



Submission

Joint Select Committee on the
Constitutional Reform of Local
Government

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Citizen of the Commonwealth of Australia

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Mr. Glenn Worthington
Secretary
Joint Select Committee on the
Constitutional Reform of Local Government
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Corporate Local Government Funding Legitimacy

Dear Secretary,

As a private individual, I would like to make a submission to the Joint Standing Committee on Constitutional Recognition of Local Government.

The first and most important point is that I believe an extension of time should be given to make submissions on this very important issue, as there has been little notice given that the Committee was accepting submissions from the public.

As only a few days remain before this period ends, I feel an extension of time of **an additional two weeks** is a reasonable request.

Secondly, I would like to make a few comments regarding the desire by municipal councils throughout the Commonwealth of Australia to change Section 96 of the Commonwealth's Constitution, which currently states...

96. During a period of ten years after the establishment of the Financial Commonwealth and thereafter until the Parliament otherwise provides, assistance to the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.

...to a proposed wording that will change to something as follows:

"96...Parliament may grant financial assistance to any state or local government body formed by or under a law of a state or territory"

- quotation from submission by Cr. Keith Fagg, Mayor, City of Greater Geelong

It is my opinion that such a change is unconstitutional for the following reasons.

1. Councils operate today as corporate businesses

All municipal councils have an ABN number assigned to them as shown below for the Bayside City Council located in Melbourne on their webpage <http://www.bayside.vic.gov.au/>.

As can be seen on the webpage (below) their ABN is 65 486 719 651.

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This means that they are NOT representing the residents of their municipality as 'public servants' appointed by the government, but as corporate businesses established to make a profit for their business owners and shareholders.

This is because a Chief Executive Officer (or CEO) heads the 'corporation' as illustrated in the company's corporate structure diagram shown in Appendix 1.



My point here is that municipal councils in their current form are large-sized corporations (sometimes with more than 500 employees) who are not truly accountable to the people they are supposed to serve.

If these entities were in any way considered to be an arm of 'government,' they would be able to stand the scrutiny of the High Court of Australia in relation to principles undergirding a Westminster system of government. Municipal councils therefore, do not adhere to this basic principle of government!

2. Councils are not representative of true 'Local Government'.

If today's corporately structured municipal council was to become truly representative of "local government" in the future, it would have to become entirely restructured to become a properly constituted arm of government.

In this sense, it would no longer be able to raise its own funds through rates and fees as currently happens, and it would be required to operate in the same manner as other Federal and State governments are run today. In this, the higher levels of government would raise funds to fund areas of State responsibility asked of each municipal council to manage on the government's behalf.

In other words, if 'Local Government' is intended to be a third tier of government in the Commonwealth, it would have to remove itself from being the corporate entity as it is now, and, it would have to comply with the standards required by the Commonwealth Constitution to be legally established as another arm of a Westminster system of government.

Another condition would probably be that for "local laws" to be legal or valid, they would need to be ratified by the Federal Government.

If a 'third tier of government' was to be established under these conditions, then the Federal Government would have to purchase each municipal council from its current owners and shareholders at an agreed price before the third tier of government could be properly established!

Given there are over 500 municipal councils throughout Australia, the purchase cost to acquire them would be astronomical.

3. Should Federal Funding be allocated to Private Corporations?

In all parliaments throughout the Commonwealth, a Consolidated Revenue Fund is required by the Westminster system of government – for money to be spent through Bills of appropriation. Constitutionally, it is not appropriate that federal funds be provided to corporate entities created by the State/s which are NOT “government” per se.

THEREFORE, when it comes to requiring taxpayers to fund any new program created by the government, there should a clear division between what *Corporate Australia* wants from taxpayers and what the *Government of the Commonwealth of Australia* is legally constituted to take and provide to them.

In the matter of Section 96 of the Constitution, the current municipal council structure of corporate government fails the test of responsible government as applied by the High Court of Australia in *Pape V Commissioner of Taxation* [2009] HCA 23 (7 July 2009), at 56 – 60.

Conclusion

The distinction between governments and large corporations should remain separate; otherwise the taxpayers of this nation will simply become a source of funding for these private corporations.

More importantly, it is the responsibility of those who govern the nation of Australia (under the existing Constitution of 1901) to be primarily governing the nation for the best interests of the people of Australia.

For any government or committee it appoints to recommend or implement changes to the Constitution that force the taxpayers of the nation to become *cash-cows* to corporations masquerading as ‘Local Government,’ such a situation is not only offensive, it is illegal.

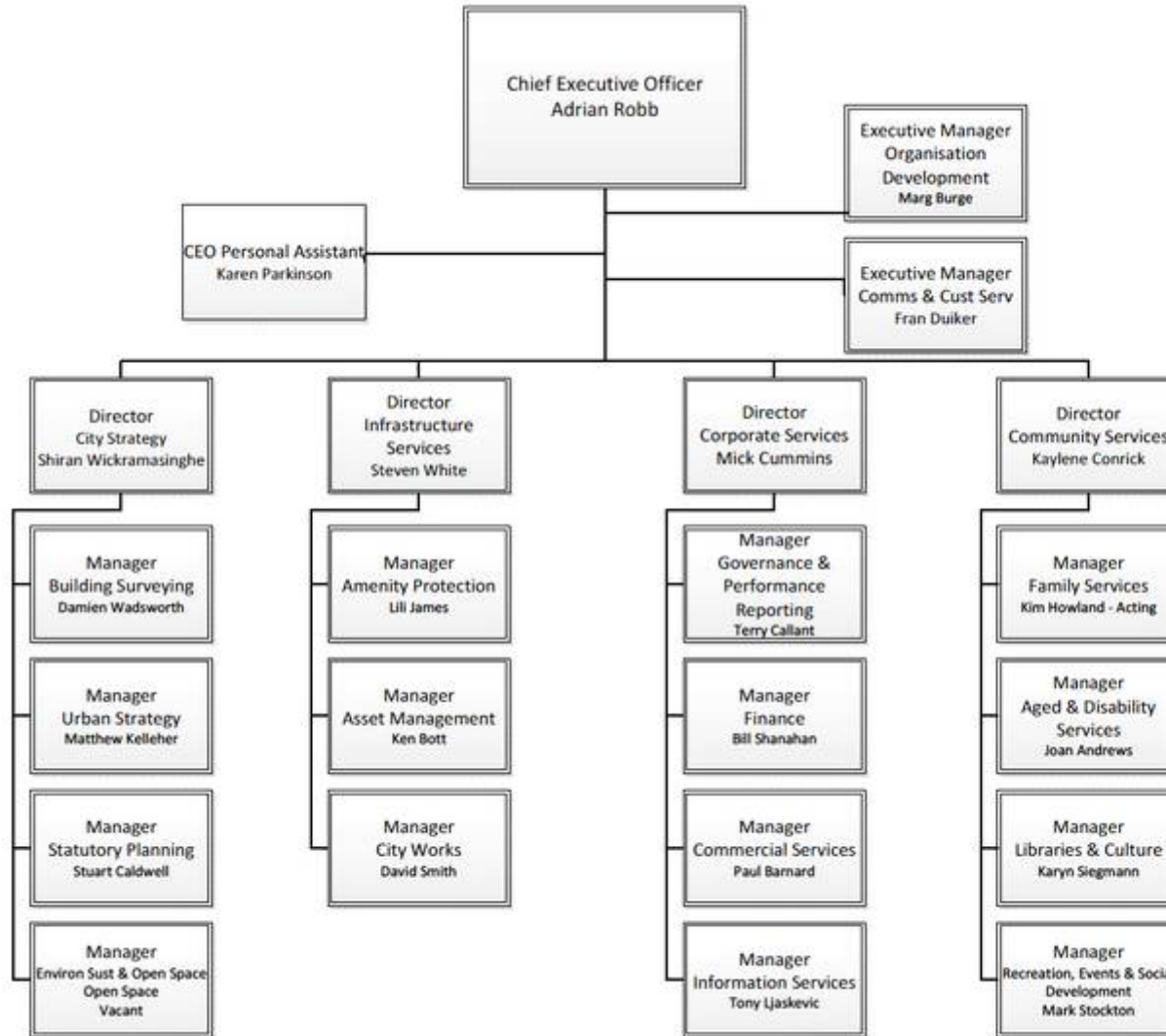
Therefore, I urge you (as members of the House) to undertake the necessary research into these claims to see for yourselves that what is being proposed for referendum approval is unconstitutional.

Yours truly,

Alan Manson

Appendix 1: Corporate Structure – Bayside City Council

http://www.bayside.vic.gov.au/Organisational_Chart.pdf



Org Charts Approved as at Wednesday, November 28, 2012