

Members of
Parliament:
law and ethics

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appendix 1

List of reports on disqualification

Commonwealth

Report of the Joint Committee on Pecuniary Interests of Members of Parliament, *Declaration of Interests*, 1975 (the Riordan Report).

Report of the Committee of Inquiry Concerning Public Duty and Private Interest, July 1979 (the Bowen Report).

Report of the Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of Members of Parliament* 1981 (the 1981 Senate Report).

The Proceedings of the Australian Constitutional Convention 1985 (Brisbane Session), Structure of Government Sub-Committee Report on *Constitutional Qualifications of Members of Parliament*, Vol II.

Final Report of the Constitutional Commission, 1988.

Report of the House of Representatives' Legal and Constitutional Affairs Committee, *Aspects of Section 44 of the Australian Constitution — Subsections 44(i) and (iv)*, July 1997 (the 1997 House of Representatives Report).

State

Report of the Law Reform Committee of Western Australia, Project No 14, *Disqualification for Membership of Parliament: Offices of Profit under the Crown and Government Contractors*, 1971.

Victorian Joint Select Committee, *Interim Report from the Qualifications Committee upon the Law relating to Parliamentary Disqualification in respect of Conflicts of Interest*, April 1973.

Report of the Electoral and Administrative Review Commission (EARC) on *Consolidation & Review of the Queensland Constitution*, 1993.

Report of the NSW Joint Committee on the Independent Commission Against Corruption, *Inquiry Into Section 13A Constitution Act 1902*, December 1998.

Report of the Legal, Constitutional and Administrative Review Committee, *Consolidation of the Queensland Constitution: Final Report*, April 1999.

United Kingdom

Report of the House of Commons Select Committee on Members of Parliament (Personal Interest), 1896.

Report from the Select Committee on Offices or Places of Profit under the Crown, House of Commons, 1941.

Report from the House of Commons Select Committee on Members' Interests (Declaration) (the Strauss Report), 1969.

Report of the Committee on Local Government Rules of Conduct, Cmnd 5636 (Redcliffe-Maud Committee), 1974.

Report of the Royal Commission on Standards of Conduct in Public Life (the Salmon Report), 1976.

Report of the Joint Committee on Parliamentary Privilege, 1999.

appendix 2

Disqualification provisions of the Commonwealth Constitution: ss 43, 44 and 45

s 43 A member of either House of the Parliament shall be incapable of being chosen or of sitting as a member of the other House.

s 44 Any person who —

- (i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or
- (ii) Is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer: or
- (iii) Is an undischarged bankrupt or insolvent: or
- (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth: or
- (v) Has any direct or indirect pecuniary interest in any agreement with the Public Service of the Commonwealth otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons:

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.

But sub-section iv does not apply to the office of any of the Queen's Ministers of State for the Commonwealth, or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army, or to the receipt of pay as an officer or member of the naval or military forces of the Commonwealth by any person whose services

are not wholly employed by the Commonwealth.

s 45 If a senator or member of the House of Representatives —

(i) Becomes subject to any of the disabilities mentioned in the last preceding section: or

(ii) Takes the benefit, whether by assignment, composition, or otherwise, of any law relating to bankrupt or insolvent debtors: or

(iii) Directly or indirectly takes or agrees to take any fee or honorarium for services rendered to the Commonwealth, or for services rendered in the Parliament to any person or State:

his place shall thereupon become vacant.

appendix 3

Recommendations of the 1981 Senate Report on s 44(iv) (par 5.83)

5.83 Recommendations

1. Section 44(iv) of the Constitution and the proviso to section 44 should be deleted and a provision to the following effect inserted in their stead:

44A. Any person who —

(i) is employed at a wage or salary in the Public Service of the Commonwealth or in the permanent Defence Force of the Commonwealth;

(ii) holds any position in an authority established under an Act of the Parliament, unless the authority has been prescribed for the purposes of this section, and he or she has been appointed by the Parliament, and receives no remuneration (other than reimbursement of reasonable expenses) from such appointment;

(iii) is a member of the Parliament of a State or of a Territory;

(iv) is employed at a wage or salary in the Public Service of a State or of a Territory; or

(v) holds any position with an authority of a State or of a Territory, unless the authority has been prescribed for the purposes of this section and he or she receives no remuneration (other than reimbursement of reasonable expenses) from such appointment,

shall be deemed to have ceased such employment or resigned such membership at the date he or she becomes entitled to an allowance under section 48 of this Constitution.

2. Section 45 of the Constitution should be deleted and a provision to the following effect inserted in its stead:

45. If a senator or member of the House of Representatives —

(i) becomes subject to the disability mentioned in section 44;

(ii) becomes employed at a wage or salary in the Public Service of the Commonwealth, or the permanent Defence Force of the Commonwealth;

(iii) accepts any position with an authority established under an Act of the Parliament, unless the authority has been prescribed for the purposes of this section, and he or she has been appointed by the Parliament, and receives no remuneration (other than reimbursement of reasonable expenses) from such appointment;

(iv) becomes a member of a parliament of a State or of a Territory;

(v) becomes employed at a wage or salary in the Public Service of a State or of a Territory; or

(vi) accepts any position with an authority of a State or of a Territory, unless the authority has been prescribed for the purposes of this section and he or she receives no remuneration (other than reimbursement of reasonable expenses) from such appointment,

his or her place shall thereupon become vacant.

3. Section 43 of the Constitution should be deleted and a provision to the following effect inserted in its stead:

43. A member of either House of the Parliament who is elected to the other House shall be deemed to have vacated his or her place in the first House upon the declaration of the poll in respect of his or her election to the second House.

appendix 4

List of Parliamentary Privileges

Source: Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* 1901 pp 501-502.

POWERS AND PRIVILEGES. — The following are among the principal powers and privileges of each House, and of the members of each House, of the Imperial Parliament, as now known to the law:

- (i.) The power to order the attendance at the bar of the House of persons whose conduct has been brought before the House on a matter of privilege.
- (ii.) The power to order the arrest and imprisonment of persons guilty of contempt and breach of privilege.
- (iii.) The power to arrest for breach of privilege by the warrant of the Speaker.
- (iv.) The power to issue such a warrant for arrest, and imprisonment for contempt and breach of privilege, without showing any particular grounds or causes thereof.
- (v.) The power to regulate its proceedings by standing rules and orders having the force of law.
- (vi.) The power to suspend disorderly members.
- (vii.) The power to expel members guilty of disgraceful and infamous conduct.
- (viii.) The right of free speech in Parliament, without liability to action or impeachment for anything spoken therein; established by the 9th article of the Bill of Rights.
- (ix.) The right of each House as a body to freedom of access to the sovereign for the purpose of presenting and defending its views.

BREACHES OF PRIVILEGES. — The following are instances of breaches of privileges:

- (i.) Wilful disobedience to the standing rules and orders of the House passed in the exercise of its constitutional functions.
- (ii.) Wilful disobedience to particular orders of the House, made in the exercise of its constitutional functions.
- (iii.) Wilfully obstructing the business of the House.
- (iv.) Insults, reflections, indignities and libels on the character, conduct and proceedings of the House and its members.
- (v.) Assaults on members of the House.
- (vi.) Interference with the officers of the House in the discharge of their duties.

IMMUNITIES. — The following are instances of Parliamentary immunities:

- (i.) Immunity of members for anything said by them in the course of Parliamentary debates.
- (ii.) Immunity of members from arrest and imprisonment for civil causes whilst attending Parliament, and for forty days after every prorogation, and for forty days from the next appointed meeting.
- (iii.) Immunity of members from the obligations to serve on juries.
- (iv.) Immunity of witnesses, summoned to attend either House of Parliament, from arrest for civil causes.
- (v.) Immunity of Parliamentary witnesses from being questioned or impeached for evidence given before either House.
- (vi.) Immunity of officers of either House, in immediate attendance and service of the House, from arrest for civil causes.

These lists are rearranged in L M Barlin (ed), *House of Representatives Practice* (3rd ed) AGPS Canberra 1997, p 682.

appendix 5

Part I Code of Conduct in *Members of Parliament* (*Register of Interests*) Act 1978 (Vic)

PART I — CODE OF CONDUCT

3. Code of conduct for Members

s. 3

(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;
- (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;
- (d) A Member shall make full disclosure to the parliament of —
 - (i) any direct pecuniary interest that he has;
 - (ii) the name of any trade or professional organization of which he is a member which has an interest;
 - (iii) any other material interest whether of a pecuniary nature or not that he has —in or in relation to any matter upon which he speaks in the Parliament;
- (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.

(2) Without limiting the generality of the foregoing in the application and interpretation of the code regard shall be had to the recommendation of the Joint Select Committee of the Victorian Parliament appointed pursuant to The Constitution Act Amendment (Qualifications Joint select Committee) Act 1973 presented to the Legislative Assembly on the 23rd day of April, 1974 (D.14/1973-74) contained in paragraph 12 of that report.

PART III — GENERAL

9. Failure to comply with Act

s. 9

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 \$2,000 as it determines.

10. Default of payments of fine

In default of the payment of any fine imposed on a Member under section 9 to the Consolidated Fund within the time ordered by the House the seat of the Member shall become vacant.

11. Regulations

The Governor in Council may make regulations prescribing any matters or things authorized or required or necessary to be prescribed under this Act.

appendix 6

State Codes of Conduct for Members

NSW Legislative Assembly and Legislative Council Resolutions of 26 May 1999: Code of Conduct for Members

That:

1. This House adopt, for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, the following code of conduct:

PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate is the final arbiter of the conduct of Members of Parliament and has the right to dismiss them from office at regular elections.
- Members of Parliament accordingly acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.

THE CODE

1 Disclosure of conflict of interest

(a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.

(b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.

(c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

2. *Bribery*

Members must not promote any matter, vote on any bill or resolution, or ask any question in the Parliament or its Committees, in return for payment or any other personal financial benefit.

3. *Gifts*

(a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.

(b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to corruptly influence the Member in the exercise of his or her duties.

(c) Members may accept political contributions in accordance with part 6 of the *Election Funding Act 1981*.

4. *Use of public resources*

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

5. *Use of confidential information*

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

6. *Duties as a Member of Parliament*

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

2. This resolution has continuing effect unless and until amended or rescinded by resolution of the House.

[Minutes of the Proceedings of the Legislative Council No 5, Wednesday 26 May 1999, Entry No 2].

Tasmanian SO 2A Code of Ethical Conduct for Members of the House of Assembly

PREAMBLE

As Members of the House of Assembly we recognise that our actions have a profound impact on the lives of all Tasmanian people. Fulfilling our obligations and

discharging our duties responsibly requires a commitment to the highest ethical standards.

STATEMENT OF COMMITMENT

To the people of this State, we owe the responsible execution of our official duties, in order to promote human and environmental welfare.

To our constituents, we owe honesty, accessibility, accountability, courtesy and understanding.

To our colleagues in this Assembly, we owe loyalty to shared principles, respect for differences, and fairness in political dealings.

We believe that the fundamental objective of public office is to serve our fellow citizens with integrity in order to improve the economic and social conditions of all Tasmanian people.

We reject political corruption and will refuse to participate in unethical political practices which tend to undermine the democratic traditions of our State and its institutions.

DECLARATION OF PRINCIPLES

Members of this Assembly must carry out their official duties and arrange their private financial affairs in a manner that protects the public interest and enhances public confidence and trust in government and in high standards of ethical conduct in public office.

Members of this Assembly must act not only lawfully but also in a manner that will withstand the closest public scrutiny; Neither the law nor this code is designed to be exhaustive, and there will be occasions on which Members will find it necessary to adopt more stringent norms of conduct in order to protect the public interest and to enhance public confidence and trust.

Every Member is individually responsible for preventing potential and actual conflicts of interest, and must arrange private financial affairs in a manner that prevents such conflicts from arising including declaration of pecuniary interest in any matter being considered as part of their official duties as a Parliamentarian.

Members of the Assembly must carry out their official duties objectively and without consideration of personal or financial interests.

Members of the Assembly must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value.

Members of the Assembly must not take personal advantage of or private benefit from information that is obtained in the course of or as a result of their official duties or positions and that is not in the public domain.

Members of the Assembly must not engage in personal conduct that exploits for private reasons their positions or authorities or that would tend to bring discredit to their offices.

Members of the Assembly must not use, or allow the use of, public property or services for personal gain.

Members of the Assembly, when leaving public office and when they have left public office, must not take improper advantage of their former office.

2B.

CODE OF RACE ETHICS

FOR MEMBERS OF THE HOUSE OF ASSEMBLY

As Members of the Tasmania Parliament we agree:

- (1) To act in a manner which upholds the honour of public office and the Parliament.
- (2) To respect the religious and cultural beliefs of all groups living within Australia in accordance with the Universal Declaration of Human Rights.
- (3) To uphold principles of justice and tolerance within our multicultural society making efforts to generate understanding of all minority groups.
- (4) To recognise and value diversity as an integral part of Australia's social and economic future.
- (5) To help without discrimination all persons seeking assistance.
- (6) To speak and write in a manner which provides factual commentary on a foundation of truth about all issues being debated in the community and the Parliament.
- (7) To encourage the partnership of government and non-government organisations in leading constructive and informed debate in the community.
- (8) To promote reconciliation with indigenous Australians.

appendix 7

The UK Code of Conduct for Members of the House of Commons

The Code of Conduct for Members of Parliament

Prepared pursuant to the Resolution of the House of Commons of 19th July 1995

I. Purpose of the Code

The purpose of the Code of Conduct is to assist Members in the discharge of their obligations to the House, their constituents and the public at large.

II. Public duty

By virtue of the oath, or affirmation, of allegiance taken by all Members when they are elected to the House, Members have a duty to be faithful and bear true allegiance to Her Majesty the Queen, her heirs and successors, according to law.

Members have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in them.

Members have a general duty to act in the interests of the nation as a whole; and a special duty to their constituents.

III. Personal conduct

Members shall observe the general principles of conduct identified by the Committee on Standards in Public Life as applying to holders of public office:

'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.'

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict

between the two, at once, and in favour of the public interest.

Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Interests and shall always draw attention to any relevant interest in any proceeding of the House or its Committees, or in any communications with Minister, Government Departments or Executive Agencies.

In any activities with, or on behalf of, an organisation with which a Member has a financial relationship, including activities which may not be a matter of public record such as informal meetings and functions, he or she must always bear in mind the need to be open and frank with Ministers, Members and officials.

No Member shall act as a paid advocate in any proceeding of the House.

No improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed.

Members must bear in mind that information which they receive in confidence in the course of their parliamentary duties should be used only in connection with those duties, and that such information must never be used for the purpose of financial gain. ●