted for the purposes of engaging in, or its purpose is to engage in trading activities. A corporation may also be a trading corporation if it engages in trade or trading activities. As Gageler J observed in **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail [2015] HCA 11** the constitutional description of trading corporation as capable of applying to a corporation – by reference to its trading purpose or alternatively by reference to its trading activity – must each be qualified to exclude that which is insubstantial. There is no bright line delineating a body corporate that is a trading corporation and one that is not. The characterisation of a body corporate as a trading corporation is a matter of fact and degree."*

https://freemandelusion.com/wp-content/uploads/2020/11/mr-martin-cooper-2017-fwc-5974.pdf

But this is not always the case, take for example how the trading activities of the *City of Port Phillip* did in fact constitute a significant proportion of the council's overall activities. It was declared a trading corporation by the Fair Work Commission in ***Matina Bastakos [2018] FWC 7650***.

https://freemandelusion.com/wp-content/uploads/2020/11/matina-bastakos-2018-fwc-7650.pdf

Nevertheless, whether the council is a trading corporation or not, it does not affect their obligations to collect rates, that is a statutory obligation. All it does is shift their obligations from State Industrial Relations policy to Federal Industrial Relations policy under the *Fair Work Act 2009*.

In ***Corica v Shire Of Mundaring [2016] WASC 356***, the appellants contended: *"...that various entities, including the respondent, the respondent's solicitors, this Court and the State of Western Australia, are 'trading corporations' within the meaning of s 51(xx) of the Commonwealth Constitution, which was said to have various consequences for the validity or efficacy of the proceedings against the appellants..."*

The court responded (at 94) that:

> *"These submissions are misconceived and wrong for reasons I will explain shortly. Apart from the flaws of such submissions as a matter of legal principle, submissions of a similar kind have already been rejected by this Court and by the Court of Appeal on numerous occasions: see, for example, Palmer v City of Gosnells [2014] WASCA 102 and the authorities therein cited. It is unfortunate that some litigants in this Court, and especially self-represented persons, continue to be seduced by these arguments and to run the risk of costs orders being made against them by repeating the arguments in litigation when they are doomed to failure.*
>
> *It is unnecessary to enter into the question whether any of the entities to which the appellants referred are trading corporations within the meaning of s 51(xx) of the Constitution. Even if they*

were, that fact would have no consequences in the context of these proceedings. Section 51(xx) confers on the Commonwealth Parliament power to make laws for the peace, order and good government of the Commonwealth with respect to 'foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth'. The legislative power of the Commonwealth Parliament under s 51 is concurrent with that of the States. That is, it is entirely open to the States to legislate in respect of trading corporations, subject to the operation of s 109 of the Constitution. Section 109 deals with any conflicts between Commonwealth and State laws made in the exercise of concurrent legislative power by providing that, if a Commonwealth law and a State law are inconsistent, the former prevails and the latter is inoperative to the extent of any inconsistency. The appellants did not point to any Commonwealth law which was inconsistent with any State law engaged in these proceedings, nor could they have."

https://freemandelusion.com/wp-content/uploads/2019/05/corica-v-shire-of-mundaring-2016-wasc-356.pdf

In ***Palmer v City of Gosnells [2013] WASC 446***, the appellants claimed (at 7) that: *"...the City of Gosnells is subject to the 'Corporations Law of the Commonwealth and as such is unable to claim from or prosecute the Defendants other than as a result of a contract..."* and (at 27) that *"...there were grounds for objection to his Honour's preliminary decision including a document which asserted that 'Australia has got an ABN number in America. They're owned by a corporation..."*

The court noted (at 107) that:

"Counsel for the Palmers on this appeal, Dr Walsh, had also represented Mr O'Connell last year in the Court of Appeal in O'Connell v The State of Western Australia [2012] WASCA 96. In that case, the Court of Appeal rejected a near-identical submission to the first two points made by Dr Walsh in this Court. Mazza JA (with whom Martin CJ and Buss JA agreed) described Dr Walsh's submission (at 88) as follows: since 'the Department of the Attorney General has an Australian Business Number (ABN), the courts in this State have effectively become corporations. Thus, it is said the judiciary is no longer a separate and independent arm of government'. It is not necessary to repeat the reasoning of Mazza JA. It suffices to set out his conclusion that this argument: "...is totally devoid of merit. The identical argument has been decided in this court in a number of cases including Glew v The Shire of Greenough [2006] WASCA 260; and Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007] WASCA 289. An application to the High Court for special leave to appeal against the first of those decisions was refused: Glew v Shire of Greenough [2007] HCATrans 520 (6 September 2007)."

https://freemandelusion.com/wp-content/uploads/2020/10/palmer-v-city-of-gosnells-2013-wasc-446.pdf

The decision was appealed in ***Palmer v City of Gosnells [2014] WASCA 102***, where it was held that:

"None of the grounds of appeal, as elaborated on in the submissions, have a reasonable prospect of succeeding. The same issues have been repeatedly raised in the Supreme Court and dismissed. See for example Shaw v Jim McGinty in his capacity as Attorney General [2006] WASCA 231; Glew v Shire of Greenough [2006] WASCA 260 (special leave refused: Glew v Shire of Greenough [2007] HCATrans 520); Glew Technologies Pty Ltd v Department of Planning and Infrastructure [2007]

WASCA 289; Glew v City of Greater Geraldton [2012] WASCA 94; Glew v Frank Jasper Pty Ltd [2012] WASCA 93; Krysiak v Hodgson [2009] WASCA 114; Glew v The Governor of Western Australia [2009] WASC 14; Glew v Frank Jasper Pty Ltd [2010] WASCA 87; O'Connell v The State of Western Australia [2012] WASCA 96 [92]. The grounds of appeal are devoid of any merit."

https://freemandelusion.com/wp-content/uploads/2020/10/palmer-v-city-of-gosnells-2014-wasca-102.pdf

There is no shortage of cases in the courts where these assertions regarding local government have been rejected. You can find many more cases on this website under the Tag "***Local Government***" Closely related is the notion that a title of Fee Simple "alienates the property from the Crown" and thereby prevents governments from exercising legislative authority in relation to the property. This assertion is covered in the article ***The Fee Simple Alienation Argument***.

This Fact Sheet explores the ***Legitimacy of Councils and Rating Powers in Victoria***, covering 5 common myths regarding local government in Victoria.

- *1. A referendum in 1988 to recognise local government in the Constitution did not succeed. Therefore local government has no legal existence.*
- *2. The Victorian Constitution is not valid; therefore its recognition of local government is invalid; therefore local government itself has no lawful basis. The Constitution Act 1975 was not properly enacted as it did not receive the assent of the Queen.*
- *3. Council has no right to impose rates because the Commonwealth Constitution only gives the power to tax to the Federal and State Governments. The High Court recently confirmed this in the 'Pape' case.*
- *4. Councils are created as bodies corporate, not governments. Therefore they cannot levy taxes.*
- *5. There is no lawful penalty for failing or refusing to pay rates because there is no power to impose rates.*

https://freemandelusion.com/wp-content/uploads/2018/07/microsoft-word-2013-legitimacy-and-powers-fact-sheet-march-2013.docx.pdf

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