



SUE PENNICUIK MLC

Member of the Legislative Council
Southern Metropolitan Region

206 Bay Street, Brighton VIC 3186
PO Box 2371, Brighton VIC 3186
Telephone: (03) 9530 8399
Fax: (03) 9530 8499
Email: sue.pennicuik@parliament.vic.gov.au
www.suepennicuik.org

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Hon TH Smith QC

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Dear Mr Smith,

Re: Policies for the 2014 Victorian Election

Thank you for writing to the Victorian Greens regarding Victoria's democratic governance arrangements, in particular in relation to IBAC, the funding of political parties, and freedom of information.

IBAC

The Greens agree that Victoria does not yet have an effective anti-corruption body.

The very first motion moved by the Greens in state parliament, in 2007, was to require the then Attorney General to request the Victorian Law Reform Commission to inquire into the best model for the establishment of an anti-corruption body for Victoria. The former government did not support the motion, but after much public pressure, finally referred the matter to the PSSC and the Proust Report was released in May 2010.

The current government indicated that it would establish an anti-corruption body based closely on the NSW ICAC. However, the IBAC as currently constituted falls short of the NSW model in a number of ways.

The Greens raised concerns at the outset that the Independent Broad-based Anti-Corruption Commission (IBAC) was not created in an open and accountable way, lacked the powers of the NSW ICAC and other similar bodies and that the definition of corrupt conduct and serious corrupt conduct were fundamentally flawed.

During debate on the IBAC Amdt (Examinations) bill, I pointed out that the scope of 'corrupt conduct' "is a basic problem on which the whole regime rests" and that especially confining the scope of the jurisdiction of IBAC to 'serious corrupt conduct' "will severely hamper its ability to investigate corruption".

In 2012, I moved a motion requesting that the government release the documents that were considered by the consultation panel after failing to obtain them under FoI. The government refused access to the documents. This lack of transparency did not bode well for the creation of IBAC, particularly in the piecemeal way in which the legislation was presented to parliament.

From the start, the Greens highlighted a number of fundamental flaws with the model which the government was putting forward in the series of bills that established the IBAC. The Greens moved a series of amendments to the IBAC bills that included:

- broadening the jurisdiction of IBAC beyond 'serious corrupt conduct' to corrupt conduct as in s8 of the NSW Independent Commission Against Corruption (ICAC);

- that the public interest should be the paramount consideration in IBAC exercising its functions;
- that IBAC should have the power to investigate breaches of MP and Ministerial Codes of Conduct;
- not limiting the definition of corrupt conduct by tying it to indictable offences; and
- that a separate body should be maintained to investigate police misconduct, including injury and death as a result of police contact.

The Greens continue to be committed to these amendments to give the IBAC the ability to effectively investigate all levels of corruption in public office, including:

- broadening the definition of corrupt conduct along the lines of s8 of the ICAC Act;
- providing for the IBAC Commissioner to determine what corruption is significant; and removing the requirement that the IBAC should only investigate 'serious corrupt conduct,'
- including misconduct in public office which will provide for breaches of MP and Ministerial Codes of Conduct being investigated,
- removing the thresholds that presently prevent IBAC investigating any state of affairs which gives rise to a suspicion of corrupt conduct, and
- providing IBAC with the appropriate powers necessary to conduct effective preliminary investigations.

The Greens agree with other amendments as identified in your letter including amending legislation to address the uncertainties and problems created in the handling of 'protected disclosures' identified by the IBAC Commissioner and the Ombudsman. We also agree with the Law Institute of Victoria that s19 of the Protected Disclosure Act should be amended to allow disclosures relating to members of the Legislative Assembly and Legislative Council to be made to the IBAC.

The Greens introduced a bill to state parliament to create an offence of misconduct in public office my MPs.

Please find attached for you information a comprehensive analysis of the IBAC legislation put together in my office.

Funding of Political Parties

The Greens agree that Victoria lacks appropriate mechanisms for ensuring that funding of political parties does not lead to anti-democratic outcomes and undue influence by donors. Because Victoria defaults to the inadequate Commonwealth system of donation disclosures, there is a lack of transparency as to donations made to political parties and other candidates at federal and state elections.

Other states have introduced restrictions on donations and election spending in an effort to overcome the inadequacies of the Commonwealth system. Therefore, an inquiry into the political funding in Victoria of parties, members of Parliament and candidates would be a good thing.

The Greens have raised the serious issue of political donations many times in state parliament - in relation to the conflict of interest that arises when governments are involved in deciding planning matters involving developers that have made donations to their respective parties and in relation to the difficulty of bringing in public health and other measures that are opposed by organisations that are large donors to political parties.

In November 2009, I moved a motion that, "This house calls on the state and federal governments to reform laws relating to political donations, with the aim of banning donations from entities such as unions and corporations, and limiting the size of donations from individuals."

In 14 April 2010, I moved a motion that, "This house calls on the Australian Labor Party and Liberal-National party coalition refrain from accepting political donations from property developers for the remainder of the 2010." This motion followed legislation in Queensland and in particular in NSW at that time which made it illegal to either offer or accept a donation from a property developer. This was brought about by ongoing scandals and public disquiet about political donations, particularly from property developers at that time, and the influence they have on political parties, and the indirect influence they can have on government.

In May 2014, I moved a similar motion that, "This house calls on the Liberal, The Nationals and the Australian Labor

Party to refrain from accepting political donations from property developers and organisations that are regulated by government or may be affected by government decisions; and government to introduce legislation to limit political donations to, and expenditure by, political parties and candidates.” Debate on this motion was not concluded.

Freedom of Information

The Greens agree that Victoria’s freedom of information legislation falls well short of best practice. We understand that transparency and accountability are critical foundations for democracy and public confidence and therefore FoI legislation should assist with this.

The Queensland Solomon Report is valuable in highlighting what is best practice in FoI by advocating for a ‘push’ model, with greater proactive and routine release of information, new right to information and privacy legislation and maximum disclosure of non-personal information.

The Freedom of Information Act 1982 (Vic) has not changed greatly since its inception, however, the structure of government spending and service delivery is now radically different. A long series of decisions by VCAT have widened the scope of FOI exemptions. The Act should be amended to narrow the scope of exemptions in Part IV, including:

- 28. Cabinet documents
- 30. Internal working documents
- 31. Law enforcement documents
- 32. Documents affecting legal proceedings
- 33. Documents affecting personal privacy
- 34. Documents relating to trade secrets etc.
- 35. Documents containing material obtained in confidence
- 36. Disclosure contrary to public interest

In addition the overall objectives and purposes of the Act should be rewritten to strengthen the presumption of public release of documents and encourage more proactive release.

Please do not hesitate to contact me if you have any further queries.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'Sue Pennicuik', with a long horizontal flourish underneath.

Sue Pennicuik MLC
Member for Southern Metropolitan Region