

Dear Attorney General.

I write to you at the direction of Magistrate Murray of Albury Local Court NSW. Magistrate Murray is the Magistrate presiding over a small claims matter 2016/00062369 between myself and Albury City Council, trading as AlburyCity. I have attached my amended initial defence for your convenience.

AlburyCity, through their commercial debt collectors (Midstate Credit Collections Pty Ltd), have issued a Statement of Claim for alleged unpaid rates, charges and interest. I have refused to pay these charges on a number of grounds that are outlined in my defence.

The plaintiff and the Court feel that I have raised Constitutional issues by my reference to the Queensland Rail Case (HCA) and Commonwealth legislation. Other matters pertaining to the NSW Constitution Act 1902 have also been raised, but of course they are not a matter of Commonwealth Constitutional Significance. Any other matters of constitutional significance that pertain to the Commonwealth that have arisen since my initial defence was lodged will be matters for the court to decide upon, as well as forming part of this Sect 78B submission.

I will now provide my matters of defence in chronological order relative to my submitted defence.

Albury City Council, trading as AlburyCity, trades exclusively under a registered Trading Name. It also holds seven (7) registered business names at this present time. Appendix 2 & 3 are prima facie evidence of this claim. The Accepted Activities Test, as applied in the Queensland Rail Case (HCA), would ascertain that a large percentage of their trading activities squarely places them in the class of a Constitutional Trading Corporation.

There is no provision whatsoever within their enabling act, Local Government Act 1993 (NSW) that allows them to operate under a Trading Name.

Section 358 Local Government Act 1993 (NSW) places restrictions upon the formation or funding of separate corporations or entities, without the express permission of The Minister. By trading exclusively under a Trading Name, AlburyCity have created a separate entity that differs from their lawful and legislated name. This makes AlburyCity *ultra vires* of their enabling act.

Council rates are an Australian Tax, as laid down by ATO ID 2012/87. This ATO ID is comprehensive, and leaves no doubt that Council Rates are indeed an Australian Tax.

Section 51 Local Government was inserted into The Constitution Act 1902 (NSW) in 1986, without public consultation, plebiscite or referendum.

This act of insertion is repugnant to the Commonwealth Constitution Act 1901 and therefore invalid. In a letter (Attached) from the CEO of AlburyCity that I received dated 14th May 2015, Mr. Frank Zaknich drew my attention to the fact that The Commonwealth Constitution Act 1901 (Australian Constitution) is the "Supreme law of the Commonwealth of Australia, and it overrides other laws." He also went on to say that State Constitutions could continue in their current form that existed before Federation.

Section 106 Commonwealth Constitution Act 1901 provides that State Constitutions may be altered, however Sect. 5(b) Australia Act 1986 (Cth) reads that provisions of any State Act that are repugnant to the Commonwealth Constitution Act 1901 (Cth) have no force or effect. Therefore, inserting a section in the NSW Constitution in 1986 that attempts to give force and effect to a third tier of Government with the authority to impose a land tax is certainly repugnant to the Commonwealth Constitution, notwithstanding the fact that a Constitutional referendum was held in 1974 and again in 1988 that asked the Australian People (ie: The Commonwealth) to grant recognition for Local Government in the Commonwealth Constitution. On both occasions the answer was a resounding no.

Local Government in NSW is, and can only be, a department or agency of the State Government. The NSW Government does not appear to recognize councils as legitimate Government by virtue of Sect. 66 Government Sector Employment Act 2013 (NSW), which refers to a local council as a "non-government sector body". There is also the matter of AlburyCity's corporate or otherwise status, as they are operating under an Australian Business Number (ABN) that is clearly displayed on their invoices, as well as its Trading Name status, seems to clearly identify it as a business, or trading corporation.

Local Government (or otherwise) does not possess the power of taxation, by virtue of Section 220, Legal Status of a Council, Local Government Act 1993 (NSW).

A body politic is a descriptor term, not a definer. It simply means a group of people within the State. It cannot have perpetual succession, unlike a corporation or "dead entity". Giving a body politic the powers of an individual is a theoretical impossibility, and in any case, an individual cannot be granted, nor possess the power of taxation. That is the preserve of the Crown.

The Local Government Act 1993 (NSW) asks this question:

## **LOCAL GOVERNMENT ACT 1993 - SECT 4**

**Does this Act bind the Crown?**

**4 Does this Act bind the Crown?**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities, except to the extent to which this Act otherwise provides.

Particular provisions relating to the Crown are found in the following sections:

- sections 72-74-concerning determination of Crown applications for approvals
- section 111-concerning revocation or modification of approvals given to the Crown
- section 126-concerning the giving of orders affecting Crown lands, reserves under Part 5 of the [Crown Lands Act 1989](#) and commons
- sections 555 and 561-concerning rates and charges on land owned by the Crown
- section 560-concerning the liability to pay rates in respect of land owned by the Crown
- section 611-concerning the imposition of an annual charge for certain things on, under or over public places
- section 708-service of notices on the Crown
- section 714-prohibition on sale of Crown lands for unpaid rates and charges

This question is answered by Sect 220

## **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).

Local Government in NSW is not a body corporate, including a corporation. They are listed as an Unincorporated Entity with the Australian Securities and Investments Commission (ASIC). ASIC has its own Federal legislation where it is also incorporated in NSW legislation through Part 11 Corporations (NSW) Act 1990.

It is also important to note that Sect. 8 of that same act appears to restrict a corporation from imposing a liability upon a private person. A council does not have the status, privileges and immunities of the

Crown, including the State and the Government of the State. This subsection appears to give councils no status at all, let alone the status of a taxation authority.

Section 220 also dictates that a law of the State applies to, and in respect of a council in the say way it would apply to a corporation. As a constitutional Trading Corporation, Commonwealth laws would apply equally, or in a prevailing manner over State laws when there is a conflict between the two.

My land title is estate held in Fee Simple and therefore retains Crown status by virtue of Section 36 Imperial Acts Application Act 1969 (NSW).

Can a Trading Corporation, or unincorporated entity, impose land tax on land that retains Crown status?

The enshrined enactments contained within the Imperial Acts Application Act 1969 (NSW) are unable to be repealed without a referendum, and are therefore valid legislation with force and effect today.

It is my assertion that AlburyCity is a Trading Corporation, and is therefore subject to original jurisdiction of the Commonwealth, and the coverage of Commonwealth legislation. Commonwealth legislation that seeks to exclude Local Government is subject to a separate Constitutional challenge on the basis that Commonwealth legislators have acted outside their power by even mentioning entities that are repugnant to the Commonwealth Constitution. This practice is ripe for challenge, and any such exclusions should be ignored by the judiciary.

It is also my assertion that AlburyCity is a cartel, in that it imposes services for a fee on consumers under threat of menace or coercion. Part IV Division 1 of The Competition and Consumer Act 2010 (Cth) deals extensively with cartel and restrictive trade practices, and provides for heavy penalties to be imposed for such practices. AlburyCity, and councils in general, engage in restrictive and monopolistic business ventures, as well as imposing rates, fees and charges, imposts and fines.

As a Trading Corporation, there must be a binding contract between parties. If councils are to be treated as a corporation, can they impose such a contract on a natural person?

By acting in a manner that is ultra vires to their enabling act, they then lose their dubious legislated authority, and fall under the realm of contract and mercantile law. This has been acknowledged by the manner in which they commenced proceedings against myself. If rates are mandated by law, why is that AlburyCity uses a commercial debt collector to pursue their alleged debts in an initiatory and coercive fashion? AlburyCity may argue that their actions are lawful and they can charge rates/tax, but is it against the law to refuse such a non-existent contract?

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia & Ors v. Queensland Rail & Anor, commonly known as The Queensland Rail Case, is HCA case law that ratifies the assertion that AlburyCity and, in fact all local government throughout Australia, fall within the parameters set by the Full bench of the High Court of Australia. The High Court ruled that Queensland Rail was a Constitutional trading corporation due to its trading activities. This was despite strong opposition from State Attorney Generals.

AlburyCity, by choosing to trade in the manner it does and, by having its corporate structure so plainly evidenced, must also fall under the category of a Constitutional trading corporation.

The Local Government Association of NSW have released papers (Attached) that outline some of the implications and consequences of the Queensland Rail Decision. It is important to note that although this case was focused primarily on industrial relations, the case has far reaching ramifications for Local Government in its current form.

The recent activities of the Baird NSW Government in relation to councils is further evidence of the nature of Local Government. Residents are forced to vote for local councilors by State Electoral Commissions under threat of fine. These councilors, who are voted for by residents in an apparently democratic fashion, have been summarily removed from office in many cases throughout council areas in NSW and, have been replaced by administrators. Is this de jure government, duly legislated with the power of taxation, or a business, separate to the State, empowered to do what State Governments are unable to do: tax Fee Simple land.

As sign of good faith, and an engagement of business practices commensurate with AlburyCity's corporate status and also, their unincorporated status that leaves them devoid of legal personality or standing, I have discharged the alleged liability with a duly constructed and drafted Bill of Exchange No BOE030720161155 for the Sum Certain of \$5000. This tender in no way admits any liability, as evidenced by

## **CIVIL PROCEDURE ACT 2005 - SECT 83**

### **Interim payment not admission of liability**

#### **83 Interim payment not admission of liability**

(cf Act No 52 1970, section 76F; Act No 9 1973, section 59)

- (1) The fact that a defendant makes one or more interim payments is not of itself an admission of liability by the defendant.
- (2) The making of, or refusal to make, an order under this Division is not a finding as to liability in respect of the proceedings.

This tender of payment was not accepted or acknowledged by AlburyCity or their commercial agent. Their solicitor informed me of this in a letter incidental to other matters some 8 days beyond the acceptance date.

Bills of Exchange are legal tender in Australia, and the Bills of Exchange Act 1909 (Cth) is still in force, and regarded as the highest law pertaining to commerce in Australia today. Bills of Exchange are also included under the money definition in the dictionary attached to the New Tax System (Goods and Services Act) 1999 (Cth). Bills of Exchange are also the subject of ATO ID 2010/11 GST and Bill of Exchange for Consideration of Supply.

This ATO ID is prima facie evidence, with corroborating case law, that future dated Bills of Exchange are legal tender for payment of services rendered in Australia. Bills of Exchange are also mentioned in;

Section 24 Currency Act 1965 (Cth)

Section 8 Reserve Bank Act 1959 (Cth)

Section 51 (xvi) Commonwealth Constitution Act 1901 (Cth)

Section 206 Duties Act 1997 (NSW)

Section 111 (NSW) Civil Procedures Act 2005 (NSW)

This list of acts and orders that corroborate the validity of Bills of Exchange as lawful payment for goods and services is not exhaustive, but is irrefutable evidence of their legality under State and Federal law. AlburyCity have no legal basis on which to refuse such a tender, and the Judiciary are bound to accept their bona fide status, irrespective of any defects in form or structure.

By refusing to accept this payment, AlburyCity has acted in dishonor, and any alleged liability on my part is now discharged in accordance with law.

AlburyCity, and Local Government in general, have evolved into Trading Corporations, in that they engage in trading and entrepreneurial activities in their daily activities. This can be amply evidenced. It is my assertion that they have undertaken this transformation since 1988 in order to subvert the will of the Australian People, and gain Commonwealth recognition and funding.

By operating in this manner they fall under the umbrella of Commonwealth law and legislation, that conflicts with, and subjugates the power that Local Government believes it possesses in exclusivity with the Local Government Act 1993 (NSW)

It was the States that requested the Australia Act 1986 (Cth) and it is somewhat ironic that that particular act provides that constitution downfall to Local Governments very existence.

I respectfully request that you intervene in this matter, and initiate steps to rectify the matters that I have outlined. AlburyCity cannot continue trading under a trading name and still expect to have the powers that it continues to enforce.

Truckie Rob (edited for privacy)