

**Hervey Bay
Neighbourhood Centre**
The Heart Of Our Community

LOCAL GOVERNMENT RATES

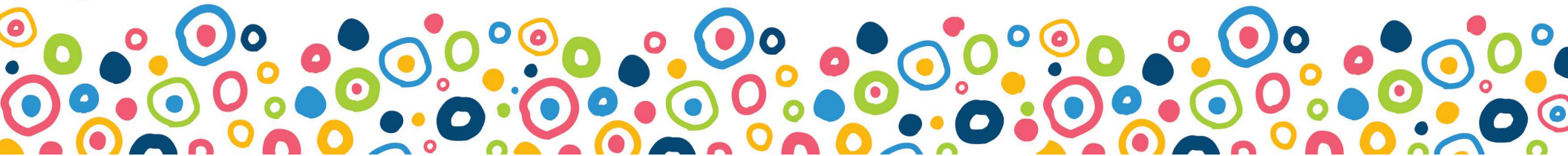
How Local Governments Are Empowered to Raise
and Enforce Rates – Busting the Myths



Wide Bay Burnett
Community Legal Service

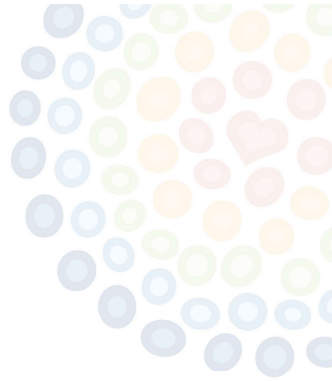


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Acknowledgment to Country

We acknowledge the Butchulla people, the Traditional Custodians of the land on which we work and recognise their continuing connection to land, water and community. We pay respect to Elders past, present and emerging. We extend that respect to Aboriginal and Torres Strait Islanders today.



Disclaimer



The material contained throughout this presentation is provided for general information and educative purposes. The content does not constitute legal advice or recommendations and should not be relied upon as such. Appropriate legal advice regarding your personal and specific circumstances ought to be obtained.

This document is current as at May 2023. Laws may have changed in the meantime. We cannot warrant that the information contained herein will remain accurate over time. Please seek advice in relation to your specific circumstances.



What are Council Rates for?



The rates you pay to Council permit Council to provide essential services to residents, including (among others):

- Construction, maintenance and repair of roads;
- Rubbish collection, tips and landfills;
- Water including supply of treated drinking water, and provision of sewerage facilities and treatment;
- Managing animals in the community including funding for Rangers and the pound;
- Providing and maintaining public facilities like parks and playgrounds;
- Investigating and controlling public nuisances like noise or pollution;
- Responsibilities in relation to urban planning and building along with protection of heritage sites and / or vegetation;
- Right down to the doggy-do bags supplied at our parks and beaches!
- Unfortunately none of this is free. Nothing ever is!
- Part of the way Council meets the cost is by raising and enforcing the payment of Council rates on land within the local government area. If Council did not do this, the State Government would have to do it instead; the costs would not simply go away.



MYTH 1 : Local Government is not recognised in the Commonwealth Constitution and therefore has no validity

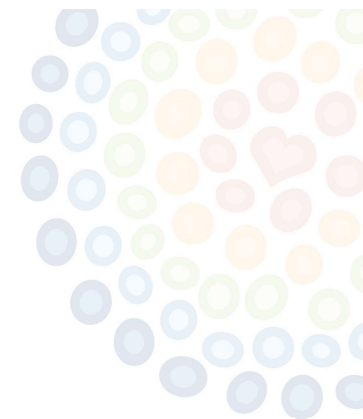
FALSE: Nothing in the *Commonwealth of Australia Constitution Act* prevents State parliaments from legislating to create and regulate local government.

ALL States have done so.

There is NO requirement for a referendum to recognise the validity of local government in Queensland.

The primary purpose of the previous failed referendum to recognise local government in the Commonwealth Constitution was to permit the Commonwealth to fund local government directly rather than via the States. This was largely resisted by the States, and the referendum did not pass.

It does not mean that local government was never valid to begin with.





MYTH 2: The Queensland Constitution is not valid, therefore it cannot recognise local government, therefore local government has no validity

- **FALSE:** Sections 106 and 108 of the Commonwealth Constitution validate the State Constitutions and laws as they existed at the time of formation of the Commonwealth.
- These sections preserve the ongoing rights of State Parliaments to amend the State's Constitution and laws.
- Chapter 7 of the Queensland Constitution legally provides for a system of local government throughout the State of Queensland.
- The Queensland Parliament passed the current Local Government Act in 2009, setting out the powers and responsibilities of local government.



MYTH 3: Councils cannot impose rates because the Commonwealth Constitution grants taxation power only to Federal and State Governments

- **FALSE:** The Commonwealth Constitution does not prevent the States from levying taxes, including taxes on land.
- Local governments are creatures of their respective State governments, and the State parliaments have the power to confer this function on them.
- Through the Local Government Act 2009, Chapter 4, the Queensland parliament has granted local government the power to levy and collect rates.



MYTH 5: Councils are corporations, not governments, and therefore cannot levy taxes or do anything else I have not contracted with them for.

- **FALSE**
- Councils are statutory bodies corporate under the Local Government Act 2009.
- Such bodies can perform any function conferred on them by the Act.
- The Local Government Act 2009 grants local government a wide range of powers including the power to levy rates.
- The Queensland Constitution provides that local governments are a distinct and essential tier of government. Therefore they do not legally need to enter into contracts with individuals.

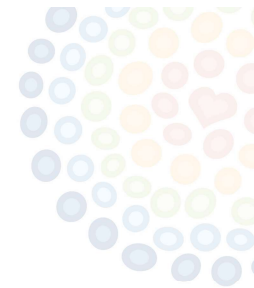




MYTH 6: Because Local Governments have no power to raise rates, there can be no lawful penalty for failure to pay.

- **FALSE.** Councils have the lawful power to raise and enforce rates as outlined above.
- If you fail to pay your council rates, you can be liable to penalties including:
 - Interest on late payments;
 - The costs of court proceedings taken out against you to recover the unpaid rates;
 - Debt collection action;
 - The sale of your land without your consent.





On What Grounds can I Challenge my Rates Notice?

- There are very few grounds for successfully challenging your rates notice.
- They can include:
 - That council has charged the rates to the wrong person;
 - That the rates have been miscalculated in some way.
- Most local councils have a policy in place to cover personal financial hardship. It may be possible to arrange a payment plan and avoid penalties. If rates have been properly levied but you cannot pay them, speak to council as soon as possible about your options, and consider discussing your situation with a financial counsellor. Do not delay, once enforcement action has commenced your options may reduce.
- If you wish to challenge a rates notice, you should first speak with the local Council and if the matter is not resolved, seek independent legal advice.

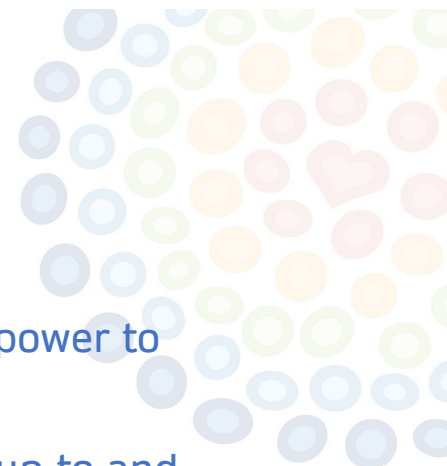


How can Wide Bay Burnett CLS Assist?

- Wide Bay Burnett Community Legal Service cannot assist you to defend a claim for council rates on any of the grounds set out in this mythbuster as “FALSE”, because they are not valid or arguable defences.
- Solicitors, including ours, have a duty to the court not to prepare and file a Defence to a proceeding when that Defence does not have reasonable prospects of success.
- If you have concerns in relation to an error in the way Council has calculated your rates, or if rates have been levied on the wrong person or the wrong parcel of land, we may be able to assist you further - please call our intake line for an appointment.
- If you require financial guidance, we can refer you to a local financial counsellor.

Important takeaways

- Local Government (Councils) are a valid tier of government and do have legal power to raise rates against land.
- Local Government has the power to enforce the payment of rates by methods up to and including the sale of the land without your consent.
- The Courts generally will not entertain defences of the kinds covered by this mythbuster.
- Running a baseless defence will almost certainly still result in a judgement against you, and can leave you liable to significant additional court costs and interest on top of the existing rates debt.
- **DON'T DELAY** : Speak to Council as soon as you become aware that you may have difficulty meeting your rates as they fall due. Enforcement action is far less likely to occur if you are able to discuss the matter with Council and come to a suitable arrangement beforehand, such as catching up by instalments. Seek the assistance of a financial counsellor if required.



Questions

If you would like specific legal advice for your situation, you may contact our Reception for an appointment:

- Wide Bay Burnett Community Legal Service (07) 4194 2663
- Our web inquiry form at www.wbbcls.com.au
- We can also provide you with referral to a financial counsellor, just give us a call or drop us a note from our webpage and one of our staff will identify suitable financial counsellors near you.

Acknowledgement

This material was adapted from the publication “*Local Governments and Rating Powers*” prepared by the Western Australian Department of Local Government, Sport and Cultural Industries. It has been modified to state the correct position and legislation in the State of Queensland. That document may be viewed at the following URL: <https://www.dlgsc.wa.gov.au/docs/default-source/local-government/rates/local-governments-and-rating-powers-factsheet.pdf>

