

# Submission to the Geelong Citizens' Jury- Intensified media scrutiny of local government

*In 2016 the Council of the City of Greater Geelong was dismissed by the Victorian State Government and replaced by an external administrator. This was after an official Commission of Inquiry published a report identifying serious problems with the conduct of some Councillors, including the colourful directly elected Mayor, Darren Lyons, a hostile organisational culture, and a lack of cooperation between council and administration. What a mess! How did we get there anyhow?*

*Ideas for how the City and its people can be well served in future will be considered by the Geelong Citizens' Jury and submissions were called for from the general public. Having an inability to keep my thoughts to myself, I had to make a submission. My basic idea is to eliminate some of the secrecy in which misdealings and unprofessionalism can fester and thrive by achieving a high degree of transparency in government by enabling much more intensive and much fairer media scrutiny. I believe I've identified a way of achieving that, overcoming the natural obstacles to local-level coverage, without risking the natural drawbacks of intensive scrutiny where it does not count. My hope (against hope) is that this idea will be adopted, not just for Geelong, but for local governments across the whole State of Victoria, because it will work best that way.*

The City of Greater Geelong has become somewhat a byword for the failure of a democratic institution which faithfully has performed the role expected of it for centuries. That institution, of course, is local government *per se*. Whether the performance of the several original local governments in the Geelong region has been ideal for all of their own history is beside the point that no crisis of the current magnitude has arisen previously in the Geelong region. A Commission of Inquiry was established by the Victorian Government and reported back on 31 March 2016,[1] finding, in the words of the Minister for Local Government:

- The Council is riven with conflict, unable to provide a long term vision for the city and lacking the leadership required to manage Geelong's major economic challenges,
- The Council's leadership is dysfunctional, and includes a significant number of Councilors contravening their Code of Conduct,
- The Council operates in silos – both at Councilor level and at senior management level – looking after sectional interests rather than the municipality as a whole,
- ]There is a deep-seated culture of bullying within the Council and its administration, which has contributed to a lack of good governance and failure to provide a safe workplace for staff.[2]

The actual executive summary found in the report lists a greater number of key findings, some of which are highly critical of individual offices. It is not the intention of this submission to expose, embarrass or reprimand any individual; therefore the Minister's broad précis is relied upon as an introduction. The State Government is currently looking into, and calling for submissions on, reforming the local government system state-wide.[3] It is, however, the Geelong region that has the heaviest burden to bear at this time and which has had the most salacious headlines. Therefore this submission relates specifically to the

avoidance of future problems of a similar kind to those experienced in the City of Greater Geelong.

The argument in summary The parliamentary democratic system which has worked acceptably for centuries has weathered some serious storms indeed. It is evident, however, that the system has failed badly in Geelong in recent years. It would appear that this is due far less to the system having defects, but is due more to a shift in the values of society at large, from whence the bearers of office are drawn, surrounding the conduct of political office. Self interest and caprice at all levels of government and business, sometimes appear to outweigh community interest and the principle of respectability, to the detriment of the integrity of social leadership. A means of incentivising good conduct and disincentivising bad conduct needs to be imposed so as to illicit a higher standard in the execution of official duties. The method proposed here is to maximise public scrutiny and the transparency of local government. It is proposed to establish a body entirely independent of local governments which will report regularly to the public, for free, on councillors' actions in office, council meetings, policy positions (once formalised), and which will make detailed personal background information available to the public on all council election candidates. This service must be punctiliously unbiased, assiduously fair, detailed, and fearlessly incisive in order to work. It needs legislative authority to investigate internally to some degree, to publicise its findings, and to avoid causing liability to its informants. A journalistic style and structure will assist in getting material into the commercial media, but the central focus must be on a fair and erudite presentation of facts rather than on readership numbers. In order to fund this it is suggested that content be made available to the commercial media first, for a fee, and then the general public a day or two later. It would work best if it covers all local governments in Victoria, not just Geelong. While there is generally little interest among the public in local government issues, limited investigative powers and limited legislative support will increase the potential for newsworthy information to be obtained. Prime Minister Julia Gillard once referred to sunlight as "the best disinfectant." That is often true, but only if sunlight is permitted to shine with sufficient brightness.

Identifying the main cause of failure Local government operates differently to the system in operation at the State and Federal level, but there is a very pertinent lesson to be learned from the history of the Westminster system. We respect and cherish it not because it is perfect, nor because the Houses of Parliament at Westminster are a pretty to look at. The system is in fact deeply flawed through its vulnerability to manipulation by self-serving political parties. We respect and cherish it because it has been around so long and has carried important democracies through centuries of upheaval. The Westminster system evolved over a number of centuries to cater to the growing demands of the people to be heard and respected by civil authorities, and it developed mechanisms to ensure this. Now, however, we see how weak this system is when those incumbent upon its various offices have as their principal priority the development of stellar careers and well feathered nests to retire to. In *The Hack Attack*,<sup>[4]</sup> Davies describes in great depth how the parliament of the United Kingdom, together with the mass media and the police, engaged in a complex system of criminal activities, cover-ups and compromises of duty which obviously benefitted many careers. For those unaware, this is the story surrounding scandalous invasions of privacy by *News of the World* journalists. In Australia during the last 20 years we have held a number of Royal Commissions to investigate corruption in various public offices which have uncovered chilling examples of corruption. Names like Eddie Obeid and Roger Rogerson conjure up in the mind sufficient material to make this point; but the list goes on and on. We also see in recent years the transformation of old fashioned party tribalism into political stalemates based on specious

and seemingly convenient arguments, demonstrating an incapacity among many (or most) contemporary bearers of high office to engage in the frank debates and compromises that for generations have delivered stable and responsible government to the Western democracies. The sourcing of political donations is also a matter of grave concern.

The cost of this is twofold: Firstly it makes a bad name for the democratic system and the rule of law as we know them, due to their apparent inability to maintain moral responsibility among those able, through opportune positions, to secrete their misdealings and avoid justice. Secondly, it may after a long time, create an elite culture which excuses inequality of opportunity and inequality before the law, where those who make the law and those on whom they rely the most, are able to enjoy superior treatment and wider opportunities. Essentially it threatens to create first and second class citizenry out of what hereto has been the indispensable middle class that build the modern West. Together these two effects could bring democracy itself into disrepute.

Essentially what this argument is getting at is that the system may be quite capable of bringing justice, political liberty and fairness, but so easily it can be held hostage to the caprices of its incumbents when there are enough of them sufficiently willing to put themselves first and to turn a convenient blind eye to each others misdealings. For all its strengths the system does not encourage propriety among its office bearers anywhere nearly enough.

The Council of the City of Greater Geelong was dismissed by the Victorian State Government and replaced with an Administrator. The reasons are outlined in the report of the Commission of Inquiry into Greater Geelong City Council.[5] This author lacks any detailed knowledge of the personal attributes or relevant actions of any councillor or employee of the council and does not aim to make personal observations, and it appears implicit in the report that not all councillors or staff were to blame. The report does not address the motivations of individuals to behave in the manner they did, nor does it address the organisational culture in depth. Nevertheless, much better is to be expected of adults who have been assigned a duty – whether by an employer or by the people directly – to work for the betterment of the community in which they live and work. It is fair to say as a general point that these very troubling findings give us all cause to wonder how a group of putative community leaders could descend to this and not bring an end to it themselves as mature adults.

If, as argued above, the system itself is not necessarily at fault, but is only vulnerable to abuse, and it is those responsible for its operation who are at fault, then whatever changes are made at this juncture should be targeted at handling the incumbents of office and not the offices they occupy. Whatever initiative is adopted needs to deal with the values, personalities, work ethic, levels of due diligence and compliance, management styles, and/or team playing capabilities of the bearers of senior local government positions, and councillors themselves.

The suggested solution – heightened media scrutiny The Report of the Commission of Inquiry acknowledges in brief that media scrutiny of government processes is a good thing. This is a fact that goes without question. The love-hate relationship between the media and government is in some way symbiotic. It is a major priority of all serious news services to find and publicise instances of political misdealing and political incompetence. Politicians appear to react quite responsively most of the time to media pressure, as bad publicity usually alters voting patterns. Media scrutiny functions on political propriety organically, so that the

system can operate well while its incumbents exercise discretion in the public interest, knowing that their malfeasances and misfeasances could be exposed. It may be a conservative view unnatural to some, but it is preferable to rely on the proper conduct and skill of decision makers than to micro-manage them with restrictive rules. This is so that they have flexibility within which to address unanticipated situations, and so that, as humans they retain enough kudos in their roles to perform effectively under pressure.

Plausible objections To suggest heightened media scrutiny, however, raises some questions as to the whether it would do more harm than good, and whether it is even possible at the level of local government. We will deal with these two objections in that order.

The Commission of Inquiry's report makes brief reference to how at times reporting by local media itself caused internal difficulties for the City of Greater Geelong, in that, '...a number of Councillors and staff indicated that local media coverage generated a high level of attention and reaction and diminished attention to the strategic issues facing Council and the community.'<sup>6</sup> Political reporting for the news media appears to be so high a priority that one finds sometimes far too much is made of some very minor issues. At the Federal level, one may think of Prime Minister Malcolm Fraser's apparently infamous 'Life wasn't meant to be easy' comment or the absence of fruit in a fruit bowl at the then Minister Julia Gillard's home after she had just returned from a stay in Canberra. The sting of judgment by media may be deserved when a genuine wrong has been done or when a genuine failure has occurred, but not when it is a matter of personal style, a word out of place, or mere negligence under pressure. This sort of reporting swings the attention of politicians and their staff away from the major issues so that they can avoid the political fallout of trivialities, even while matters of real importance are left alone. Politicians and many of their staff and consultants are paid too highly to be called upon to respond to trivialities. The question then arises that if media scrutiny of political matters were to be increased, would this circus, as it is called even by the media itself, be intensified to the detriment of all?

Much of the attraction to reporting on trivialities appears to come from the profit-driven basis of the mass media. The outline proposal below in point form describes an independent not-for-profit body with a priority of informing the public objectively, without bias and in detail to assist the public in forming voting decisions. This will prevent any addition to the time wasting problems that currently beset political activities. See below for further detail.

A second objection to this proposal is whether local government could ever generate enough news of interest to enable intensified coverage to attract public attention. The public takes interest in matters of Federal government first, and then less-so, matters of State government. Local issues rarely rate a mention in the 24 hour mass media cycle unless something truly salacious or fantastical occurs, preferably involving someone already known to the public. Reading local community newspapers is sometimes a pointless task as matters reported on are often of very narrow concern and journalists' efforts at inflating stories into something engaging tend to make them quite tepid reading.

This author has a background in investigative roles, and as a volunteer on radio. It is readily to be observed that reading alternative news sources from other countries uncovers truly interesting news which commercial free-to-air news does not address, while they opt instead to devote considerable airtime to less interesting stories. It is patently obvious that casting a wider net would catch better content. Undertaking investigations of various kinds, this author's view is that the world is a far more interesting place than the news media makes out, with things of interest happening virtually around every corner, and there is far more newsworthy content that simply does to get reported. Local government items that could

attract attention include the processes involved in reaching decisions, the private interests of key stakeholders in decisions, changes in bylaws and enforcement policies, local development and planning strategies, the conduct of Councilors and senior staff, the management of council business and assets, council support of community events and initiatives, collaboration between council and important State and Federal government organs and departments such as the Police, trade departments, immigration, mining and agriculture, the background and performance of council candidates at election time, and so forth. There is of course a challenge for journalists in knowing where to look and who to ask, and maintaining fruitful relationship with useful informants. It may be a very expensive exercise in terms of the man-hours involved, for news media to discover more original news of reportable reliability than they currently do. Therefore even if there is interesting content at the local level, a question of value for money arises in tandem. The proposal outlined below involves limited legislative powers to enable better information gathering so as to assist in identifying matters of interest and getting enough information to make a newsworthy story. The proposal in outline For convenience, let us refer to this body hereafter as the Government-Media Liaison (GML). To overcome the two above objections to a GML, and to explain how this proposal could be made to work, the following features should be considered:

### **Organisational Structure**

- The GML will be separate from any governing entity that it reports on, whether council or executive. It should not be in any way accountable to them, except in terms of an overarching duty to be fair and factual.
- It should be incorporated as not-for-profit, owned by the State Government
- The GML shall be accountable only to the State Cabinet (ie: the Governor in Council).

### **Operations**

- Councillors and staff shall be free to approach the GML at will to provide information, as long as they do not provide misleading information or breach legal duties in doing so. There must be no disincentive for them to provide information of public concern as long as it is reasonable of them to do so.
- The GML is empowered to conduct inquiries internally in so much as it cannot be prevented from contacting persons to give interviews or provide documentation. It cannot, however, compel any person, directly or indirectly, to provide any information.
- The GML has power to demand information as to what documentation exists on any topic, apart from confidential discussion papers and other highly sensitive information on matters in progress. It also should have power to demand the identity of stakeholders involved in policy development, but not to demand what suggestions they have contributed, so that policy discussions can remain candid.
- Remuneration shall be generated not from readership or ratings, but by subscriptions from private users – commercial media organisations, other interested private organisations, and even individuals.
- The GML shall not be limited to one local government area only, but shall cover every local government area across the State of Victoria. This will maximise its ability to attract subscriptions from larger customers and commercial media.

- At one or two days' delay, all content will be made available for free to the general public, online, and possibly in print at key places such as libraries and newsagents.
- Where relevant, the GML will take into account and publicise the official media releases, or official position, of Council.

## Content

- The kind of subject matter may include, as listed above:
- The processes involved in reaching decisions,
- Private interests of key stakeholders in decisions,
- Changes in bylaws and enforcement policies,
- Local development and planning strategies,
- The conduct of councillors and senior staff,
- The management of council business and assets,
- Council support of community events and initiatives,
- Collaboration between council and important State and Federal government organs and departments such as the Police, trade departments, immigration, mining, agriculture, VicRoads, and regional development,
- The background and performance of council candidates and existing Councilors at election time,
- Where major development proposals are put forth, the business case studies, cost to benefit analyses and feasibility studies – and whether any exist,'
- Use and abuse of perks and privileges by Councilors.
- The ongoing effects (beneficial and detrimental) of council policies.
- Stories shall be written in a journalistic style to aid incorporation of material into commercial media.
- The aim in story writing shall be to inform the voting public of all it needs to know to make voting decisions and to engage as stakeholders in council debate and decision making. Therefore material must not be aimed at the “lowest common denominator”, but the “highest common denominator,” so to speak.
- Content must not be aimed at entertaining the public, nor at any other subjective effect, nor to suggest opinions to be formed from the facts, but rather the reader must be enabled to form their own view.
- The GML must be disallowed from reporting on trivialities which objectively have little or no relevance to the competence, diligence or integrity of the bearers of office.

Necessary amendments to law Laws exist which will impede this level of information flow to the media. Some such restrictions will be a problem, while others will not. This calls for an formal study run by lawyers with long involvement in government organisations and media law. Although this author is currently researching related areas of law, this document is about political policy rather than law. Therefore no attempt is made here to look into the legal landscape in detail.

In brief, there are provisions of privacy legislation, the equitable duty of confidentiality, and the fiduciary duty of confidentiality, which must be circumvented. As a media organisation, the GML's reporting will not be affected by the *Privacy Act 1988* (Cth). But where such information is of a confidential nature or was obtained surreptitiously, it will be bound by equitable restrictions. Government employees are bound by both Commonwealth and State privacy legislation to use or disclose personal information for purposes unrelated to the purpose for which it was provided, or in a manner inconsistent with a person's reasonable

expectations, is unlawful for them. Due to the fiduciary duty of confidentiality employees also must maintain the confidence of their employer.

Without stopping to study the matter from a legal point of view, it is suggested here that State legislation could be created to enable defences to the equitable duty of confidentiality and the fiduciary duty of confidentiality. A direct exception targeted specifically at permitting public scrutiny of politically significant issues is probably the best approach. Further State amendments may be warranted to free up informants and the GML from the State *Privacy Act* and a Federal legislative amendment will be needed to ensure that government employees are free to report to the GML what is reasonable for them to report. It is suggested that the full current restriction on sensitive information in the Commonwealth *Privacy Act 1988* should remain in force as is.

Immunity from disciplinary action or prosecution for resulting damage to the interests of others, must be guaranteed to any employee who provides information to the GML as long as that information is not defamatory and is no more than reasonably necessary for news coverage of matters of public interest. This is provided that other laws addressed above – as amended – are not broken.

Finally, there is probably no system run by humans which is totally immune from corruption. To save the GML from outside manipulation by those affected by its activities, further legislative support is needed to make it an offence to bring any form of incentive or disincentive to bear upon the GML and its staff with respect to the information it obtains, what it reports on, or how it formulates its reporting.

## Endnotes

1. Moran, Terry, AC, Munro, Jude, AO & O'Brien, Frances, QC, *Commission of Inquiry Into Greater Geelong City Council: An Independent Commission of Inquiry Established by the Minister for Local Government*, Victorian Government Printer, March 2016. Sourced at : [http://www.parliament.vic.gov.au/file\\_uploads/Geelong\\_City\\_Council\\_Report\\_Combined\\_vn4s3j5T.pdf](http://www.parliament.vic.gov.au/file_uploads/Geelong_City_Council_Report_Combined_vn4s3j5T.pdf) on 21 September 2016.

2. Hutchins, The Hon Natalie, MP, Media Release: *Dismissal of Greater Geelong City Council*, Victoria State Government, 12 April 2016. Sourced at <https://284532a540b00726ab7e-ff7c063c60e1f1cafc9413f00ac5293c.ssl.cf4.rackcdn.com/wp-content/uploads/2016/04/160412-Dismissal-Of-Greater-Geelong-City-Council.pdf> on 21 September 2016.

3. Hutchins, The Hon Natalie, MP, *Have Your Say on Local Government Act Review*, Victoria State Government, 13 July 2016. Sourced at <https://284532a540b00726ab7e-ff7c063c60e1f1cafc9413f00ac5293c.ssl.cf4.rackcdn.com/wp-content/uploads/2016/07/160713-Have-Your-Say-On-Local-Government-Act-Review.pdf> on 21 September 2016.

4. Davies, Nick, *The Hack Attack: How the Truth Caught up with Rupert Murdoch*, Chatto & Windus, London, 2014.

5. Moran et al, op cit 1, pp 9-13.

6. Moran et al, op cit 1, p 46.