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To the Executive Officer

**Public Accounts and Estimates Committee
Strengthening Government and Accountability in Victoria**

Introduction

1. Liberty Victoria - The Victorian Council for Civil Liberties Inc is an independent non-government organisation which traces its history back to the first Australian civil liberties body established in Melbourne in 1936. Liberty is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognised by international law. Liberty Victoria believes that these objectives cannot be met without open, transparent and accountable government. Liberty Victoria has campaigned extensively in the past on issues concerning democratic processes government accountability, transparency in decision-making and open government.
2. Our most visible campaigns on these issues in recent years have concerned the attempts by the previous Victorian Government to curb the powers of the State Auditor-General, we initiated a campaign to 'Protect the Auditor-General. Liberty Victoria also made submissions to the inquiry on Upper House Reform in Victoria and indeed supported the changes made by the Bracks Labor Government. In addition, we were strong supporters and campaigners on a Charter of Rights for Victoria that ensures that governments of all persuasions adhere to basic human rights.
3. We welcome this opportunity to comment on the Australian Study of Parliament Group's paper *Reforming Accountable Government: Reforming government accountability in Victoria*. We endorse the underlying assumptions on page 1 of the paper:
 - a. Democracy is fundamental to the Australian way of life.

President Julian Burnside QC	Vice Presidents Jamie Gardiner Anne O'Rourke	Secretary Georgia King-Siem	Treasurer Robert Niemann
Immediate Past President Brian Walters SC	Michael Pearce SC Prof Spencer Zifcak	Assist. Secretary Sean Huggins	
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- b. That all citizens and most particularly our Parliamentary representatives should act in a way which protects and enhances our democracy.
- c. The rule of law, reason and procedural fairness strengthen democracy.
- d. The power of the Executive must be kept in check. The Executive cannot become a law unto itself without accountability to the people.

Threats to Government Accountability

4. Unfortunately Government accountability has been receding over recent years. This problem is most obvious at the Federal Level where obfuscation and blame-shifting, censorship of critics, and an unwillingness to adhere to the principles of international law are all too evident. A number of recent events highlight the lack of accountability and side-stepping of Ministerial responsibility:

- The Iraqi Wheat Scandal – first and inadequate response followed by assertions of by Ministers of ‘I knew nothing’, or ‘nobody informed me’. This echoed the responses by many of the same Ministers and indeed the Prime Minister in the children overboard episode. Claims of ignorance followed by attempts to shift the blame onto Ministerial advisors. At the same time none of those same advisors or indeed Heads of Departments were allowed to appear before Senate/House Committees to explain what happened, what was communicated and to whom.
- Consistent attacks on the judiciary, both as an institution and on individual members of the judiciary. These constant attacks by politicians undermine the rule of law. They offend the separation of powers, and bring our highest institutions into disrepute. The attacks also engender a loss of respect, legitimacy and public confidence in the judiciary. Making matters worse some Federal Government Ministers appear to facilitate the public’s misunderstandings or mistrust in the judiciary. One of the most pernicious examples concern Senator Heffernan’s attack on Justice Michael Kirby using fraudulent documents. Parliamentary privilege should not be used by Ministers to make unsubstantiated personal attacks on judges or members of the public. A code of ethics should be developed to ensure that parliamentary privileged is not abused.
- The most recent example of incompetence, political opportunism and a lack of ministerial responsibility is the Dr Haneef investigation. One mistake is compounded by another with the Minister refusing to first, accept the Court’s determination. Second the Crown solicitor giving wrong information to the Court. Third, the Minister’s intervention to take away Dr Haneef’s visa when a court decision does not suit the Minister. Fourth, a further investigation by the DDP clearing Dr Haneef of charges where again the Minister refusing to accept the decision, continuing to defame Dr Haneef and implying that nonetheless there is still evidence to justify the Minister’s intervention. At no point in this tawdry exercise was the Minister able to accept the Court or the DPP’s decision. The Minister sought to undermine both and refused to accept any Ministerial responsibility for the inadequate and incompetent handling of this case.

5. Ministerial responsibility means that the Minister must accept any mistakes, lack of communication, or errors in their portfolio area. This does not mean that unrealistic expectations should be placed on Ministers. However, in the examples above, the Minister must take responsibility for mistakes and not pass them off on to junior staff. The meaning of Ministerial Responsibility needs to be renewed. Ministers need to be reminded of their obligations to the Parliament and to the public under the Westminster system.
6. Part and parcel of this problem is the development of the culture of denial of responsibility. This is most evident at the Federal level but is also creeping into other levels of Government. This requires reform to the operation of Parliament. Liberty endorses the proposal by the Accountability Working Party to ensure independence of the Presiding Officers, indeed we suggest (and have done so previously) that there should be an independent Speaker, who has the responsibility and authority to investigate actions of Ministerial staff. Liberty also believes that Ministerial Staff and Heads of Departments must be required to appear before Parliamentary Committees. Ministers should not be able to hide from responsibility behind their staff. Liberty Victoria endorses the proposals put forth in the *Guide to Key Elements of Ministerial Responsibility* by the Accountability Working Group.

Committees

7. Inviting public submissions to parliamentary inquiries is an essential part of the democratic process of listening and responding to citizens and community organisations on issues of public concern. Calling for submissions serves the Australian Parliament's stated purposes of directly informing Members of Parliament about community views and generating public debate. A genuine invitation to the public to contribute to an inquiry must give sufficient time for the message to reach all interested individuals and organisations, as well as ample time to construct a response.
8. Liberty Victoria frequently makes submissions to both federal and state parliamentary inquiries. We have noticed that the deadline for submissions is getting increasingly shortened. In many cases this reaches absurd lengths whereby a number of Bills are being examined at once and the timeline given is less than 10 working days. This happened with various pieces of anti-terror Bills and also with trade liberalization inquiries whereby organizations were expected to examine and comment on five trade and treaty related Bills in 10 working days.
9. Many organizations do not have the expertise at hand to examine Bills in such a short-time line and often depend upon a volunteer lawyer to explain and assist with submissions. This process cannot be completed in ten working days. At the very least, a month should be given to examine a Bill. If it is more than one Bill then the time for submission should be extended. Liberty has undertaken research on the time allocated for submissions at the federal level and we attach this research for your examination. We have not undertaken research at the state level but the same issues concerning timelines is applicable at the state level, we have

noted that on a couple of occasions we have received notice of an inquiry after the final date for submissions .

10. As former federal Senator Barney Cooney points out in his submission, 'Parliamentary committees form a significant instrument for gaining and preserving good government'. Alongside the Judiciary they perform a fundamentally important scrutiny function. They provide a venue by which members of the public can comment and contribute to the process of government, the improvement of legislation, and the accountability of government. The problem with such Committees is that they are often under resourced and their reports ignored by government. This is evident with the current federal Government where they allow the committee to examine a Bill but often have the legislation ready to go before the Parliament before the Committee has given its report. This undermines Parliamentary and public oversight of government, and offends democracy. Better practices/guidelines need to be introduced to ensure that politicians respect the Committee process and to ensure that the public is able to participate properly in the process.

Freedom of information & confidentiality

11. Freedom of information (FOI) is another area of concern to Liberty Victoria. FOI has been increasingly undermined over recent years. This is often done under the auspices of national security/anti-terror or commercial confidentiality, the latter when government partners with the private sector. Under the anti-terror laws we have an absurd situation where citizens are not allowed to know what the evidence against them is which completely undermines any resemblance to a fair process and makes it impossible for a person to adequately defend themselves.
12. An additional problem concerns government going into private-public partnerships and utilizing such partnerships to argue commercial-in-confidence to undermine public scrutiny. Such arrangements start from the wrong premise. Instead of placing the emphasis on the private, the starting point needs to be on the public. If public money is being used then the public has a right to know how much a project costs, how money is going to be spent, how much public money is subsidizing the private sector and what the public gains from such investment. The onus should be on the private partner to argue the case why such information should not be made public. If public finance is used then the public has a right to know.
13. FOI needs re-examination. While it is acceptable that some documents particularly cabinet documents, or documents regarding national security or the administration of justice, be protected provided such protection is in the national or state interest, it does not follow that all such documents need to be exempt. The system needs to ensure that an appropriate balance between confidentiality and disclosure is ensured, while protecting against abuse of the system for the sake of political mileage or gain.
14. According to the Accountability Working Group the Government Departments frequently seek to avoid their obligation to disclose documents under FOI on the grounds that the request is voluminous either in relation to resources or quantity

(p 7). Furthermore, applicants are often discouraged because of excessive costs or by excessive delay. To overcome these problems, the Accountability Working Group suggests that the Ombudsman be given jurisdiction to review disputes in these areas, and be authorized to mediate, investigate and report such disputes. Liberty Victoria is of the view that FOI is being slowly eroded and supports the Working Group's suggestion for reform.

Other Issues in *Renewing Accountable Government*

15. Ministerial Conduct: Liberty Victoria supports the proposals for an improvement in Ministerial Conduct. We note that these mirror standards established in the United Kingdom found in the *Ethical Standards in Public Life (Scotland) Act 2000* and the *Ministerial Code: A code of ethics and procedural guidance for Ministers*, (Blair Government), and initially recommended by the Nolan Committee (1994) now known as the Committee on Standards in Public Life UK. Liberty has commented on the Nolan Committee's work in the past and supported the recommendations of the Nolan Committee which were also reproduced and supported by both the Fitzgerald Inquiry in Queensland and the WA Inc Royal Commission. The final reports from both inquiries recommended that standards similar to the standards recommended by the Nolan Committee be established in Australia.
16. The *Ministerial Code: A code of ethics and procedural guidance for Ministers 2005*, covers Ministers and appointments, Ministers and civil servants, Ministers' private and party interests, Ministers and the government, the parliament, their departments, their presentation of policy, overseas visits, and Ministerial pensions. It also includes the seven principles of public life that should guide a Minister's behaviour:

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

17. Liberty Victoria supports the above principles and the Ministerial Conduct guide proposed by the Working Group. However, at a time of low public confidence in politicians we would not wish such a Code to be an exercise in window-dressing but should entail an obligation on Ministers with consequences for Ministers found in breach.

Conclusion

18. Liberty Victoria supports the recommendations made in the Australasian Study of Parliament Group's report, *Renewing Accountable Government; Reforming government accountability in Victoria*. Should the Public Accounts and Estimates Committee hold public hearings Liberty would like to appear before the Committee. We apologise for the late submission and thank the Committee for accepting our submission.

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President
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Jamie Gardiner
Anne O'Rourke
Michael Pearce
Vice-Presidents
Liberty Victoria

Anne O'Rourke's digital signature on behalf of the President and Vice-Presidents.