

**VICTORIAN COUNCIL FOR CIVIL LIBERTIES
SUBMISSION TO LOCAL GOVERNMENT BOARD
INNER MELBOURNE REVIEW (INTERIM REPORT)**

Introduction

In the past the Victorian Council for Civil Liberties (VCCL) has made submissions to ministers for Local Government and spoken publicly on many occasions on what it believes to be the increasingly and unwarranted wide range of powers given to local councils. These powers have permitted the enactment of legislation which the VCCL believes unduly trespasses on the rights and liberties of individuals within local communities.

The basis of past criticism by the VCCL was that the Local Government Act 1989 gave local councils far greater powers than they previously enjoyed and powers which could have the effect of restricting democratic participation in local communities. Local governments constitute the third layer in Australia's democratic system of government. Though traditionally they have focussed their attention on the three R's - rates, rubbish and roads - local governments do serve an important function in the representation of small, yet diverse, communities and the provision of a wide range of services across residential, commercial, industrial, recreational and rural sectors. To this end, the participation of individuals in "local politics" and their access to local representatives has been essential to the management of issues of particular local concern within the larger context of state and federal politics.

The VCCL has sought to ensure that local governments in Victoria discharge their important functions and obligations in a manner which respects the rights and liberties of their constituents. Now, however, attention must be given to the State Government's intention to amalgamate local councils to ensure that these rights and liberties are not infringed by the State government's proposed changes. Under the proposed changes to local governments, as outlined in the Local Government Board's Inner Melbourne Review Interim Report, the protection of citizens' rights and liberties appears to be threatened due to the removal of the most fundamental feature of our system of government in Australia - the participation of citizens in the management of their affairs through democratically elected representatives.

The Appointment of Commissioners

The VCCL has concerns about any legislation, regulation or practice which would prevent people from criticising the decisions of any level of government, be it federal, state or local. Similarly, we are concerned about the implementation of any procedures which could lead to an abuse of power by office bearers or prevent ordinary citizens from exercising their right to democratic participation in their local communities. To this end, the Local Government Board's recommendation to appoint unelected commissioners to facilitate the transition of the proposed local government amalgamations, without specific guidelines for the election of democratically appointed councillors is of serious concern.

Proper mechanisms for elections of representatives for federal, state and local governments are clearly set out in Acts of Parliament, including the Local

1975 guarantees a system of local government for Victoria consisting of democratically elected councils.

In the recent unreported decision of the Supreme Court of Victoria Appeal Division No.s 9605 of 1993 and 9742 of 1993 Justice Coldrey acknowledges that "Part IIA [of the Constitution Act 1975] cannot be the sole repository of legislative power in relation to local government..." but similarly recognises that "it is arguable that an Act which provides for abolition must, if it is not to fall foul of the tenor of s.74A(1) of the Constitution Act, also provide for the ultimate reinstatement of a democratically elected council."

The Local Government Board recommends that the "time elapsing before new councillors are elected should be as short as possible subject to satisfactory progress being made in developing an adequate organisational and procedural framework for council operations". The VCCL recognises that changes to municipal arrangements will provide a period of uncertainty for the communities involved. As stipulated in the abovementioned decision, the VCCL does not believe that such uncertainty justifies the freezing of democratically elected institutions and the appointment of commissioners for unspecified periods of time.

If, upon recommendation of the Local Government Board, the Minister for Local Government decides to appoint commissioners to oversee the transition of the amalgamations, the VCCL recommends that, further to Section 5(1) of the Local Government Act 1989, a nucleus of councillors representing the various councils in the proposed amalgamation remain involved. In addition rules of appointment for the commissioners ought to be established and settled to incorporate the role of both commissioners and councillors for the transitional period.

The Local Government Board has identified the primary roles and responsibilities of the interim administration to include, among other things, :

- to ensure that an appropriate system of representation is attained;
- to organise elections for the new council as soon as possible;
- to prepare for the election of a new council.

Instead, the VCCL recommends that these roles be explicitly defined in consultation with the residents and ratepayers of the newly proposed municipality together with the councillors and appointed commissioners as follows :

- ensure that an appropriate system of representation is retained;
- nominate a specified date for the elections of new councils;
- establish a transitional board, comprising a commissioner to oversee administrative procedures, and a specified number of councillors previously elected from the councils involved in the amalgamation;
- establish procedures for residents of the proposed new councils to attend meetings of the transitional Board to monitor and provide direction for the new council;
- establish open reporting mechanisms from the transitional Board to the residents of the council.

The VCCL regards the review of Inner Melbourne as a timely opportunity for the Department of Local Government to review the enactment of local laws which have been passed in contravention of Schedule 8 of the Local Government Act 1989 which contains the following provisions :

“2. A local law must not :

.....

- (f) Unduly trespass on rights and liberties of the person previously established by law;
- (g) Unduly make rights and liberties of the person dependent upon administrative and not judicial decisions;
- (h) Be inconsistent with principles of justice and fairness.”

The VCCL has been publicly critical of the enactment of local laws which it believed were in contravention of the above provisions. Such laws include Local Law No. 2 Protection of the Amenity of Public Areas (Ringwood); Local Law No.3 Portable Advertising Signs (Ringwood); Local Laws 1990 Control of Sexually Transmitted Diseases; Health Brothels; Brothels - Insurance Against Liability; Prostitution (City of Camberwell); exclusion of local government from Freedom of Information legislation; curtailment of freedom of speech in Brunswick and Shire of Upper Yarra; banning of the consumption of alcohol in public places. Many of these laws and regulations, have not only breached the above provisions but have gone beyond the jurisdiction of local interests.

Further to Section 123 of the Local Government Act, it is recommended that a system be put in place so that the Minister for Local Government is not given the sole responsibility of deciding whether local laws breach the provisions specified in Schedule 8. There is considerable room for legitimate difference of view about the protections accorded by Schedule 8 of the Local Government Act, and wider input beyond a Ministerial decision, would provide a range of valuable perspectives.

Community Consultation

In its review of the 21 municipal districts of the inner area of Melbourne the Local Government Board has identified a diverse range of factors which provide for very different kinds of communities and thus, different council structures. Local councils have addressed the needs of their communities in very different ways - results cannot solely be measured by rate levels nor the number of staff employed at the local level or number of councillors elected.

The recommendations by the Local Government Board for council amalgamations ought not be rejected solely on the basis of disturbing the status quo. However, the VCCL remains critical of the manner in which changes are intended to be introduced without adequate community consultation and respect for democratic institutions and procedures. Local governments have adequately served communities and citizens in both the provision of basic services and promotion of communal identity and ought to continue to do so in the future. The direction of the communities ought to be decided by the residents and ratepayers of those municipalities.

It is recommended that the Minister for Local Government consider the needs of the residents and ratepayers of the local communities and that he strives to ensure that democratic representation remains intact during the proposed transitional arrangements for the proposed council amalgamations.

Mr Alan H. Goldberg, QC
VCCL PRESIDENT

26 April 1994