Hi Corinne,

Can you please send out the following response from the AG Enquiries Inbox?

While neither the Attorney-General nor this Department is able to provide legal advice to private individuals, I trust the following general comments are of assistance to you. The Australian Constitution does not include a specific reference to local government. Local government bodies are established and regulated by State and Northern Territory laws. The capacities of the States and the Northern Territory to make laws about local government arise from their powers to make laws about matters within their jurisdictions.

Hi Jim or Louise

Is this something that you can help with?

Regards,

Corinne Arthur

6141 2503

Hi There.

I have read on some sites that local government bodies in Australia are not recognised under the Australian Constitution. This does appear to be supported by a statement in a letter by R McClelland dated 08 July 2010 ref 10/6264,MC10/8705

From this, there have been and still are assertions that based on this, local governments do not have constitutional right to apply and prefer fines on people for issues such as parking violations etc.

Can you assist in clarifying this???
Embleton, WA, 6062

"Mors ultima linea rerum est"
Hi Kristina,

Can you please send the following response out from the AG Enquiries inbox? Thank you:

Neither this Department nor the Attorney-General is able to provide legal advice to private individuals. However, I hope the following general comments will be of assistance to you.

The Australian Constitution was passed as part of the Commonwealth of Australia Constitution Act 1900, an Act of the British Parliament, and took effect on 1 January 1901. A British Act was necessary because before 1901 Australia was a collection of self-governing colonies and ultimate power over those colonies rested with the British Parliament.

A former Chief Justice, the Hon Murray Gleeson AC, noted the status of the Constitution as Australia’s basic law (in the 2000 Boyer Lectures published as The Rule of Law and the Constitution, ABC Books, 2000, at page 6):

"In Australia, unlike the United Kingdom we have a basic law, the Constitution, which defines and limits the power of the Parliament to alter the law. Because the basic law can now be altered only by the people of Australia, the sovereignty of our nation lies with the people, both as a matter of legal principle and as a matter of practical reality."

The Australian Constitution confers the power to make laws on the Commonwealth Parliament. However, the power of the Commonwealth Parliament to make laws is limited to particular subjects. Most of these subjects are listed in sections 51 and 52.

If the validity of a law enacted by the Commonwealth Parliament is challenged, it is the High Court which ultimately determines whether the law is within the legislative powers of the Commonwealth. If an Act is found to be invalid, it is usually ‘invalid from the beginning’.

The common law of Australia must conform with the Constitution but also informs our understanding of the Constitution. The High Court of Australia is the ultimate court of appeal in Australia and its decisions have assisted in achieving a markedly uniform common law.

In relation to the interaction between domestic law and international law, the general rule is that an international law becomes part of Australian law when it is given domestic effect by the enactment of Commonwealth, State or Territory legislation. There are other ways in which international treaties or agreements may influence Australian law, however. The common law might develop to take account of international law and international law may be used in statutory interpretation. The Australian Government also has regard to international law when developing policies and programs. Regardless of its incorporation into domestic law, Australia is bound by the obligations it has accepted as a matter of international law.

-----Original Message-----
From: AG Enquiries
Sent: Monday, 27 August 2012 12:02 PM
To: Parrott, Louise
Subject: FW: Constraints? [SEC=UNCLASSIFIED]

UNCLASSIFIED
Hi Louise

Are you able to respond to the below email enquiry to the questions regarding the Australian Constitution?

If not, please let me know.

Thanks
Kristina

-----Original Message-----
From: [mailto:]
Sent: Monday, 27 August 2012 8:07 AM
To: AG Enquiries
Subject: Constraints?

Hello,

This email is a sincere attempt to gain important knowledge, and is written in good faith, without any form of malice, or frivolity.

Could you please tell me what constraints the Australian Government has when it comes to passing legislation?
What lines must the government not cross?

As an extreme example... What would prevent the government from passing legislation requiring all Australians to participate in child sacrifices?

My current belief is that there is a difference between what is legal, and what is lawful. The law is basically that you must not hurt anyone, damage their property, or be fraudulent in your transactions; whereas legislation specifies what is legal and illegal.

If the government did hypothetically pass child sacrifice laws, child sacrifices would then be legal, but they would still not be lawful. Is that correct?

Is it possible for legislation to be invalid from the beginning?

Is the Australian Government constrained by common law?

Is the government constrained by the constitution, and if so what does the government recognize as the constitution?

What would happen if what the Government recognized as the constitution turned out to be invalid?

Is the Australian Government constrained by International Law?

I have many more questions, but that will do for now.

Kindest regards,
Sorry delete the second 'that'. Here's a corrected version:

A referendum was not required for the Australia Acts. There is therefore nothing that we can usefully add to our email of 1 August.

Louise Parrott
A/g Principal Legal Officer
Office of Constitutional Law
Tel: 6141 3611

Hi Kristina, here is a response:

A referendum was not required for the Australia Acts. There is therefore nothing that we can usefully add to our email of 1 August.

Good morning Louise

The enquiries inbox has received a follow up question to the CPU query. Happy to send your response out from the AG Enquiries again.

Thanks and regards
Kristina
Dear Sir/Madam,

Correct me if I am wrong but we have not had any referendum to change the Australian Constitution making the Australian Act and at the said referendum the people said NO. Are we operating under a de jure government or a de facto government?

Regards

From: Enquiries@ag.gov.au
To: [mailto:]
Subject: FW: INFORMATION REQUIRED [SEC=UNCLASSIFIED]
Date: Wed, 1 Aug 2012 01:15:27 +0000

UNCLASSIFIED

Dear [ ],

While neither the Attorney-General nor this Department is able to provide legal advice to private individuals, we trust the following general comments are of assistance to you.


The Australian Constitution was originally enacted as part of a British statute, the Constitution Act (1900). A British statute was necessary because, before 1901, Australia was a collection of self-governing British colonies and ultimate power over those colonies rested with the British parliament.

The new entity created by the Constitution – the Commonwealth of Australia – retained a 'Dominion' status for some time after federation. It was generally thought that, as a Dominion, Australia remained subject to some imperial legislation. However, Australia attained an independent status in international affairs in the course of the 20th century. This was acknowledged in the Constitution Act 1986.

The Australian Act was enacted by the Commonwealth parliament at the request of the Australian States in accordance with subsection 51(xxviii) of the Constitution. It was enacted in virtually identical terms by the United Kingdom parliament. As the long title of the Act indicates, it brought certain arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a fully independent, federal nation. Section 1, in particular, confirmed that the United Kingdom parliament no longer had power to make laws for Australia.

The Royal Style and Titles Act 1973 provides that the Royal Style and Titles in Australia are 'Elizabeth the Second, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth'.

Kind regards

Strategic Communication Branch
Attorney-General's Department

From: [mailto:]
Sent: Monday, 23 July 2012 9:37 PM
To: AG Enquiries
Subject: INFORMATION REQUIRED

Dear Sir/Madam,

I am questioning the validity of the law and require answers.

1. In an act to Constitute the Commonwealth of Australia 1900 (UK), our Constitution Government is named GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA. Mail received says AUSTRALIAN GOVERNMENT. Which one is it?
2. In an act to Constitute the Commonwealth of Australia 1900 (UK) - our Constitution, "We the people", Whereas there is a corporation registered with the Securities Exchange Commission In Washington DC called THE COMMONWEALTH OF AUSTRALIA, Is this the same or different? Which one is it?
3. In an act to Constitute the Commonwealth of Australia 1900 (UK) – our Constitution Parliament is defined as PARLIAMENT OF THE COMMONWEALTH However go online and the Australian Government Website says PARLIAMENT OF AUSTRALIA ABN 52 997 141 147. Which one is it? Are they the same?
4. Is our Constitution Valid? and if so, which Constitution is the government referring to?
5. Did the signing of any treaty transform the Commonwealth of Australia from a self governing colony into an independent nation?
6. If the Commonwealth of Australia Is under the crown of the United Kingdom of Great Britian and Ireland, how is it an Independent nation?
7. Was any Act that may purport to have established an "Independent Nation" (eg Australia Act 1986) given proper Royal Assent as constitutionally required in all respects?
8. In what capacity does the Australian Government act? As a Public Servant or a Corporate Entity?
9. Which is the valid Government of Australia? Commonwealth of Australia as defined within an act to Constitute the Commonwealth of Australia 1900 (UK) or COMMONWEALTH OF AUSTRALIA private corporation registered with the Securities Exchange Commission Washington DC (ABN 122 104 616).

I require the information within 7 days.
Regards

If you have received this transmission in error please notify us immediately by return e-mail and delete all copies. If this e-mail or any attachments have been sent to you in error, that error does not constitute waiver of any confidentiality, privilege or copyright in respect of information in the e-mail or attachments.
Hello,

Can you please send the following response from the inbox?

The States’ capacity to make laws about local government arises from their power to make laws about matters within their jurisdictions rather than any specific reference to local government in the Australian Constitution. The Constitution has never included a specific reference to local government. In 1988, four proposals to amend the Constitution were put to voters in accordance with section 128 of the Constitution. One of those proposals sought to give constitutional recognition to local government but the proposal was not carried.

Local government bodies are in fact established and, for the most part, governed by State and Territory law. Local government is largely the responsibility of the States and Territories. You may wish to consider raising any continuing concerns about particular Queensland laws with the Queensland government.

You may also be aware that the Government has said that it is committed to holding a referendum on recognition of local government in the Australian Constitution at or before the next federal election.

Thank you,

Louise

Louise Parrott  
Senior Legal Officer  
Constitutional Policy Unit  
Attorney-General’s Department  
Tel: 6141 3611

Hi Louise,
The below email was received by the AGD Enquiries inbox and is being forwarded to you for a response. Please feel free to respond directly. Alternatively, you may draft a response to be sent from this inbox.

Thanks.

Regards,
Strategic Communication Branch

From: [mailto:]
Sent: Thursday, 29 March 2012 10:10 AM
To: AG Enquiries
Subject: local councils

Local Govt [Councils] are not recognised [included] in The Constitution of Australia. A referendum to include them was defeated in 1988. Where does this place them in relation to their legal rights to impose fees & charges on ratepayers.

Ormeau Qld