

Minimising Secrecy

AUSTRALIAN DEMOCRATS ACTION PLAN MINIMISING SECRECY ACCOUNTABILITY

Openness, accountability, and the public's right to know are essential principles and protections in a democracy. Fundamental to the realisation of these principles is the minimal use of secrecy by government. Blanket secrecy is unacceptable in government if parliament is to fulfil its oversight function and if government is to remain open and accountable to the people. Secrecy is only necessary for genuine reasons of security and privacy. Freedom of Information is vital in fighting excessive secrecy. So is ensuring that 'commercial confidentiality' clauses in government contracts are genuine and are not just designed to avoid scrutiny.

"Openness and accountability are being undermined by the changing nature of political decision-making and an Orwellian determination to control the flow of information."

Cameron Stewart
Associate Editor
The Australian 2007

Our Action Plan

- Continue our long campaign to limit secrecy in government.
- Ensure that there continues to be support for and compliance with the Democrats-initiated Senate Order concerning the use of confidentiality provisions in government contracts, and publication of key contract details.

Why secrecy is damaging

The contracts that governments let, run into the hundreds of billions annually. It is vital that the processes of letting and running contracts guarantee the integrity of public administration and expenditure.

Financial scandals in past state and federal governments alerted Australians to the danger of parliaments and auditors being kept in the dark on key details of contracts. Enormous cost to the taxpayer can result. The Commonwealth is not immune. Secrecy can hide corruption. It can also hide incompetence, waste and sloppy processes.

Democracy is threatened when a government fails to provide access to information and fails to open itself to scrutiny and to accountability. When information is blocked it must be genuinely in the public interest, and not in the political interest. Neither must secrecy be used by officials as a device to protect their own positions.

To end excessive secrecy the government needs to actively promote:

- openness, accountability and access to information in matters of government, and a strict limitation on secrecy in public affairs;
- limitations on cabinet secrecy; and
- greater ministerial and executive responsibility and reporting in terms of their fiduciary duties, thereby promoting accountability.



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www.democrats.org.au

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Secrecy is acceptable on genuine privacy and security issues. Beyond that, there is a strong public will for open, accountable and transparent government. The Federal Government would be foolish to ignore the perception that mismanagement and corruption thrive in the absence of proper scrutiny.

The Senate order on contracts

Perhaps the most common device used by some ministers and bureaucrats, departments and government agencies to conceal governmental activities has been the commercial-in-confidence claim. However, in 2001 the Democrats' successfully initiated a Senate Order to provide greater transparency in relation to government contracts.

Known as the 'Murray Motion', it is a key measure to prevent the over-use of confidentiality claims in commonwealth contracts, and it also has the effect of promoting more efficient competitive and open contract practices.

The order requires ministers to table letters annually confirming that their departments and agencies have posted on their websites a list of contracts entered into in the preceding 12 months (or before, if not yet completed) worth \$100,000 or more. Ministers and departments have to show, among other things, the name of the contractor, the value and duration of the contract, the subject matter, the commencement date, whether it contains confidentiality provisions and if so, why.

Compliance with this Order has been variable, as the Auditor General has no enforcement role, nor does the Department of Finance or any other agency. However there has been a general improvement in compliance, process and practice, and the ANAO's regular audits required by the order have played a key role in entrenching the principles underpinning the order. The Commonwealth has responded by promoting transparency and consistent process in procurement, and website records of contracts and their details are now commonly available.

As the Senate Finance and Public Administration Committee noted in 2007: *Two notable achievements are the general decline in the use of confidentiality provisions and the now commonplace inclusion of standard disclosure provisions in government contracts [but] concerns remain about the continued misuse of confidentiality provisions in contracts and the reliability of the reported data in departmental and agency lists.*

In October 2006, the Auditor-General's audit of selected agencies' compliance with the order revealed that of 45 contracts that did contain confidentiality provisions, 12 did not meet the criteria allowing for confidentiality to be claimed.



CONTACT US

(03) 9416 1880

Lv 1, 62 Wellington Parade, East Melbourne VIC 3002

inquiries@democrats.org.au

Authorised by Jack Evans, 5 Poinciana Place, Wanneroo WA 6065
Printed by Senator Lyn Allison, Parliament House, Canberra ACT 2600