

ALP Victoria Response to Accountability Round Table

The ART seeks a public commitment from all parties to restore open, responsible and accountable government by:

1. adopting the Solomon Report and enacting the Right to Information legislative model adopted in Queensland and Tasmania (Appendix A):

Under Labor, public confidence in Freedom Of Information (FOI) is at an all time high, with the number of requests having more than doubled since the Liberal National Coalition were last in office. In fact, figures for 2009-10 showed 31,343 FOI requests were received across Government, compared with 13,082 requests in 1998-99; while applicants were provided with full or partial access to documents in 97.6 % of access decisions.

This means that, under Labor, more people are getting access to more information, more often and, as the Accountability Round Table correctly identifies, the Brumby Labor Government has moved to regularly post a variety of frequently sought information on the internet.

Labor is determined to keep improving FOI and wants even more Victorians to gain access to the information they seek. This is why we implemented many of the recommendations in the Ombudsman's 2006 review of FOI. We are open to further legislative reform and are more than ready to examine the models adopted in Queensland and Tasmania.

However, the Liberal National Coalition has blocked Labor's previous legislative reforms to FOI which would have abolished application fees and put the 'free' back into freedom of information. Their political posturing has not been backed up by their actions in Parliament and their record in office would suggest that they will try to dismantle FOI rather than strengthen it. Labor will be seeking majority support in both Houses for effective FOI reforms including the removal of application fees.

The ART seeks a public commitment from all parties to restore open, responsible and accountable government by:

2. restoring Westminster principles by
a) recommitting to the principles of ministerial accountability and responsibility (Appendix B)

Labor has recently released an exposure draft of the *Parliamentary Integrity Commissioner* (PIC) legislation. After incorporating feedback from the community, a future Brumby Labor Government would introduce a final version of the legislation to Parliament in early 2011.

Under the proposed legislation, the Commissioner will be able to receive and, where appropriate, investigate complaints about MPs, Ministers and their staff, as well as breaches of any relevant codes of conduct. The PIC will also support and advise MPs in fulfilling their obligations to demonstrate integrity, and comply with the code of conduct and register of interests. Where the PIC considers that there is evidence of serious misconduct or corruption, the PIC will refer the matter to the most appropriate specialist investigations agency, such as Victoria Police or the new Victorian Integrity and Anti-Corruption Commission (VIACC).

The ART seeks a public commitment from all parties to restore open, responsible and accountable government by:

2. restoring Westminster principles by

- (b) committing to the rejection of the so-called McMullan Principle as being inconsistent with the right and duty of the Parliament to seek information to enable it to hold ministers and the Executive to account (Appendix C)**

The Convention known as the ‘McMullan principle’ is that ministerial staff are accountable to the Minister and the Minister is accountable to the Parliament and ultimately the electors. The convention involves a critical principle of public importance, being the security of communications between Ministers and their advisers, which is why both sides of politics have accepted and applied the convention.

The Accountability Round Table raises the example of the inquiry by the Standing Committee on Finance and Public Administration into the redevelopment of the Windsor Hotel as one illustration of why the McMullan Principle should be rejected.

Labor believes that Committee was established on a highly political basis and its actions have proved to have been conducted in bad faith without any regard for due process or the powers of parliamentary Committees. However, it is important to be aware that the McMullan Principle is not, in fact, the only reason that the advisers were directed not to attend before the Committee.

In view of the important nature of the powers provided to Parliamentary Committees, these Committees must, at all times, act within their powers and follow proper procedures. The Inquiry was conducted throughout with the objective of generating publicity and gaining political mileage from an allegation which was never defined and for which no substantive evidence was produced.

For example, the Committee sought to rely on invalid summonses; breached standing orders and Parliamentary Privilege; leaked its proceedings to the media and brought a notice of no-confidence in the Minister before hearing from him.

Given that each House of Parliament regulates its own procedures, with immunity of one House to another, a Committee of the Legislative Council cannot compel the attendance of a member of the Legislative Assembly. This immunity also extends to advisers and, as the advisers that the Committee sought to call are employees of the Premier, as such they cannot be compelled to appear before an Upper House inquiry.

Nonetheless, the Brumby Labor Government wrote to the Committee inviting them to identify in writing the matters into which it wished to inquire with the advisers. The Planning Minister would raise the matters with them, obtain their response and appear before the Committee himself to provide evidence. The Committee failed to respond to this offer of providing written evidence – and it was never clear what questions they actually wanted to put to the advisers.

Labor would support clarifying the rules by which Ministers provide evidence to Parliamentary Committees and the checks and balances that prevent such hearings degenerating into witch hunts. Formalising the rules in relation to putting written questions to advisers through their Minister would be a way of adapting the McMullan Principle without subjecting staff to political accountability which must rest with the Minister.

**The ART seeks a public commitment from all parties to restore open, responsible and accountable government by:
implementing a Ministerial Code (and Ministerial Staff Code re B) giving effect to those commitments and doing so in legislation in a manner similar to the current Code of Conduct for Members of Parliament.**

Labor has recently released an exposure draft of the Parliamentary Integrity Commissioner (PIC) legislation. After incorporating feedback from the community, a future Brumby Labor Government will introduce a final version of the legislation to Parliament in early 2011.

A draft Ministerial Code of Conduct, together with the Ministerial Staff Code of Conduct are attached to the exposure draft. The Parliament has separately adopted a Code of Conduct for Electorate staff and a legislated Members of Parliament Code of Conduct, was proposed in the *Members of Parliament (Standards) Bill 2010* which unfortunately failed to pass due to the Opposition's refusal to compromise on its extensive proposed amendments.

The Codes of Conduct for Members and Ministers set out the standards of propriety, ethical behaviour and judgment that a reasonable member of the public is entitled to expect from a Member or Minister in accordance with the public trust placed in them.

These Codes are intended to become applicable codes for the purposes of the Draft Bill and may be brought into a single governance structure and prescribed in regulations.

This means that each code must lie before Parliament, and either House of Parliament may disallow the code. The finalised codes will provide that failing to cooperate with the PIC will be a breach of the code (as already contained in the Draft Ministerial Code of Conduct).

The Draft Ministerial Code of Conduct is a blend of the Commonwealth's Standards of Ministerial Ethics 2007 and the South Australian Ministerial Code of Conduct 2002, which have been adapted to the Victorian integrity system.

The Discussion paper attached to the exposure draft of the PIC legislation seeks community feedback on the draft Codes and provides additional information about the intended operation of the Codes.

The codes of conduct for Members and Ministers set out the standards of propriety, ethical behaviour and judgment that a reasonable member of the public is entitled to expect from a Member or Minister in accordance with the public trust placed in them.

Apart from the Members of Parliament Code of Conduct, which is currently in the Members of Parliament (Standards) Bill 2010 (Standards Bill), each of the above codes will be prescribed in regulations. This means that each code must lie before Parliament, and either House of Parliament may disallow the code. Each code will be amended to provide that failing to cooperate with the PIC will be a breach of the code (the Draft Ministerial Code of Conduct contains provisions to this effect).

Labor looks forward to feedback from the community on the draft Bill and would welcome engagement with the Accountability Round Table in discussions as we move from the exposure draft to the final Bill for Parliament.