"What's Wrong with Local Councils?

A lot! Councils have, in general, lost the trust of their customers. As an institution they are arrogant to the point of being bullies and may be seen to be a self-serving group interested only in the advancement of the elected Councillors and Council staff. My council has 700 staff yet only about 500 full time equivalent employees. This means that half of them work half time. Those that are at work travel around in twos and threes. Instead of sending 'a boy on a bicycle to do a man's job', they send three men in two cars!

Councils impose rates unlawfully and then confiscate the property of those unable to pay them. In some areas, they grow the work tasks by supporting self-interest groups funded by community taxes. They spend indecent amounts entertaining themselves and their friends and associates. The restaurants in my local yacht clubs would suffer a serious drop in revenue if my local Council went out of business.

The basis of Councils' claim to independent authority is that the constitution makes them a "distinct and separate (third) tier of government". This is not so. They confuse the term government with that of governance. It is this claim to be a "government" that is used to justify their anti-social and unconstitutional conduct.

The attached diagram (D1)shows the lines of authority that have been given to the tier of government which rules in Victoria. Local government is given its necessary authorities and discretions by the Parliament of Victoria. The Parliament, in turn, receives its authority from the people, through their vote, and from the Monarch, through the Constitution. The authority purported to be given from the vote of the people, directly to Councils, is conflicting and has no support from the Constitution. It is inevitable that a sub-group electing a council will conflict with the outcome of the master group which elects the government. It is this conflict which causes the improper conduct (or lack of fairness) in Local Government.

The major source of conflict lies in the outcome from the activity of Municipal Councils. Such output, the provision of economic goods, regularly causes the electorate to question the suitability of the charges that are applied. In its simplest terms, "Does the expense of the entertainment at the Yacht Club provide a legitimate service to the community?" If so, which category of economic goods are produced – Public Goods, Private Community Goods or Private Personal Goods? The answer to the last question determines who must pay the bill.

What Does the Constitution Provide For?

The Constitution of Victoria has no specific reference to Municipalities but allows for the laws of England and Scotland, on the 25th July 1828, to be adopted as the laws of Victoria. Laws controlling municipalities go back to the reign of George II. He signed into law, the rules for Municipal Councils, in 1727. Councils receive their authority, in Victoria, from the laws of the State. These laws may have been changed, as provided in the Constitution, by The Parliament of Victoria, at any time since 1828.

The Constitution Act 1975 (A Consolidation Act of Victoria) allows, at Part IIA (s74A and s74B), for the State to make laws to provide for the governance of the area within the municipal

boundaries; it provides for an elected responsible (municipal) body, which is supported by an administration. It also sets a provision for the Parliament to suspend or remove this governing body at its pleasure. Should the elected body be dismissed, The Parliament may then decide how the Council is to be governed, usually by a Commissioner. Councils are not given any power under the constitution to make laws and raise taxes – a fundamental of a government. They are simply authorised to administer the laws made by the State Government. This authority is geographically constrained.

Such type of public organisation is almost identical to that of the Office of President of the United States of America. (In the USA) it administers the laws and exercises the discretions given to the Office, by the Government and the Constitution. It is usually referred to as The Administration. It is responsible for the **Governance** of the country according to the requirements of the **Government.**

We suggest that the Constitution of Victoria provides for a Municipal Authority to be an Administration (in the USA sense) with powers of governance limited in the manner set by the Parliament of Victoria. It is a parochial form of governance in the manner of that of the Presidency of the USA. Indeed, the High Court of Australia defined Municipal authorities as an administrative arm of the State, as long ago as 1904. There does not appear to have been any change, since that time, which would alter this ruling. The name "Local Government" is an unfortunate confusion which many municipalities use literally. Local government receives its authority from the Parliament and not from the people.

What Authority does a Municipal Council have to Raise Funds?

The traditional manner by which governments raise funds is by taxes of various kinds, excise, service rates, licence fees and the like. The authority to tax is jealously guarded by the States who inherited their taxation rights with the right to Statehood. Such authority is transferred to others reluctantly and such transfer requires a change to the State Constitution. The taxing powers are described in s62 of the (Victorian) *Constitution Act 1975,* where the right to levy "any duty, rate, tax, rent, return or impost…." is reserved exclusively to the House of Assembly of the Victorian Parliament. **Councils cannot raise taxes.**

The Constitution Act clarifies this situation though, by setting out, in s64, those charges which are not considered to be taxes et al, as referred to in s62. Using these "exemptions", Councils are authorised to raise their own funds by three methods. These are:

- By fines and penalties, and
- By fees for licences (incorporating various forms of rent), and
- By fees for service.

All these fund raising methods have a link between the party responsible for paying the fee and the reason for the fee. In the absence of such a link the charges become a tax which, if imposed by Councils, would appear to be unlawful.

Councils are given authority to raise funds in the form of **Rates and Charges** on rateable land in Part 8 of the *Local Government Act 1989* (The LGA). Again there is an unfortunate name clash as **"Rates"** are included in the banned charges in s62. We must conclude from this that there are two kinds of **Rates.** There are **rates-as-taxes** banned by s62 and **rates-as-fees-for-service** compliant with s64.

How do we Distinguish Between the Permitted Rates and Banned Rates?

To understand this we were given a technical paper by Local Government Victoria. It is "Rating Policies – an ad hoc or principled balancing act?" by Comry, Smirl and Sody. It develops the idea that the goods produced by Council can be split into **Public Goods** and **Private Goods.** Public goods are able to be provided by taxation and private goods by a fee for service. Private goods can be further divided into Private Community (Wide) Goods and Private Personal Goods. We see this technical paper as "official advice" from the office of the Minister. It was issued, as necessary information, during a call for submissions on differential rates.

Public Goods give a benefit to all persons without exclusion e.g. meals on wheels, child health and immunisation, environmental reserves, etc. Public goods are therefor available to all without functional or regional restriction.

Private Community Goods are available to all occupiers. They can be of benefit to either the property, such as roads and drains, or the residency, such as a library service.

Private Personal Goods are available to sub-groups or locations within the community. Such groups are sporting clubs, planning permit applicants, road construction schemes and the like – parties who benefit either personally or in groups.

Public Goods must be provided by either taxation or donation; there is no other source available.

Private Community Goods are provided as a community wide benefit and the cost shared equitably amongst the beneficiaries according to the nature of the benefit e.g. roads and drains give a benefit to the properties in the community. The costs of supply are able to be equitably distributed according to some attribute of the property such as the land value. Other goods may give a benefit to all residents e.g. a park to walk in. Such costs would be shared by all residents on the basis of having the usage right (or convenience) through residency.

Private Personal Goods are delivered in a manner where individuals and groups benefit personally. One of the best examples, local road construction schemes, will deliver Private

Personal Goods. Sporting clubs benefit if/when grounds are exclusively reserved for their use. Planning applicants benefit individually; they cannot expect the community to subsidise the processing of their application.

An important example of Private Personal Goods is the promotion of industry and commerce. Persons who have land zoned for commercial use may benefit; those in other zones are unable to share in the benefits. These are private goods, personal to all land in the industrial and commercial zone.

The task of distinguishing between rates-as-taxes and fee-for-service rates becomes simple when classifying the elements of supply into the different category of beneficiaries. It is the neglect of this function that results in Councils improperly charging ratepayers for services that they do not receive and for services that should be charged to others. Importantly, Councils regularly retain unspent funds in excess of their budgeted requirements. Who do these funds belong to?

This concept of exclusion is used to identify the limits to benefits provided by the supply of goods. The payments for such supply must directly relate to the class of person required to contribute the rates-as-fees-for-service. Essentially, the user or the State must pay!

Conduct by Municipal Councils.

Councils, as a group, have systematically expanded their activities without regard for the justification for the supply charges. This has led to a drift away from roads, drains, town halls, water and sewage supplies, which, in 1855 came to us from the laws of England. Such laws were those current on 25th July 1828. At that time the charges for roads drains etc were raised by a rate based on the value of the property. Common community goods such as the town hall were paid by a municipal charge.

Since 1855, the services taken on by Councils have expanded and diversified. The range of types of municipal rates able to be used to collect service fees has grown. Other methods of revenue collection have been added such as fines and licence fees (rents and parking fees). Councils have failed to respond to these changes in revenue collection opportunities; **the necessary rigour of identifying the link between the charge and the service has not been followed.**

In 2013 the funds raised from property based rates are well in excess of the value of services provided to property. It is still lawful to raise property based rates, but, to comply with s62 of the Constitution, funds must be spent on property based services.

The systemic mixing of the funding of different benefit groups, through property based rates, generates claims of deception; money spent for the benefit to one group is charged to another. As the recently introduced fire insurance levy demonstrates, a composite “rate”

may be constructed where different groups benefit in variable measure from a single service.

An analysis of the 2013/14 budget documents of the City of Bayside has enabled this improper charging system be demonstrated in that Council. (Note F1) However, it can only be partly understood because essential information has not been published. Some form of forensic accounting is required to identify false allocations.

Our partial results show that of $63 million of expenditure that was analysed, only $21million was able to be assigned to a classification suitable for collection by a Rate based on Property Value. Bayside Council has, however, declared a rate which will collect $61million on this basis. They also collect $13million from municipal charges. We estimate that $42million of their $63 million residential rate charge has no validity.

Bayside also has about $30million of cash in the bank. About $20million of this is surplus funds collected from unexpended rate and charge collections during previous years. The remainder is funds collected and not yet spent. Council has no financial capital. This unexpended amount must belong to the ratepayers – but which ones?

A current example of misapplied revenue (in Bayside), is a proposal to replace floodlights in a soccer ground. A new larger set, to the value of around $250,000, is proposed. It will be paid for out of rates collected from the CIV imposition together with a $100,000 grant from the State. The sole beneficiaries are the soccer club and its members. This forms the provision of Personal Private Goods although the $100,000 grant would suggest that some element is considered by the State to be Public Goods. Property owners and occupiers are **excluded from any benefit** to be obtained from the supply. Indeed, the property owners surrounding the ground – who partially pay for the lights - suffer serious disadvantage from the development. Payment of the $150,000 by Council would appear to be unlawful.

It is clear that many Councils collect revenue from their public in a manner which is not sanctioned by the Local Government Act, when read in conjunction with the Constitution Act of 1975. A necessary system to ensure that there is a direct link between those who benefit from Council expenditure, and those who contribute the funds, is not used. There is knowledge that a fair and equitable system can exist. This understanding is widely dispersed through Local Government Victoria, Municipal Councils and the Municipal Association of Victoria.

Summary of What's Wrong.

Councils claim to be to be a third tier of government; they claim to have authority to spend on activities as they think fit and use the rate collection to employ staff and spend money without constraint. This claim is, of course, untrue. Councils are only an administrative sphere of the State Government and must act in accordance with the requirements of the Local Government Act and all other State laws.

Municipal Councils believe they are able to collect rates based on the value of property; this is true. As long as the money raised is to be spent on services to property, such rates are a valid levy. Councils are not, however, able to collect property based rates to supply public goods. The supply of Personal Private Goods by property based rates is also improper.

Councils ignore the existence of a clause in the Local Government Act which requires them to “equitably distribute rate charges”. Additionally, services provided by the rates must be “responsive to the community needs” and “must be accessible to members of the community for whom they are intended”. Councils cannot allot funds to a cause which excludes those who pay for it, from enjoying the benefits

Councils also use the Local Government Act to enforce the payment of rates by sequestration of property. The legal process whereby this is done is that of distraint – the same process used in the Perrin court. Historically, distraint cannot be applied to property. In addition, land cannot be encumbered under provisions in the Constitution of Victoria, (clause xv) or the Constitution of Australia (clause 51(xxxi)). The Local Government Act is subordinate to both constitutions and distraint does not appear to be available for use by Councils to enforce payment of rates.

In answer to “What’s wrong?, it seems clear that Municipal Councils, guided by the MAV, have assumed authorities and discretions that have not been given to them by The Parliament of Victoria or by The Constitution of Victoria. The quantum of this improper conduct will vary between Councils. To seek redress, it will be necessary to sue Councils individually. A parallel with the recent legal action against a major bank, for imposing penalty charges, would appear to be the course of action to be followed. Is this a class action against another class?

End of Document. Bccwhatswrong. Author. G Reynolds. 6pp. Rev 5. 201113.

Attachment Documents. Note F1 - bccrateobj3.xls Document D1 – lgver stateauthp.pdf