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12th June, 1991

The Hon. N. F. Greiner, M.P.,
Premier,
State Office Block,
Macquarie Street,
SYDNEY 2000

Dear Premier,

We, the Members for Bligh, Manly and South Coast, in the interests of maintaining stable government in New South Wales, undertake:

1. to support Supply being granted to the Government;
2. not to support the Opposition in any Motion of No Confidence, unless it relates to matters of corruption or gross maladministration. We reserve the right to move a Motion of No Confidence on any matter, at any time, if the Government does not honour its agreement to implement the Charter of Reform in accordance with the agreed timetable or in relation to matters of corruption or gross maladministration.

These undertakings are given on the condition that:

1. a Charter of Reform (appended to this letter) is implemented by the Government in a form, and to a programme, acceptable to us.
2. in addition to a monthly update, consultation on progress on implementation of the Charter of Reform takes place every three months, with a full review at the end of twelve months. If at that time, progress is satisfactory in our view, the agreement shall stand for a further twelve months. If however, progress is not satisfactory in our view, we reserve the right to withdraw from this agreement;
3. the Government guarantees the right to each of us to introduce and fully debate legislation, and the Government shall facilitate the progress of such legislation through the second and third reading stages, subject to the will of the House;

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4. Similarly, the Government guarantees to each of us the right to move and fully debate amendments to legislation; and to move and debate motions on any matter.

Further, we will vote upon all legislation before the House on its merits.

Yours sincerely,

CLOVER MOORE, M.P., JOHN HATTON, M.P., PETER MACDONALD, M.P.

CHARTER OF REFORM

SUMMARY OF PROPOSALS

I. OPEN AND ACCOUNTABLE GOVERNMENT

1. Freedom of Information.
2. Ombudsman and Auditor-General.
3. Whistle blower legislation.

II. LAW AND JUSTICE

1. Defamation Act reform
2. Legal Services Ombudsman.
3. Judicial Independence

III. PARLIAMENTARY REFORM

1. Four year fixed term.
2. Consideration of Legislation.
3. The Speakership.
4. Standing Orders and Procedures.
5. Parliamentary Committees.
6. Parliamentary Appropriations.
7. Parliamentary Counsel.
8. Declaration of pecuniary interest.

IV. ELECTORAL REFORM

1. Election Funding
2. Referenda

I. OPEN AND ACCOUNTABLE GOVERNMENT

1. Reform of the Freedom of Information Act to include;

All internal reviews of decisions refusing to disclose documents in whole or in part area to be conducted by the Ombudsman. (Amend s34(5) Fol Act). The Ombudsman is to have all the powers of the original decision maker. Existing rights of appeal to the court shall be preserved.

Charges are to be reasonable.

No Agency to be exempt under the Act.

Local Government to be subject to all provisions of the Act.

The Freedom of Information Act shall override the secrecy provisions in all other Acts, and any document that is the subject of secrecy provisions in any other act shall only be exempt where the ombudsman decides that their disclosure would be contrary to the public interest.

All Government Agencies shall publish annual reports in a standard form to allow comparisons between departments to be easily made.

2. Ombudsman and Auditor-General

Strengthening the power and independence of the Ombudsman and Auditor General by providing for;

- a The Ombudsman and Auditor General to report directly and frequently to the Parliament.
- b. The Ombudsman and Auditor General to be able to inspect all documents of Government.
- c. The Ombudsman and Auditor General to be able to publish reports at any stage of an investigation with or without ministerial consent.

3. Whistle Blower

The Government shall recognise the fundamental right of freedom of speech for all public sector employees, and shall legislate to provide full protection of the rights and employment of any public servant(s) who make information public and/or available to the Parliament and/or its members about corruption, incompetence, inefficiency or waste; such protection to be provided by an Act based on the United States Whistle Blower Protection Act 1989.

II. LAW AND JUSTICE

1. Defamation

Amendment of the Defamation Act and other Acts to be extent necessary to remove restrictions on the full media reporting of Government. Such reform shall not be dependent upon conformity with similar legislation in any other State or States. Such reform shall incorporate the following;

- a. Allow for truth alone as a defence.
- b. Limit damages for non-economic loss in defamation.
- c. Allow a public figure test.

2. Legal Services Ombudsman

The Government shall appoint a legal services ombudsman to oversee the legal profession.

3. Independence of the Judiciary

Judicial independence from executive Government to be entrenched in the New South Wales Constitution Act.

III. PARLIAMENTARY REFORM

1. Parliament shall have a fixed four year term.
2. Exposure drafts of all legislation to be made available for public and community group consideration and comment.
3. The Speaker to be chosen and the term of his office determined either by a two thirds majority of the Parliament or by acclamation or elimination ballot.
4. Recognition by the Treasury and all arms of State Government that the principal presiding officers of the Parliament shall represent the will of the parliament in matters of administration and finance in conjunction with a Board of M.P.s.
5. Legislation that is not proclaimed within 90 days of the third reading to be notified to the house and debated.
6. Exposure drafts of all legislation to be made available for public comment.
7. A complete review of Parliamentary procedure and standing orders shall occur as a matter of urgency.

8. Enhancement of all parliamentary committees. members of the Parliament shall have a role, with the presiding officers, to formulate budget submissions for Parliamentary appropriations, and that suitable mechanisms to formulate adequate budgets including committee business.
9. A separate Parliamentary Appropriations Bill to provide for Parliaments independence from executive Government.
10. Parliamentary Counsel to become officers of the Parliament, and to be available to private members to assist in the drafting of bills and amendments.

IV. ELECTORAL REFORM

1. Election Funding

Mandatory disclosure of the original source of all contributions to political parties, groups, or individual candidates whether financial or in kind.

- 2 Referenda. Questions in referenda should be clearly stated and relate to a single issue for decision. The following referenda will be put to the people of NSW at the Local Government Elections in September 1991.
 - i. Should State Elections be held at fixed four year intervals?
 - ii. Should all state and local Government elections be based on one vote one value?
 - iii. Should citizen initiated referenda be adopted?

CHARTER OF REFORM

I. OPEN AND ACCOUNTABLE GOVERNMENT

1. Reform of the Freedom of Information Act to include:

- (i) All internal reviews of decisions which involve refusal to disclose documents in whole or in part are to be conducted by the Ombudsman. (Amend s34(5) FoI Act). The Ombudsman is to have all the powers of the original decision maker. Existing rights of appeal to the court shall be preserved.

In reaching his determination, the Ombudsman may provide access to a document notwithstanding that it is otherwise exempt if in his or her opinion, it is in the public interest to do so.

Before disclosing any such document, the Ombudsman shall give the agency and any third person whose interests might be affected by disclosure an opportunity to make submissions as to why the disclosure should not be made. If, after receiving those submissions, the Ombudsman decides to disclose the document, he or she shall give the agency, the applicant and any third party notice of his or her intention to do so. Any agency or person objecting to disclosure will have a right of appeal to the Court, and if an appeal is filed within 14 days, the Ombudsman is not to disclose the document unless the court so orders.

- ii) All fees associated with requests for documents to be set and amended by regulation; such regulations shall provide for the automatic granting of lower fees in cases of hardship or public interest cases.

- iii) There shall be no charges for considering exemptions or review of decisions by either the agency or Ombudsman.

The Act shall apply to all documents, whether created before or after the commencement of the Act (repeal s25 (1) (e)).

- iv) No agency to be exempt under the Act but the Ombudsman is bound by secrecy provisions covering publication;
- v) Local government to be subject to all provisions of the Act;
- vi) Law enforcement documents, including documents created by the State Intelligence Group and the former Special Branch shall only be exempt where the Ombudsman decides that their disclosure would be contrary to the public interest.
- vii) The Freedom of Information Act shall override the secrecy provisions in all other Acts, and any document that is the subject of secrecy provisions in any other act shall only be exempt where the Ombudsman decides that their disclosure would be contrary to the public interest.
- viii) The time limits in which requests for documents are to be met to be shortened to 14 days as of 1 January, 1992.
- ix) The Ombudsman shall have the power to vary any unreasonable charges imposed in relation to the administration of the Act.
- (x) Documents supplied to M.P.s for work in accordance with their duties without charge.

2. Reports and Board Minutes

- i) A requirement that the minutes and annual reports of the boards of all statutory authorities be publicly exhibited.
- (ii) A requirement that all agencies shall publish annual reports, in a standard format.

- (iii) The Minister shall report to parliament failure of departments to meet Annual Report deadline.

The Government shall recognise the fundamental right of freedom of speech for all public sector employees, and shall legislate to provide full protection of the rights and employment of any public servant(s) who make information public and/or available to the Parliament and/or its members about corruption, incompetence, inefficiency or waste; such protection to be provided by an Act based on the United States Whistle Blower Protection Act 1989. A bill for this Act shall be introduced and proceed through all stages in the 1991 Budget session. A working party appointed in consultation with Independent Members of Parliament, shall be convened to prepare the Bill.

Amendment of the Defamation Act and other Acts to the extent necessary to remove restrictions on the full media reporting of Government. Such reform shall not be dependent upon conformity with similar legislation in any other state or states. Further, such reform shall:

- i) Emphasise "truth" as a defence;
- ii) Limit non-economic loss in defamation set at 70 percent of the maximum payable for the loss of the whole of life under the Motor Accidents Act currently \$180,000.
- iii) A public figure test, similar to in the US along the lines of the US "Sullivan" judgement, shall apply.
- iv) The cause of action in all defamation cases to be the matter complained of, that is, the publication and not the imputations arising from the publication.
- v) The defamation law shall be simplified so that juries can give clear answers to the important question whether the publication was substantially true.
- vi) Public figures should not recover damages for defamation, unless the publisher failed to take adequate and reasonable

precautions to ascertain the truth of the matter published or else knew or reasonably ought to have known that the matter published was substantially untrue.

- vii) Where the matter published was substantially untrue but the publisher took reasonable and adequate precautions to ascertain the truth of the matter published, public figures should have a right to a court-ordered correction of the publication, giving the correction similar prominence and distribution as the false publication.
- viii) Compulsory conciliation conferences to be convened by a court appointed officer within two weeks of the commencement of defamation proceedings so that early settlement and apologies can be obtained before legal costs mount.
- ix) All defamation proceedings must be commenced within six months of the plaintiff learning of the publication.

5. Strengthening the power and independence of the Ombudsman and Auditor-General by providing for:

- i) The Ombudsman and Auditor-General be appointed upon proposal by a joint tripartisan parliamentary committee. The resolution to appoint must be carried by a two thirds majority in each house of parliament, otherwise referred back to the committee.
- (ii) Further, that the Ombudsman and Auditor General shall be responsible for the appointment of his/her deputy and other senior staff.
- iii) The Ombudsman and Auditor-General to report directly to the Presiding Officers of the Parliament;

Any report presented to the Presiding Officers by the Ombudsman or Auditor-General must be tabled by each Presiding Officer in his/her respective house on the first sitting day following the receipt of the report.

The Ombudsman and Auditor-General are to be given free and unfettered access to all Government documents, notwithstanding obligations of secrecy, duties of confidence and the laws relating to public interest and legal professional privilege (replace s.22 of the Ombudsman Act 1974).

Notwithstanding such obligations, duties or laws, the Ombudsman is to report to Parliament in all cases where he finds wrong conduct.

The Minister responsible for the Department or agency against which a finding of a wrong conduct has been made to respond to the Ombudsman's report by a public statement to the Parliament within 12 sitting days of the House of Parliament in which the Minister sits.

iv) The Ombudsman and Auditor-General to be able to publish reports at any stage of an investigation, with or without Ministerial consent.

v) The actions of all public sector employees to be subject to scrutiny of the Ombudsman and Auditor-General.

6. The Election Funding Act shall be amended to provide for:

i) Mandatory disclosure of the original source of contributions to political parties, groups or candidates, whether financial or in kind.

ii) Disclosure to be made annually by a Declaration of Income and Expenditure no later than 30 days after the end of each financial year.

iii) Unsuccessful candidates and groups to disclose any donation, whether financial or in kind, after any election in which they were candidates.

iv) Mandatory disclosure of all forms of income and expenditure by third parties which involve themselves in the political

process.

- v) Disclosure of all donations made between the previous election and the announcement of current election no later than two days after the election announcement.
- vi) Where a candidate or party fails to disclose sources of funding, or makes a false or incomplete declaration of sources of funding, that candidate or party shall be ineligible to receive funding from the Elections Funding Authority for five years following the date of the election for which there was failure to disclose, or a false or incomplete declaration was made.

The Election Funding Authority to be restructured to provide for the part-time commissioners to be the Ombudsman and Auditor-General, replacing the nominees of the government and opposition parties.

- vii) Notwithstanding the above the Joint Select Committee on Election Funding shall be reconvened within 14 days of the first sitting day of the Fiftieth Parliament, so that work done up to date can be utilised particularly evidence collected in the United States and Canada.

The Government shall appoint a Legal Services Ombudsman. The Legal Services Ombudsman shall have the power to:

- i) Examine allegations about the way complaints about members of the legal profession have been handled by the Bar, the Law Society, or any other legal professional body;
- ii) Refer cases back to any body which originally investigated the complaint, or any disciplinary tribunal which has the power to consider the complaint;
- iii) Recommend level of payment of compensation by the professional body concerned;
- v) Recommend changes or improvements to the complaints

- procedures of professional bodies; and
- v) publicise decisions, by a suitable public notice in the two major daily newspapers.

The government shall remove all legal barriers to the Trade Practices Act applying to the legal profession.

8. Judicial independence from Executive government to be entrenched in the New South Wales Constitution Act.

9. Third Party Rights.

The third party should be given the right to sue in public interest cases. All public duties may be enforced and all breaches or threatened or potential breaches of public laws may be restrained or remedied by any person whether or not that person has standing to sue at common law.

No legislative or administrative restriction on provision of legal aid, and indemnity against costs for public interest cases, pursuant to Third Party Rights.

II. PARLIAMENTARY REFORM

1. Parliament shall have a fixed four year term.

In deciding on the method of implementation of this reform the Victorian and South Australian Bills establishing fixed terms in those states shall be considered, as well the report of the Constitutional Commission 1989 and the Bill introduced in the Senate in 1981 by Senator Evans and Appendix A (attached).

Such reform shall be entrenched in the New South Wales Constitution Act, if necessary by way of a referendum.

2. The strengthening of the independence of the Speaker by:
 - i) The Speaker to be chosen either by a two-thirds majority of the parliament, or by acclamation; or by elimination ballot (Appendix 2).
 - ii) The Parliament to determine on a bipartisan basis the term of office of the Speaker.
 - iii) Recognition by the Treasury and all arms of State Government administration that the principal presiding officers of the parliament shall represent the will of the parliament in matters of administration and finance.

3. Parliamentary and community consideration of legislation:

All reforms in this section shall be by way of legislation as a Parliamentary Reform Act.

- i) Exposure drafts of all legislation to be made available for public comment at least 28 days before, except where otherwise provided for in Appendix 3 (to be added).
- ii) Funding for legal or other assistance, shall be made available to community groups making submissions on proposed legislation.

- (iii) Financial, social and environmental impact statements shall be tabled with all bills, except where otherwise agreed on a bipartisan basis.
- iv) Unless by tripartisan agreement, legislation to be referred to ad hoc legislation committees for consideration, scrutiny and report.
- v) Major legislation to have a statutory review mechanism, such as a parliamentary committee, with the power to hold inquiries and receive submissions on the implementation, operation and administration of the legislation, and to make draft amendments and recommendations to the parliament.
- vi) Legislation that is not proclaimed within ninety days of the third reading to be notified to the House and debated.

4. Parliamentary procedure and standing orders:

A complete review of Parliamentary procedure and standing orders shall occur as a matter of urgency. These reforms shall include:

- i) Parliamentary sitting days shall be extended to allow for:

Parliament to sit for four days in each sitting week, commencing at 10.00a.m. and rising at 10.00 p.m.

Proceedings shall be interrupted to allow for an adjournment debate. Parliament shall rise at 10.00 p.m. except where a motion to extend the sitting has been adopted without dissent.

- i) Speaking time of Ministers and Opposition Spokespersons to be limited to 20 minutes and subsequent speakers to 10 minutes, thereby giving members increased speaking time and adequate opportunity to debate and to participate in amending government bills;
- ii) Sufficient additional private members' days to be scheduled to ensure private members' bills are fully

debated with adequate time for consideration by the House, before being brought to a vote on the second and third readings; and

- iii) Private members, including Independent members, to have the right to initiate debates on matters of public importance and private members' motions, with the government facilitating debate on such matters.
- iv) Any motion that the question be put cannot take effect until after two hours of debate on the matter upon which the closure was sought. Further any speech in reply shall not be included in these two hours.
- v) Suspension of standing orders to be permitted at times other than during Question Time.
- vi) Reform of the procedures to allow full debate on general business motions and tripartisan participation.
- vii) The government to be required to publish an agenda listing all legislation to be introduced and/or debated in each house at least 24 hours prior to the sitting day on which it is to be introduced and/or debated; and further that this agenda may only be varied by a vote of both houses of the Parliament. Such an agenda shall be published in at least two daily newspapers circulating in New South Wales.
- viii) Questions on notice to be answered within fifteen sitting days. Where a Minister fails to answer a question on notice within 15 sitting days, the Minister shall provide an explanation on the notice paper as to why the question is not answered.
- (ix) Answers to questions without notice should be no longer than seven minutes. In the event of a Minister requiring more time to answer a question, the Minister shall exercise the right to make a further statement at the end of question time.

5. Parliamentary Committees

- i) Enhancement of all parliamentary committees. Members of Parliament shall have a role, with the Presiding Officers, in formulating budget submissions for parliamentary appropriations with suitable mechanisms to formulate adequate budgets to cover, among other things, committee business.

The establishment of committees, which shall comprise of members of both the Legislative Assembly and Legislative Council, and shall include the aforementioned legislation committees, budget estimates committees, Triennial Performance Review Committees, a parliamentary appropriations committee and other committees according to the will of either House.

The Budget Estimates Committees shall be a joint standing committee of the Parliament and shall be established prior to the bringing down of the 1991 State budget. The duties of each committee shall include examining proposed budget appropriations, and the administration and operations of government departments and authorities.

The Triennial Performance Review Committees shall conduct performance reviews of all government departments on a triennial basis. Departments shall be grouped according to their function (eg legal services, financial services, transport and communication etc), with each grouping being reviewed in the one year. Such reviews shall not be restricted to finance, but shall examine the aims and objectives of departments, and performance generally.

- ii) Each and every committee report shall receive a parliamentary response from the government; this response to be followed by a parliamentary debate on the committee report, such response to take place within the term of the session.

Parliamentary appropriations

- i) A separate Parliamentary Appropriation Bill to provide for Parliament's independence from the Executive government.
- ii) The Parliamentary Appropriation Bill of the Fiftieth Parliament and each subsequent annual Parliamentary Appropriation Bill to provide for:
 - a) A more equitable distribution of resources among Members of Parliament;
 - b) Improved funding for information technology for Members of Parliament;
 - c) Adequate funding for all parliamentary committees, including staff, resources and accommodation outside Parliament House.
 - d) Improve resources for the parliamentary library including the establishment of a specialist research service which is available to all members.

7. Parliamentary counsel

Parliamentary counsel to become officers of the Parliament, and to be available to private members to assist in the drafting of bills and amendments to bills.

8. Declaration of pecuniary interest

Comprehensive declaration of pecuniary interest legislation applying to all parliamentarians, senior executive service and senior members of statutory bodies. Declaration of pecuniary interest shall apply also to statutory bodies with decision making power, and to local government.

9. Recognition by the Treasury and all arms of State Government administration that the principal presiding officers of the parliament shall represent the will of the parliament in matters of administration and finance.

10 Referenda

- i) Multiple referenda shall be held conjointly with each NSW parliamentary election.

- ii) Questions to be put in a referenda to be held conjointly with the elections for the Fifty-first Parliament shall include:
 - a) Should all state and local government elections be based on one vote, one value?

 - c) Should citizen initiated referenda be adopted?

APPENDIX 1

- i) An earlier election shall only be held where, within the first three years of the term, the Legislative Assembly passes a motion of no confidence in the Premier and his Ministers. If a motion of confidence in an alternative administration is passed within seven days of the successful motion of no confidence, then the Governor is to commission an alternative administration.

The proposer of any motion of no confidence must give 24 hours written notice of the motion to the Speaker.

Where a meeting of the Legislative Assembly is not fixed to take place within seven days after the day on which a motion of no confidence is passed, the Assembly shall be called together to meet within seven days after that day.

A general election shall not be held if after the passage of the no confidence motion and before the passing of a motion of confidence in an alternative administration, the Premier resigns and a person is appointed as Premier.

- ii) These provisions shall be entrenched in the NSW Constitution Act, if necessary by way of referendum.