



Local governments and rating powers

The WA Constitution allows for a system of local government through the *Local Government Act 1995*. This permits local governments to impose rates and charges to landowners in their local government area.

Significant penalties apply to people who refuse or fail to pay rates and charges.

Where do local governments derive their rating powers from?

Myth	Facts
<p>Local government has no legal validity because it is not mentioned in the Commonwealth Constitution.</p> <p>A referendum in 1988 to recognise local government in the Constitution failed.</p>	<p>There is no obstacle in the <i>Commonwealth of Australia Constitution Act</i> to prevent State Parliaments from legislating to create, empower and regulate local government. All States have done so.</p> <p>There is no requirement for a referendum to recognise the validity of local government in Western Australia.</p> <p>Section 128 of the Commonwealth Constitution only prescribes that a referendum is required to amend the Commonwealth Constitution, not the individual constitutions of Australian States and Territories.</p>
<p>The Western Australian Constitution is not valid; therefore, its recognition of local government is invalid; therefore, local government itself has no lawful basis.</p>	<p>Sections 106 and 108 of the Commonwealth Constitution validate the continuation of State Constitutions and laws as they existed at the time of formation of the Commonwealth.</p> <p>Additionally, these sections preserve the ongoing right of State Parliaments to amend those Constitutions and laws.</p> <p>This right has also been confirmed by the Supreme Court of Western Australia.</p>



Myth	Facts
	<p>The <i>Constitution Act 1889</i>, which relates to the Western Australian Constitution, was lawfully amended to provide for a system of local government throughout the State under section 52.</p> <p>The legal existence of local government was further confirmed through the passing of the Western Australian <i>Local Government Act 1995</i>.</p>
<p>Council has no right to impose rates because the Commonwealth Constitution only gives the power to tax to the Federal and State Governments.</p> <p>The High Court confirmed this in the ‘Pape’ case.</p>	<p>The Commonwealth Constitution does not contain any obstacle to the levy of taxes by the States, including on property.</p> <p>State Parliaments have the power to confer this function on other bodies through legislation.</p> <p>Through the <i>Local Government Act 1995</i>, Part 6, the Western Australian Parliament has conferred upon local government the power to levy and collect property tax in the form of rates.</p> <p>The High Court case of <i>Pape v Commissioner of Taxation</i> (2009) did not refer to either the States’ power to tax, or local government’s power to levy rates and charges.</p>
<p>Councils are created as bodies corporate, not governments.</p> <p>Therefore, they cannot levy taxes.</p>	<p>Councils are created as statutory bodies corporate under the <i>Local Government Act 1995</i>.</p> <p>Such bodies can perform any function and exercise any power conferred on them by the Act which creates them.</p> <p>The <i>Local Government Act 1995</i> provides local governments with a range of powers, including the ability to levy rates.</p> <p>The Western Australian Constitution provides that local governments are a distinct and essential tier of government. Therefore, they do not need to enter into contracts with individuals.</p>



Myth

There is no lawful penalty for failing or refusing to pay rates because there is no power to impose rates.

Facts

Councils have the lawful power to impose and enforce rates as outlined above.

People who fail to pay their rates may be liable for considerable penalties, including:

- Interest for late payment
- Court proceedings which may result in awarding costs against a defaulting owner, which means paying the local government's legal costs on top of the outstanding rates and charges
- Recovery of unpaid rates and charges as debts, which may include selling the relevant land without the consent of the owner.

Appealing Rates and Charges

Section 6.76 of the *Local Government Act 1995* allows for objections to rates notices where there is an error in the rate record –

- (a) (i) with respect to the identity of the owner or occupier of any land; or
(ii) on the basis that the land or part of the land is not rateable land;
or
- (b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.

There is no ability to appeal within the Act based on valuation, the rate in the dollar, or percentage of annual increase (provided the correct process to set rates has been followed by the local government).

However, many local governments have a policy to cover circumstances of financial hardship and can arrange a payment plan with individuals to avoid penalties.

Any person wishing to challenge a rates notice should speak to their local government first. If pursuing the matter further, seeking independent legal advice is recommended.

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