

# Land Tax Campaign

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## Strategic Plan

### Executive Summary

The Community Law Association Land Tax Campaign is a project aimed at the destruction of State Land Tax in Australia. The Campaign is to be progressed on two separate and independent fronts – first, a campaign in Federal High Court aimed at undermining the legal basis of Land Tax, with a view to its legal disestablishment, and second, development of one or more packages of actions whereby affected land owners can legally sidestep the imposition of these taxes.

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## Historical Background

When Australia was formed in 1901 into a Federated Commonwealth from the Colonies and Territories which existed before, a number of anomalies were created. For example, Australia was to be a single sovereign nation; yet to this day that one nation's Government permits six 'states' and two 'territories' to operate as sovereign nations with it, with their own legislatures, independent laws and practices – even their own Regents, or Queen's representatives. There can not be one sovereign nation within another, except in an Empire; and that was certainly not what the authors of the Australia Act of 1900 intended.

The States and Territories maintained independent and separate Governments simply because certain individuals and groups wanted to retain the wielding of regent power for themselves, both for the power *per se* and for the considerable profit that attaches to controlling a State's treasury. Although the Commonwealth is the sole legitimate collector of taxes in Australia, it is clear that all of our States and Territories are imposing and collecting taxes of all sorts on their own behests. The NSW Rum Corps may be history, but its heritage is legion.

In so many ways the States have cooked up Regulations, Statutes, Rules and Practices to circumvent the founding Australian Constitution. Trial by jury – recognised as fundamental to the dispensation of Law in both England, from the time of the signing of Magna Carta, and in the United States of America, as affirmed and reinforced in the writing of the US Constitution – has been all but abolished in Australia. While maintaining the fine pretense of traditional juristic process in court, and thereby coincidentally preserving the fine tradition of high incomes for the jurists, these judge-only 'courts' have become nothing more than Star Chambers in which truth is subservient to political direction in the resolution of cases civil and criminal. And the same solo judges can silence criticism or comment by jailing critics indefinitely and without charge or trial for 'contempt of court.'

It is this flagrant violation of the founding Constitution of our nation that we seek to remedy. The political machines of each State will combine to fight bitterly – and dirtily, you can be sure – to maintain their franchise of snouts in the state troughs. The volume of our tax money being diverted, misused and generally abused by State and Territory Governments is incalculable, but you can be assured it is substantial.

Our campaign is the start of a drive to have our Constitution restored to its rightful condition and respect. By moving to deny States access to their present returns from Land Tax by means of both court proceedings and legitimate practical tactics, and by other, similar 'denial of revenue' programs in the future, we hope to pressure them to hand back to the Commonwealth many of the 'responsibilities' that they use as excuses for tax revenue raising, with the ultimate end of having the public recognise that the State Governments exist for no other purpose than to raise revenue for themselves, to the advantage of certain individuals and groups instrumental in projecting and maintaining the highly profitable deceit to the contrary.

## Land Tax

Land Tax is a tax levied by States (and Territories) in Australia on real estate property. Each State has its own system, with different rates, tax-free thresholds, supercharges (such as the MRIT in WA) and exemptions. Typically, the rate levied increases with the higher valuation of the real estate involved. Also typically, all land attracts this state taxation, including primary production land and leasehold land; however, a range of exemptions exist in various states, from farming use, to occupation by invalid pensioner, to religious use.

While each State offers its own designation for its means of valuation for the purpose of this taxation, they all appear to come down to what might be called 'unimproved valuation.' The value of the land is assessed in various ways – in Victoria, Municipal rate assessment is used; in SA it is state assessed based on 'ownership, site value and usage'; in Queensland, it is expressed as 'taxable value of unimproved land'.

One thing is consistent throughout all states – it appears as if the weight of bricks and mortar compressing the land beneath it somehow increases the value of that land, and the states consistently increase their assessments and consequently their tax demands. It is also clear that the individual states – perhaps with the exception of Victoria – can assess the value of the land parcels at whatever they wish, with no chance of argument by the owner / tax payer.

This Land Tax is insidious and baseless. It is a tax on existing property, which is supposedly illegal. The returns are usually designated as going into 'consolidated revenue' where they 'go towards paying for schools and hospitals', at least according to one apologetic State's Land Tax website. Land Tax is based on the property valuation, regardless of actual use (despite statements that valuation is based on use, as in the case of SA) – if I own a residential investment property, but can't find a tenant, I still must pay the land tax as if I was receiving rental. If I fall ill half-way through building a house, and cannot continue, I must still pay land tax as if I had completed the house.

Remarkable, if I lease land from the Crown, I must pay land tax on it. This is weird, because the Crown is exempt from taxation. So by taking out that lease I have created a state revenue source where none existed before; the land has not been improved – it has not even been used when the land tax becomes payable.

One final point on Land Tax – its relevance to ordinary persons; that is, to people who are not property owners, or landlords, but just average Joes perhaps living in rental accommodation. If you buy a residential accommodation – say, a block of six units – for \$4.2 million, let's say that the unimproved land value is \$2 million. The rent returns will usually be less than the mortgage service costs for the first few years – it's only after at least five or ten years that the investment starts to pay for itself. However, during those years, not only have you had to bear the risks of empty units, and the costs of bad tenants defaulting or causing damage, of essential repairs and maintenance, you also had to pay Land Tax of some \$32,000 (at current NSW rates). In the above case, if there were six units in the block involved, each has therefore to contribute \$5300 to the tax, through their rents. That's close enough to 25% of their annual rent, gone to land tax.

The above mathematics clearly shows that Land Tax simply pushes up rents – in that case, by fully 33% - as well as making the property investment process more expensive, additionally risky and more highly leveraged against ROI.

## **Plan of attack**

We intend to move on two fronts in this campaign. The first will be through court process, the second through one or more packages whereby landowners are made exempt from land tax liability on their holdings.

## **The Court attack**

The Community Law Association has been developing an application to the Federal High Court which, if successful, will result in Land Tax as we know it being declared illegal throughout Australia.

The application begs the Court to undertake a ‘feigned procedure’ to discover the legality or otherwise of Land Tax. The concept of feigned procedure is long established, but has not been used in Australia for some time. Basically, the idea is that the applicant states that he had a supposed wager involving a reasonably large sum of money, and that the wager involved the legality or otherwise of Land Tax. If the Court takes this on, it will assume all of the costs other than those of preparing the brief and making the application. This is a very good means of procedure for us, since by holding the action internally, and without vested interests pressuring the Court’s political masters one way or another, there is a very good chance for a fair and just outcome – which in this case, would have to be that state land tax is illegal.

## **The Exemption of Liability package**

Naturally, if you – or your property – is exempted from Land Tax, you do not need to pay it. The problem is how to gain exemption.

The CLA, by virtue of being a not-for-profit organisation, and recognised as such by the Commonwealth Government, is exempt from liability to Land Tax in NSW. Since the CLA does not own any real estate, this exemption is wasted at this time.

However, it is in examination of potential loopholes such as this that we may develop means of bypassing liability for this taxation, and the CLA is actively investigating such possibilities.

## Resources

The resources required to implement both the Court application and the Exemption package are not large. The CLA at present consists of two creative legal minds who are working on this and other projects on a volunteer basis.

The CLA operates two websites – [www.communitylawass.org](http://www.communitylawass.org) and [www.community-law.info](http://www.community-law.info). The CLA operates from two home offices in Glebe at present – donations of funding or of accommodation would be greatly appreciated. Our major resource needs at present are around \$3500 for court lodgement fees, legal opinions, travel cost and general expenses. We do not anticipate incurring high legal costs since it is our intention to gather legal opinions from legal ‘friends of CLA’ and academics rather than approaching their more grasping brethren in commercial practice.

While funding to spread the word more energetically would be good to have, readers of this could greatly help this campaign – and themselves – by spreading the word of our work wherever and whenever they can. Word of mouth is always much more convincing than paid advertising, which we can’t afford anyhow.

## Budget

Our actual needs at this point are not great:

Court application fee	\$800
Advocates for legal opinions	\$1500
Travel (for ACT lodgement)	\$250
Application preparation cost	\$750
General out-of-pocket expenses	\$200

Should the need for court representation arise, we will seek to source a QC from amongst our legal ‘friends of CLA’, either on a *pro bono* basis or for a very much reduced cash-in-hand fee.