

18 February 2010

Local Government Victoria,
GPO Box 2392
Melbourne, 3001.

To whom it may concern,

Conflict of Interest Consultation Paper

Liberty Victoria wishes to make two brief submissions on the Conflict of Interest Consultation Paper.

The first is that the statutory provisions concerning conflict of interest in the Local Government Act 1989 (LGA) are overly prescriptive.

Given the length and complexity of the LGA provisions it is not surprising that some councilors are having difficulty in understanding their legal obligations. The highly prescriptive provisions also increase the risk of unintended consequences through the rigid application of statutory language.

Liberty submits that it would be preferable for the legislation to revert to a simpler statement of general propositions such as ss 180 – 184 of the Corporations Act 2001 (Cth). The notion of “conflict of interest” is well known to the law and does not really require that much elaboration. A more general statement of the principles would also permit greater flexibility of approach.

Secondly, Liberty remains concerned that the provisions of the LGA unduly restrict the political activities of councilors. The discussion paper correctly points out in section 1.2.2 that conflict of interest is not to be equated with bias. It then asserts that it is the common law rules of bias that restrict the political activities of councilors, not the conflict of interest provisions of the LGA.

However, those provisions include s 76B(b) which requires a councilor to “impartially exercise his or her responsibilities in the interests of the local community”. This requirement is inconsistent with the political nature of councils. Councilors are often elected to be partial on certain issues and to prefer one section of the local community over another. This is consistent with s 18 of the Charter of Human Rights and Responsibilities Act 1986 but inconsistent with s 76B(b) of the LGA.

The common law rules of bias only apply in respect of quasi-judicial functions of councils, such as decisions on planning permit applications. Even there, it is recognised that the political nature of councils means that the rules of bias do not apply with full force: see *Winky Pop Pty Ltd v Hobsons Bay City Council* (2007) 19 VR 312 at 326

**GPO Box 3161
Melbourne VIC 3001**

info@libertyvictoria.org.au
www.libertyvictoria.org.au

☎ 03 9670 6422

Reg No : A0026497L

PRESIDENT
Michael Pearce SC

VICE-PRESIDENTS
Jamie Gardiner
Anne O'Rourke
Prof Spencer Zifcak
Georgia King-Siem

SECRETARY
Jessie Taylor

ASSISTANT SECRETARY
Agusia Kapitaniak

TREASURER
Timothy Warner

COMMITTEE
Rachel Ball
Julian Burnside AO QC
Hugh Crosthwaite
Judy Magassy
Dr Di Sisely
Marian Steele
Dr Larry Stillman
Evelyn Tadros
Brian Walters SC
Jonathan Wilkinson

It may be that s 76B(b) can be read down in accordance with ss 18 and 32 of the Charter. However, Liberty submits that the preferable course is to repeal s 76B(b) and remove any uncertainty about the ability of councilors to fulfill democratic mandates.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Michael Pearce". The signature is written in a cursive, flowing style.

Michael Pearce SC
President