



Attachment A

Request for public commitments to strengthen Victoria's Government Integrity System – Case for Change.

Background

Guiding principles

Before considering the commitments sought and setting out the supporting cases, we submit it is important to consider a fundamental principle of ethics and law which is very relevant but appears to have been forgotten by all of us for many years. We submit that that lack of awareness explains, at least in part, the failures of the last Parliament to properly address the establishment of an anticorruption body for Victoria and to significantly strengthen the Freedom of Information Act.

We refer to the principle that public office is a public trust. The principle is more than a principle of ethics. It has been part of our common law for a long time.

In the period since the last State election the ART has continued to research that principle and our collective amnesia about it. A summary of that exploration can be found in a paper published on our website.¹ The principle has been recently explained by the former Chief Justice of the High Court, Sir Gerard Brennan, speaking prior to presenting the Accountability Round Table's Parliamentary Integrity Awards for the 43rd Commonwealth Parliament. He said:²

“It has long been an established legal principle that a member of Parliament holds “a fiduciary relation towards the public”³⁷ and “undertakes and has imposed upon him a public duty and a public trust”.³⁸ The duties of a public trustee are not identical with the duties of a private trustee but there is an analogous limitation imposed on the conduct of the trustee in both categories. The limitation demands that all decisions and exercises of power be taken in the interests of the beneficiaries and that duty cannot be subordinated to, or qualified by the interests of the trustees.”

¹ http://www.accountabilityrt.org/wp-content/uploads/2009/11/Smith-T-2014-Lyceum-U3A-Speech-final-_3_.pdf

² Op cit , 13-14

On the question of enforcement, he said³):

“True it is that the fiduciary duties of political officers are often impossible to enforce judicially (citing *United Steamship Co of Australia Pty Ltd v King* (1988) 82 CLR 43 at 48); the courts will not invalidate a law of the Parliament for failure to secure the public - interest) 40 – the motivations for political action are often complex – but that does not negate the fiduciary nature of political duty. Power, whether legislative or executive, is reposed in members of the Parliament by the public for exercise in the interests of the public and not primarily for the interests of members or the parties to which they belong. The cry “whatever it takes” is not consistent with the performance of fiduciary duty.”

In considering, as people seeking public office,, whether to make the commitments we seek, below, we submit the test to be applied is - will it advance the public interest. ⁴ We submit that they clearly do because they will significantly

- address the corruption risks in our community and
- improve the openness and accountability of government by our elected representatives and the public service and so the quality of government and trust in our democracy

In doing so, they will also facilitate economic growth. To quote The UK Prime Minister: ⁵

“ the best way to ensure that an economy delivers long-term success, and that success is felt by all of its people, is to have it overseen by political institutions in which everyone can share. Where governments are the servants of the people, not the masters. Where close tabs are kept on the powerful and where the powerful are forced to act in the interests of the whole people, not a narrow clique. That is why the transparency agenda is so important.”

That is not to say that it is easy. The Prime Minister commented later:

“So I want to finish by saying this: none of what I’ve outlined today is easy for us politicians. Transparency brings risks – indeed we often find that out here on a day-to-day basis – but it is absolutely critical. Time and again, history has shown us that open governments make for successful nations. From the children across Africa who depend on it, to the pensioners in this country who rely on this, it matters. So let’s keep the momentum up, let’s keep going, and when history comes to be written let us make sure that this generation was not found wanting”.

³ Op cit , 14

⁴ The test also expressed by the Hon Fred Chaney (<http://www.accountabilityrt.org/inaugural-art-lecture-fred-chaney-integrity-parliament-where-does-duty-lie/>) as the test to be applied by MPS making policy decisions which can involve numerous conflicts of interest which they carry with them from the moment of their election.

⁵ Speech of the UK Prime Minister, Mr Cameron at the [Open Government Partnership Summit 2013](https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013), pp 3 and 7
<https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013>

In the last 4 years, we have seen resistance within both the elected and unelected arms of government to such changes in Victoria and elsewhere in Australia. It is understandable because those public officers are being asked to make decisions which might result in their conduct being publicly examined and criticised and, not being aware of the public trust principle, have not been called upon to consider that guiding principle. But they are not ordinary citizens. They are public trustees, entrusted directly, or indirectly, by the people with the power and duty to serve the people. Everything they do should be open to the people's scrutiny unless it can be shown that to do so would so damage the public interest as to outweigh the public benefit of disclosure. Where their personal or party interests conflict with the public interest, the public interest should be put first.

We submit that those are the fundamental tests and standards to be applied in considering whether to accept or reject the Commitments we seek. Specific matters relevant to the specific areas are discussed in the Appendixes that follow. Our approach has been to identify what appears to be best practice in Australia and to recommend its adoption unless there is good reason to the contrary.

Commitments Sought:

(A) IBAC :

Amend the IBAC legislation to give IBAC the same ability as NSW's ICAC to investigate corruption and to address the uncertainties and problems created in the handling of "protected disclosures identified by the IBAC Commissioner and the Ombudsman.

For discussion of the issues and changes required see Appendix A in the attached document

(B) PUBLIC FUNDING:

Referral to the Joint Electoral Matters Committee of an Inquiry into the political funding in Victoria of parties, members of Parliament and candidates, including the making of recommendations for the legislation required to provide a system of political funding that will serve and enhance our democracy including by assisting our elected representatives to honour their responsibilities as holders of positions of public trust.

For discussion of the issues and recommendations for reform see Appendix B in the attached document

(C) FREEDOM OF INFORMATION ACT:

Adopt the Solomon Report by enacting the Right to Information legislative model in place in Queensland and Tasmania

For discussion of the issues and recommendations for reform see Appendix C in the attached document

Appendix A

Reform of the Independent Broad-based Anti-corruption Act 2011 Positions that have been taken by the Coalition and ALP.

1. The present Victorian Government, before being elected late in 2010, proposed that it would establish an IBAC that would be closely modelled on the NSW Independent Commission Against Corruption (ICAC). The proposal was that together with the Ombudsman and the Auditor-General, there would be seamless coverage of the range of Victoria's integrity issues.
2. The present Opposition has never suggested that Victoria does not need or should not have an anti-corruption commission of this kind, since the IBAC legislation was first introduced to Parliament in 2011. Indeed, to the contrary, the Opposition's attitude to the IBAC appears to have been that the IBAC lacks teeth and is not what the present Government promised the people of Victoria before it was elected.

The Original promised Model - the New South Wales ICAC

3. The NSW ICAC has broad powers to start an investigation. "Corrupt conduct" is defined very inclusively in ss.8 of the ICAC Act, for example as including any activity that could adversely affect directly or indirectly the exercise of official functions by a public official, together with a broad variety of particular offences. The expression "public official" includes a Minister of the Crown. The ICAC's jurisdiction is very widely expressed and it is entitled to investigate "any allegation or complaint, that, or any circumstances which, in the Commissioner's opinion imply that ... corrupt conduct ... may have occurred, may be occurring, or may be about to occur." The ICAC is required, as far as practicable, to direct its attention to serious and systematic corrupt conduct, thus leaving it to the Commissioner's discretion to weed out and disregard trivial and frivolous complaints. The ICAC's powers of investigation are so widely expressed that the entitlement to investigate upon suspicion of corruption is for practical purposes unlimited. This is essential, since corruption is usually hidden, disguised by false names and often hidden by layers of discretionary trusts, as exemplified by the ICAC investigation known as Operation Jasper. If an anti-corruption body does not have widely expressed powers to commence investigating it becomes easier for an investigated party to launch proceedings for an injunction, which in turn allows that party to hide, or destroy crucial evidence.

The Commission established – IBAC; its fundamental weaknesses

4. In contrast the IBAC legislation contains a very narrow definition of "corrupt conduct," which is further limited by the phrase "being conduct that would, if the facts were found proved beyond reasonable doubt at a trial, constitute a relevant offence," that term also being very narrowly defined to include only "an indictable offence against an Act" and three specific common law offences committed in Victoria. Since misconduct in public office is an offence at common law only, these words operate to prevent misconduct in public office from being within the IBAC's jurisdiction. Further the IBAC is then prevented by s.60(2) from conducting an investigation "unless it is reasonably satisfied that the conduct is serious corrupt conduct.

Issues identified by IBAC

5. In the IBAC Commissioner's Report to Parliament of April this year, the Commissioner, Mr O'Bryan QC noted that the threshold restrictions in the IBAC legislation had caused the IBAC not to feel able to commence investigations in some cases of corrupt conduct allegations. He also contended that the IBAC should be entitled to investigate misconduct in public office. Mr O'Bryan also drew attention to various areas of uncertainty in the legislation which required clarification.

Issues identified by the Ombudsman

6. The Ombudsman's Report to Parliament for 2014 also raises the problem that her office has been required to investigate large numbers of "protected disclosures," referred by the IBAC, which had had a real impact on the ability of her office to do its core business. The Ombudsman and Mr O'Bryan have agreed that amendments to the legislation are needed to rectify this state of affairs.

The Reforms required to IBAC's legislation

7. It is therefore the ART's contention that to make the IBAC an effective anti-corruption commission, at least the following amendments to the IBAC Act are necessary –

(a) ***Definitions – corrupt conduct***

- (1) The present definition of "corrupt conduct" in s.4 of the IBAC Act is far too narrow and a much broader definition should be introduced, for example along the lines of s.8 of the ICAC Act 1988. The definition of "relevant offence" in s.3 is unnecessary and should be removed;
- (2) The offence of misconduct in public office should be expressly included in the definition of "corrupt conduct" and become an appropriate subject of investigation by the IBAC;

(b) ***Investigation thresholds.***

The thresholds which presently prevent IBAC investigating any state of affairs which gives rise to a suspicion of corrupt conduct should be removed, and a section such as s.13 of the ICAC Act should replace them. Removing these barriers would require the removal of s.60(2) of the IBAC Act, and the passage in s.4 in the definition of "corrupt conduct" which stipulates "being conduct that would, if the facts were found proved beyond reasonable doubt at a trial constitute a relevant offence;"

(c) ***A guidance provision?***

If it be thought necessary, a section such as s.12A of the ICAC Act could be introduced, requiring the IBAC, as far as practicable, to direct its attention to "serious and systemic corrupt conduct," but leaving it to the discretion of the IBAC Commissioner to determine the practicalities;

(d) ***Addressing uncertainties.***

The uncertainties in the IBAC legislation which concern the Ombudsman and Mr O'Bryan should be clarified.

8. Amendments such as those contained in the preceding paragraph would lower the threshold that presently prevents IBAC conducting investigations, broaden the nature of corrupt conduct that IBAC may investigate, and presumably also remove some of the need which presently exists for the IBAC to refer matters to the Ombudsman for investigation.

Appendix B

Political Funding

Introduction

“Electoral funding may be inextricably linked to participatory democracy yet it can so easily be construed as a vehicle for both good and evil. Old sayings like, “he who pays the piper calls the tune” ring in ones’ ears but if contributions to political parties are spontaneously given as a true reflection of popular opinion then the electoral outcome that follows such opinion can be seen as an honest and viable action. But the latter is to see the world through the brightest and clearest of spectacles. More often in our modern world we view it through a glass darkly, unable to readily see the shifty eyed intention of many a large donor.”⁶

In addition

“Participatory democracy is a constantly changing dynamic. There is never a lasting or perfect solution. The ever fertile human brain will seek to turn to advantage whatever system we put in place and in terms of political honesty the current love affair with marketing as the be all and end all of selling the political product has moved the funding of campaigns into dangerous territory.”⁷

It must also be faced that the present system provides real opportunities for corruption and the temptation to corrupt.

“The process creates a situation where persons who wish to engage in corrupt behaviour are given every opportunity, and the political party concerned becomes indebted to the people who made donations.”⁸

The risk is increased by

1. The so-called “arms race” by political parties to raise and to spend funds promoting themselves and attacking each other, particularly in election periods;
2. The lack of any comprehensive adequate statutory regulation of political funding and, in particular, to ensure real transparency;
3. The development of party fund raising organisations and party entities and their use of high priced functions which offer publicly, or in fact, as the main inducement to the paying guests access to their ministers, shadow ministers and MPs.

To elaborate on points 2 and 3:

⁶ Accountability Round Table 2009 submission to the federal government on its Electoral Reform Green paper.

⁷ Ibid.

⁸ Tim Smith, *Corruption*, The Australian Collaboration, 2010, 46.

Point 2. Private Funding – Regulation

Victoria differs from NSW, Queensland, Western Australia and the Commonwealth in that they have their own statutory regulation of political funding but Victoria does not. Within Victoria, Federal Parties and candidates in federal elections and those supporting them are, however, subject to the provisions in the Commonwealth Electoral Act. It fails to provide transparency, the disclosure threshold being more than \$10,000 and disclosure not being required prior to 15 weeks having elapsed since polling day. Under the NSW legislation, the current benchmark legislation, donations of \$1000.00 or more must be disclosed (s86) and disclosure is required within 8 weeks of the donation (s91)

“The only provision of political donation disclosure in the Act⁹ requires those political parties registered in Victoria, and which are also federally registered, to lodge a copy of their annual return with the Victorian Electoral Commission.

There is no accurate record of all political donations received by political parties and candidates in Victoria”¹⁰.

In addition, following much discussion in preceding years, in 2011, Premier Baillieu introduced a Code of Conduct¹¹ for Coalition MPs which attempts to require them, and especially Ministers, to bring greater transparency and accountability in political financing. It attempts to distance Coalition MPS from actual fund raising but not from participation in events organised to raise funds. The Code also introduced a requirement that public disclosure by the Coalition parties to the Australian Electoral Commission (AEC) be made within one month of receipt of any donation of more than \$100 000 or when aggregate total receipts from a donor equal or exceed \$100 000 in any one financial year.¹² The other Parties were invited to adopt the Code for themselves. The Code and accompanying media release do not address how the Code will be enforced.

The result is a system with significant gaps in its coverage that fails, where it does apply, to provide transparency and accountability because it does not require disclosure within days of payment. There once may have been a justification for a week in which to notify the authorities, but with today’s instant electronic communication and computer systems two business days should be ample.

Point 3. Payments for access.

⁹ Electoral Act 2002 (Vic)

¹⁰ Brenton Holmes, Political financing: regimes and reforms in Australian states and territories;
http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2011-2012/PoliticalFinancing#_Toc319931581

¹¹

http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00_Victorian_Government_Fundraising_Code_of_Conduct.pdf

¹² Ibid; and

http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00_Victorian_Government_Fundraising_Code_of_Conduct.pdf

A major, and increasing concern, is the current practice of raising funds by offering access to members of parliament at functions, particularly ministers and shadow ministers. Payments for access are already a significant source of funding for political parties.¹³

As noted above, it provides opportunities for corruption, damages the reputation of all politicians, and confidence in our democratic system. It also gives unequal access to politicians based on the ability of those receiving access to pay for it. IN addition, there is a serious issue about its legality.

Is raising funds by charging for access to public officers a breach of the law?

The practice of holding “fundraisers” by political parties was discussed in a paper “When public and private interests clashed”¹⁴ presented by the former Queensland Integrity Commissioner, Mr. Gary Crooke QC, at the 2009 Australian Public Service Anti-Corruption Conference. He commented¹⁵

“Those elected to, or appointed, to high public office are no more and no less trustees of the capital which they hold for use and benefit of the Community. In no way, is it within their remit as a trustee to do things other than for the public good and, in particular, they should never make use of capital for their own interest”

After referring to the rejection of the argument by those involved in fund raising as beneficiaries that any such process “could affect proper and ethical decision-making in public administration” he went on,¹⁶

“But, what of informed public perception of this process? Is there a perception that those in business, whether privately, or whether corporately and responsible to shareholders, are going to pay a significant amount to attend a particular function for no expected return? “Nothing is for nothing” as Gordon Nutall famously said in the witness box.

What, for example, of the developer who pays \$3000 for a seat next to a Minister responsible for making a decision about a contentious project in which the guest is involved? What of those objectors or other members of the Community who are interested in the outcome of the decision? Are they being perceived to be fairly treated?

At the bottom of all this is the misuse of capital.

¹³ See examples including individual sums of the order of \$50,000 referred to provided in Joo-Cheong Tham, Money and Politics; The Democracy We can't Afford, UNSW Press, 2010, 81- Note that on the Electoral Commission's website, in the Record of receipts and payments included for 2008-9, there is the report of an “associated entity” of the ALP, “Progressive Business”. It organises fund raising events of the type in question. The report shows receipts by it of \$1.6 m but does not provide details of those receipts.

¹⁴ Third Australian Public Sector Anti-Corruption Conference (APSACC). Retrieved from www.apsac.com.au/2011conference/2009/2009papers.html , p5

¹⁵ P5

¹⁶ P6

The esteem in which the holder of a high political office is held and the power to make decisions that goes with it, are part of the capital which is the property of the Community. It is not for sale for sectional interest. A political party is a sectional interest”

Later Mr Crooke stated ¹⁷

” It is the unspoken creation of an expectation of preferential treatment attending this, which will result in the inevitable conclusion by informed public opinion that the activity is untoward.”

The questions arise as to whether those

- who organise the occasions
- who pay the fee to attend the occasions
- members of parliament to whom access is to be provided and who participate for that purpose

breach any statutes¹⁸ or the common law? In the discussion that follows we focus on the position of the members of parliament.

(A) Legislation

The Crimes Act 1958 (Vic) does not appear to address such conduct. But there is other legislation as well as the common law to consider.

Victorian Members of Parliament (Register of Interests) Act 1978 arguably does so. It provides in “ PART I CODE OF CONDUCT” the following:

“3. Code of conduct for Members

- (1) It is hereby declared that a Member of the Parliament is bound by the following code of conduct-
 - (a) Members shall -
 - (i) accept that their prime responsibility is to the performance of their public duty and therefore ensure that this aim is not endangered or subordinated by involvement in conflicting private interests;
 - (ii) ensure that their conduct as Members must not be such as to bring discredit upon the Parliament;
 - (b) Members shall not advance their private interests by use of confidential information gained in the performance of their public duty;

¹⁷ P7

¹⁸ As to the Commonwealth position, see the ART Supplementary Submission to the JSCEM (Parliament of Australia)

- (c) a Member shall not receive any fee, payment, retainer or reward, nor shall he permit any compensation to accrue to his beneficial interest for or on account of, or as a result of the use of, his position as a Member;
- (e) a Member who is a Minister shall ensure that no conflict exists, or appears to exist, between his public duty and his private interests;
- (f) a Member who is a Minister is expected to devote his time and his talents to the carrying out of his public duties.”

The practice of holding funds-for-access functions involves members of parliament agreeing to make themselves available to their parties for meetings with members of the community. Because of the payments made for their parties’ benefit, the members of parliament involved are likely to be asked and to consent

- to give priority to those who make the payments over other members of the community who they might otherwise have met in their important duty of receiving and considering their representations, and
- do so with the knowledge and for the purpose that through their party, they will indirectly receive financial benefit.

It is arguable that this constitutes members of parliament permitting “compensation to accrue” to their “beneficial” interests as members of the party that receives the compensation as a result of the use of their position as members of parliament (s3(1)(c)). There may also be a question of -potential breach of s 3(1)(a) **and (b) and (e) and (f)**. Enforcement, however, is in the hands of the Parliament¹⁹ not the courts.

Our research has not identified any other statutory provisions that are relevant. We turn to the question whether such conduct may constitute a breach of a common law offence.

(B) The common law.

The offence of bribery of public officers may be described as follows:

“Bribery is the receiving or offering of any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity It is an indictable misdemeanour at common law to bribe or attempt to bribe any person holding public office, and for any person in an official position corruptly to use the power or interests of his position for the rewards or promises”.²⁰

The statement of the common law elements of the offence is arguably applicable to the typical situation described above. In substance, the practice involves the offering and acceptance of indirect rewards to, and by, public office holders, the members of parliament, on the basis of

¹⁹ S.9 provides;“Any wilful contravention of any of the requirements of this Act by any person shall be a contempt of the Parliament and may be dealt with accordingly and in addition to any other punishment that may be awarded by either House of the Parliament for a contempt of the House of which the Member is a Member the House may impose a fine upon the Member of such amount not exceeding \$2000 as it determines.”

²⁰ Russell on Crime, 12th edition, 381and authorities there cited; see also Judicial Commission of NSW, Bench Books, Bribery-<http://www.judcom.nsw.gov.au/publications/benchbks/criminal/bribery.html>

which those public officials will give priority to the donors over other members of the community in performing their duty of receiving and considering their representations. Arguably this also involves a breach of their obligations as public trustees – putting their personal interests (raising funds for their party) ahead of their public duty to serve their community. As public trustees, they are expected to provide access to any person wishing to make representations to them on the basis of criteria that serve that public interest in the equality and fairness of our democracy and which should exclude from consideration whether or not money was paid for that access which directly or indirectly benefits them.

If it is sought to argue that, in reality, nothing much is provided in exchange to the donors, such a suggestion ignores reality - for such opportunities on occasions will prove to be significant and those who pay will be hoping for, and expecting, such an outcome. It should also be noted that such an argument is contradicted by the justification used in the federal context by parties and their associated entities for not disclosing details of the payments made to attend such functions – that the funds are not gifts because adequate consideration was received, namely, that which was promised- access and, therefore, not disclosable under the Commonwealth Electoral Act 1918.²¹.

In addition, as long as the practice continues, the position of MPs as public trustees is severely compromised and their public office further demeaned. As our elected representatives in a representative democracy, entrusted with power to be exercised on our behalf and the protection of the reputation of our parliamentary democracy, it is critical that that they avoid allowing an impression to be given that

- they see nothing wrong in a system that gives unequal access to them and does so on the basis of the payment of fees that most members of their community could not afford
- their decision -making is open to being influenced by financial inducement.

The matter is very serious. Any uncertainty should be removed by legislating to stop the practice.

Conclusion.

It is time that we faced the problems associated with political funding and dealt with them. The commitment sought is support for the referral to the Joint Electoral Matters Committee of an Inquiry into the political funding in Victoria of parties, members of Parliament and candidates, including the making of recommendations for the legislation required to provide a system of political funding that will serve and enhance our democracy including by assisting our elected representatives to honour their responsibilities as holders of positions of public trust.

²¹ That argument turns on the definition of the term "gift" in the s 287 which provides, so far as is relevant, that "'gift" means any disposition of property²¹ made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration, ..."

Appendix C

The Importance of the “Right to Know”

As the 2008 Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information ²²stated:

“.. the right of access to information is a foundation for citizen participation, good governance, public administration efficiency, accountability and efforts to combat corruption, media and investigative journalism, human development, social inclusion, and the realisation of other socio-economic and civil-political rights.”

and

“.. the right of access to information promotes efficient markets, commercial investment, competition for government business, their administration and compliance of laws and regulations”

It urged States to

“.. integrate promotion of the rights of access to information into their own national development and growth strategies and sectoral policies ⁽²³²⁾”

Lack of progress in Reform in Victoria

In Australia, a major shift has begun in other States, inspired by the Solomon Report for the Queensland Government. ²⁴ It was taken up in legislation in Queensland and Tasmania (and to a lesser extent federally). That legislation gives effect to the major policy change proposed in the Report to move from the old approach of responding to specific demands for information (the demand approach) to one where government is expected to take the initiative in publishing information (the push approach), the presumption being that the community is entitled to information about the actions of government unless the balance of competing public interests requires non-disclosure. This was consistent with and reflects the fundamental ethical and legal principle that public office is a public trust; for the information and documents in the possession of the public trustees is created and held for the people and prima facie should be available to the people they have been empowered to serve.

To facilitate and maintain this changed approach, the position of Information Commissioner was been created. The legislative reforms **also** included removing automatic exceptions for classes of documents, abolishing the conclusive certificate system, and placing the onus on those resisting the disclosure of information to substantiate their claim that disclosure would be contrary to the public interest. The legislation also contained an inclusive list of factors favouring disclosure and nondisclosure as well as a

²²] The Carter Centre, “A Declaration and Plan of Action for the Advancement of the Right of Access to Information”, Paper from the International Conference on the Right to Public Information, 27-29 February 2008, p.1. <www.cartercentre.org/news/pr/ati_declaration.html>; cited Solomon Report, 33 and 34

²³ *ibid*, p.5.

²⁴ *Right to Information; Reviewing Queensland’s Freedom of Information Act*, June 2008.

list of irrelevant factors (such as the alleged potential for a document to confuse an applicant and the fact that the document was authored by a senior official).

During the present Victorian Parliament there was one major positive change made and one negative made. Legislation to create the position of Information Commissioner came into effect on 1 December 2012²⁵. The other change was an increase in application fees from 2 fee units to \$26.50.²⁶

There has continued, however, to be considerable and justified disquiet about government secrecy in Victoria, particularly in relation to major planning and construction projects, including planning permissions granted by the Planning Minister,²⁷ and PPPs. This eats away at community confidence in the government. If evidence was needed, the experience in Australia in the 20th and 21st centuries demonstrated that where secrecy is practised, the government of the day cannot be held to account by the Parliament, or ultimately the people, good governance is put at risk and the risk of corruption is significantly increased. The people who entrusted the decision makers with power have the right to know.

A particular concern in relation to major financial commitments is that full details are still not made available including, in the case of PPPs, the Public Sector Comparator. On balance, public interest clearly requires the disclosure of such information.

The present FOI legislation was first enacted in 1982. Since then communication and record keeping has undergone the most remarkable change and the provision of information by government and access to it made much easier, speedier and cheaper. There is no excuse for maintaining the old approach. It is time that Victorians had what, in this the 21st century, is best practice. That requires Right to Information legislation of the kind and content of that already implemented, and operating, in Queensland and Tasmania.

The Accountability Round Table calls on all seeking election to the Parliament to commit to the enactment of legislation of that kind and content.

²⁵ <http://www.foicommissioner.vic.gov.au/home/about/legislation/>

²⁶ <http://www.foi.vic.gov.au/home/costs/application+fee+increase>

²⁷ <http://www.theage.com.au/victoria/developers-flipping-projects-for-huge-profits-20140901-10b3a8.html>