

The Honourable T H Smith QC
C/- Accountability Round Table
15 Loch Street
Camberwell VIC 3124

To the Accountability Round Table,

Please find enclosed the official response from the Australian Greens Victoria to your request dated 27 October 2010.

The Victorian Greens have repeatedly stated there are 3 principles we will pursue in any negotiation to determine which party would form the executive in a hung Parliament. They are listed in order of priority.

The first is a commitment to a stable government that would survive the full four year term. The second is for an open and transparent government. This will require the Liberal or Labor party's commitment to completely overhaul current disclosure practices in order to form a minority government with the Greens. The third principle is that we want a progressive government in order to give effect to the policies that our voters want to see implemented.

In the absence of a hung Parliament, Greens MPs will continue to pursue legislative reforms that allow a free-flow of information to the public. In either case, our commitment to open, responsible and accountable governance is assured.

Our responses to your specific public commitment requests are as follows:

1. Right to Information

The Greens want the Freedom of Information (FoI) regime to be a point of last resort. A proactive disclosure of government information should be publicly available because ultimately all such information is owned by, and belongs to the public.

In situations where there is a genuine competing *public* interest in non-disclosure, an independent Office of Information Commissioner would inspect the documents and determine whether they should be withheld or released in whole or in part. Appeal rights to VCAT would then be available.

We will also push for a change to each House's standing orders so that the Office of Information Commissioner will be able to inspect disputed documents that are the subject of a call for documents motion. The

Commissioner would be imbued with an arbitration function to determine the extent and bona fides of executive privilege.

We also support the removal of all statutory provisions allowing for the issuing of conclusive certificates. Such executive discretion is directly incompatible with free information and open government.

Within the FoI Act, we support reviewing the adequacy of all exemptions in Part IV, narrowing their application and removing automatic exemption classes.

In a similar manner to the schedules in the *Right to Information Act 2009 (Qld)*, we support an inclusive list of exemptions and detailed considerations as to what constitutes ‘public interest’. We would support a referral to the Victorian Law Reform Commission to create an equivalent regime appropriate for Victoria.

As part of the change to proactive disclosure, it would be compulsory for all contracts and their public sector comparators to be publicly available. Only truly commercially sensitive information would be prohibited from release – not information that is sensitive to government.

In relation to the Roundtable’s concerns about PPP’s, the Greens in the Public Accounts and Estimates Committee’s review of the *Audit Act* successfully sought inclusion of the Auditor-General’s powers to follow public money or assets held by the private sector. The bill will be presented to the next Parliament.

2. Restoring Accountable and Responsible Government

Parliament’s duty to hold the executive to account is a central foundation of our democratic institutions. The gradual shift of power from the Parliament to the executive deeply concerns the Greens.

Despite responsible government being central to constitutional democracy, it is largely a non-justiciable convention. However this does not prevent a Parliament from legislating ministerial responsibility into existence.

The Greens will make submissions to the Attorney-General on the Parliamentary Integrity Exposure Draft Bill that the process of drafting the codes and the *Members of Parliament (Standards) Bill* begins with a Parliamentary committee seeking the views of all MPs and interested third parties. Only once this process is complete should it should be presented to Parliament.

Parliament should have control over ministerial codes and ministerial/adviser staff codes of conduct. We do not support the current government’s intention to

issue these codes as regulations, as the substantive qualities of the codes would remain in the domain of the executive.

The Greens support ministerial codes and ministerial/adviser staff codes forming schedules to the *Members of Parliament (Standards) Bill*. This will allow codes binding the executive to be controlled by Parliament.

Another compromise could be for codes to be issued in regulations, but explicit delegated power be given to the Privileges Committee to amend their content. For this to occur, the Committee must be comprised of a non-government majority.

The Greens support the inclusion of 4.4 and 4.5 of the federal ministerial code being inserted within the Victorian code. We support the concept of ministerial culpability being defined within the code, but such definitions should be unanimously agreed to by a cross-section of the Parliament.

3. The ‘McMullan’ Principle

Greg Barber MLC’s minority report into the ‘Windsor affair’ clearly states the Greens’ position on the accountability of ministerial staff – they are not immune to the Parliament’s powers to compulsorily summon witnesses.

In line with responsible government, the Greens will always prefer to hear from the Minister as they are accountable for the actions of their department, agencies and staff. However, this will not always be possible. The Greens agree with the proposition put forward by the majority report at paragraph 62:

“The Committee concludes that in the event that a Minister denies knowledge of a state of affairs or has distanced him/herself from a public servant or advisor’s actions and that public servant or advisor has a direct involvement in the state of affairs in question, there may be grounds for the public servant or advisor to be answerable to the Committee.”

The Greens reject the first ‘McMullan’ principle, but accept the former Senator’s later critique of it as creating ‘a black hole of accountability’. Senator McMullan’s principle and his later retraction of it, demonstrates the ‘fluidity’ of a politician’s dedication to accountability depending upon whether they are in government or opposition.

We note that the Legislative Council had the power to hold the executive to account and call the witnesses to the Bar of the House, but the opposition were not genuinely dedicated to asserting Parliament’s rightful powers. This passivity can be deduced on the basis that “today’s opposition is tomorrow’s government.”

This gap in parliamentary accountability will continue to be exploited by the executive until action is taken to correct it. Greg Barber MLC’s minority report

recommended legislating the privileges of the Parliament, its committees and the executive to resolve this current blemish on our democracy.

The Greens stand by this commitment.