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No A0040924M
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Submission to the Local Government Electoral Review

Introduction.

This submission is based on a more wide ranging study into the perceived conduct of Local Government in Victoria. A relevant part of the text of this study is introduced as follows:

“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, (Bayside for example), 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 the local yacht clubs would suffer a serious drop in revenue if Bayside 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 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 voting for 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. Such laws go back to the reign of George II who signed into law the rules for Municipal Councils in 1727. Such Councils receive their authority, in Victoria, from the laws of the State. These laws may have been changed by The Parliament of Victoria, since 1855.

The Constitution Act 1975 (a Consolidation Act of Victoria) allows at Part IIA (s74A and s74B), it provides for the State to make laws to provide for the governance of the area within the municipal boundaries; it provides for an elected governing body which includes an administration. It also sets a provision for the Parliament to remove this governing body at its pleasure. Should the directorate be dismissed, The Parliament may then decide how the Council is to be governed. 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 to individual councils.

This 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** – of which it is an integral part.

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 a manner set by the Parliament of Victoria. Such powers are also limited to the geographical region established by the Parliament. Indeed, in 1904 the High Court of Australia defined Municipal authorities as an administrative arm of the State. There does not appear to have been any change in function, 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.**

Our Submission begins with the following observations:

1. Local Government is not a local government but a (local) government administration.
2. The administration (the CEO etc) is integral with that of its governing body in that it has both several and delegated authorities.
3. The administration is intended to exercise governance for all its citizens in a non-political manner; if it is given any discretions, they must be exercised in accordance with directions given by the Parliament.
4. There is a review body (VCAT) which can set aside and remake some decisions of governance made by Councils.
5. Council administration acts as an agent of the State in cases such as dealing with the Road Safety Act, The Health Act, The Planning Scheme, etc. (It has a department which is called Statutory Planning; it provides governance for the State Planning scheme in its area)
6. Councils may have between 5 and 12 councillors.
7. Immediately after elections (and probably before) councils become sectarian and as few as three councillors are able to control all decisions.
8. Many councillors, “elected democratically”, find they may as well not be there as their voice is not considered.
9. The method of electing councillors by a proportional representation system is open to manipulation by teams of dummy candidates. There are insufficient vacancies (**or electoral allocations**), in two and three member wards, to render such manipulation ineffective.

It is clear that the laws regarding “the conduct of and voting at elections of Councils” must ~~change~~ **be interpreted differently** if the credibility of “democratically elected Councillors as the governing body” is ~~able~~ to be established. Such directives, as set out in s74A(1A) of the Constitution Act 1975, require the elected body to be responsible for ensuring good governance. Observing the conduct of Municipal Councils in Victoria during the past seven years, the laudable objective of good governance has not been achieved. **Change is necessary.**

It is important to recognise and agree that a Municipal Authority is a body responsible for governance and is not a government. The regime of supervision must reflect this. The Council is not and cannot be a body with political authority – it should serve its constituents ~~equally~~ **fairly**. It must be a body responsible for the correct and responsible use of the money and other assets of the customers and members that it serves. It ~~must~~ **may** be seen as a fee-for-service organisation – one of the services being governance.

The political view that everyone has a vote and must be forced to use it has no validity. Municipal Councils are no different in function to the Board of Directors of a company. They occupy a position of trust and need to be elected by a simple vote of members according to some form of ruling on where when why and how the Board is to be constituted. **The prime discriminator for the electors must be the competency of the candidate as an administrator. Proportional representation becomes irrelevant – or at best of minor importance.**

To establish a competent governance organisation, certain principles related to the function of the organisation need to be widely recognised. These would cover:

1. Governance of organisations which spend hundreds of millions of dollars per year of other people’s money requires high levels of skill and integrity - **Education**
2. Clear rules of governance must be in place so that “laws” rather than “standards” are able to be applied - **Clear and simple tasks.**
3. The body as a whole has collective responsibility. The elected part and the appointed part should be as one, with the elected body having the ultimate responsibility. **Clear lines of control**
4. The principle that “delegation of authority does not delegate responsibility” should be understood. The elected body should have the same functional responsibilities as a company governed by a board of directors – **Clear lines of authority.**
5. A Governance Body requires continuity from year to year. Elections should change only part of the “board” at any one electoral event (as in the Australian Senate). – **No sudden change**
6. The elected body should be responsible to the electorate as a whole, not to separate wards. **No Partisan Conduct**
7. There should be no indemnity given to either the elected body or Council staff. – **Everyone to take personal and collective responsibility for their conduct.**
8. **Candidates should be required to promote their qualifications for office. This may include formal skill qualifications, political and social history and any criminal background. – Competence, Integrity and Trustworthiness.**

We suggest that there are a number of options which present themselves to elect what must be an Executive Body. These are:

1. A single executive or small team elected for full time duty. The election is inevitably on the basis of first past the post or (say) first three. The single elected leader is the **administrative** model of the US Presidency. It works well with the need for strong decisive leadership and clear majority support. The single or small team executive is, after all, the method chosen by the Parliament of Victoria for the governance of its municipalities, if/when the

elected leadership is found wanting. It may not, however be sufficiently democratic for many people and fails the continuity attribute.

2. A board of say 6 – ~~8~~ 12 elected by a first past the post system, elected by the whole of the electorate. Half stand for re-election or retire every three years. Other combinations are possible. Elections to be by non-compulsory postal vote. This is possibly sufficiently democratic to meet the needs of the electorate. It may require a communication subsidy to reasonably successful candidates; (there is likely to be a need to contact 100,000 or so electors per Council.) The Chairman (Mayor) may be elected by the Board with compulsory vacation of the position aligned with the frequency of election of members.
3. A board made up of 1 member per 10,000 voters (as at present) elected by the whole of the electorate. Simple preference voting. Non-compulsory voting.

IN SUMMARY we suggest that the true function and responsibility of Municipal Authorities first be recognised, understood. They should be confirmed as a fee-for-service organisation set up to provide goods, services, and good governance to their electorate. Executive responsibility may then be taken by a Council elected by a simple majority of votes from a franchise of all owners or occupiers of property in the municipality - all the persons who are obliged to pay a Rate or Municipal Charge.

We suggest that such an organization would have:

Members of Council elected on a rotating basis for a six year term with three year rotation.

A Maximum tenure of two terms for Councillors with a substitute appointed by the Minister in the event of early loss or retirement.

The Mayor elected by a vote of the elected body for a term ~~of three years — the election cycle.~~ **selected by the Minister.**

The Mayor elected for a maximum of once in their two term tenure.

The Mayor must have been a Councillor for at least three years before being eligible for election.

Councillors paid in the manner of non-executive company directors with the Mayor a full time appointment.

Councillors (and staff) being subject to the Corporations Law

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