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Review of the *Members of Parliament (Register of Interests) Act 1978*
Secretariat

Enclosed is a submission from the Accountability Round Table.

The Accountability Round Table is a non-partisan group of citizens with diverse backgrounds (academics, lawyers, politicians, journalists, authors) who are gravely concerned with the current erosion of honesty and integrity of our democratic parliamentary and governmental process.

The Accountability Round Table is dedicated, in particular, to the resurrection and enlivening of the principle of ministerial accountability, that is the obligation of government ministers to be answerable and accountable to the Parliament for the actions, inactions, defaults and carelessness, not only of the ministers themselves but also of all those in the minister's office (such as advisers) and in the departments and agencies of which the ministers are head.

We apologise for the lateness of this submission. We seek an extension of time to allow it to be accepted. The submission has been prompted by our consideration of recent public discussion of a fund raising practice that has developed in Australia.

It appears that the major political parties now regard it as acceptable to hold functions to which individuals and business interests purchase admission for a substantial sum on the basis that by doing so they will secure an opportunity to speak with ministers or shadow ministers.

We hope that the enclosed submission may be of some assistance



(Associate Professor the Hon Dr) Ken Coghill

for Accountability Round Table –

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LAW REFORM COMMITTEE REVIEW

THE MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1978

SUBMISSION BY THE ACCOUNTABILITY ROUND TABLE

We apologise for the lateness of this submission on behalf of the Accountability Round Table and seek an extension of time from the Committee. The submission has been prompted by our consideration of recent public discussion of a fund raising practice that has developed in Australia.

It appears that the major political parties now regard it as acceptable to hold functions to which individuals and business interests purchase admission for a substantial sum on the basis that by doing so they will secure an opportunity to speak with ministers or shadow ministers.

For the record, may we commence by endorsing the submissions made to the Committee on 29 June 2009 by the Hon. Dr Ken Coghill in two capacities; as an expert on governance and as a member of the Accountability Round Table. His proposals, if fully implemented (particularly the proposals on donations and gifts), would substantially discourage the above practice. We wish, however, to

- emphasise the importance of his proposal that a statement of ethical principles be developed by each House (*cf modified Queensland Code attached*) and
- submit that s 3 of the above Act be reviewed in light of the Nolan Principles and that, at the very least, s3 (c) of the above Act be strengthened.

As Dr Coghill submitted, the world in which members of Parliament make their decisions has changed dramatically since 1978. Dr Coghill referred to the increased potential for corruption of the exercise of ministerial discretion because of

- the greatly expanded use of privatised services,
- the use of public-private partnerships, and
- the major decisions that governments have to make that have significant financial consequences for large commercial interests, interests with the ability to make generous donations to support political campaigns.

We wish to add that members of Parliament, be they members of Cabinet, Shadow Cabinet, Committees or simply representing the electors, face constant tension in making decisions between the public interest and their short term political interests, decisions that now have to be made under the 24 hour scrutiny and attack of the media and opposition parties. The pressure for the quick short-term political answer is constant and high. At the same time deception is encouraged by the same 24 hour news cycle under which the media tends not to pursue issues for very long and can be diverted by other events.

Turning to the new fund raising practice, we submit that it involves members using their public office to raise funds for their personal political benefit and that of their party colleagues. Precisely what is promised to those who purchase this opportunity is unclear. Presumably, however, reassuring statements are made to those who pay; for it is a political exercise and it will be important that they leave the function with the feeling that the cost was worthwhile. Or do some participate to avoid a perceived risk of being disadvantaged when decisions are made by government? The process was recently described as “speed dating”. That is a process by which people meet to decide whether to pursue a possible close relationship. Is that the object?

Whatever is the reason and whatever is the connection between those who contribute and those with the power to make related decisions it is always possible for those who want to make allegations of corruption to claim that preferential treatment has been given to the contributor. Whether proven or not the mud sticks and the institution of government takes another blow to its public credibility. Surely the only way to overcome the problem is to outlaw the practice and to confine political contributions to straight monetary donations under a strict code of transparency. Most of our political leaders defend the practice, but does it not

- prostitute the democratic process and the offices to which the members have been elected,
- involve a breach of their fiduciary obligations to the public who placed them in power to govern on their behalf,¹
- create obvious opportunities to corrupt government?

Is not the practice also dangerous for any members involved because of the potential for disappointed payers and others to make allegations of breaches, or attempted breaches, of s 82 and s87 of the Crimes Act 1958?² Are members at risk of being accused of breaching the common law offences of misconduct in public office³ or offering, seeking or receiving a bribe⁴?

We submit that the practice breaches at least two of the ethical principles stated by the Nolan Committee – “Selflessness” and “Integrity”.

Selflessness:- Holders of public office should only make decisions solely in terms of the public interest. They should not do so in order to obtain financial or other material benefits for themselves, their family or their friends.

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

We submit that, in addition to the proposals advanced by Dr Coghill, the Code of Conduct for members set out in S 3 of the Act be revised to give effect to the Nolan principles. In particular, we urge that consideration be given to substituting for paragraph (c) of s 3(1) of the Act a paragraph to the following effect

¹ Professor P.D. Finn (as he then was) “*A Sovereign People, A Public Trust*” In “*Essays on Law and Government*” Vol 1, (1995) Law Book Co., 1; Report of the WA Inc. Enquiry (1992) and discussion of the “Trust principle”, paras 1.2, 3.1.7, 4.4 and the statement of principle in *Driscoll v Burlington Bristol Bridge Co.* 86 A 2d 201, 222-3. (1952)

² Respectively, obtaining financial advantage, for himself or another, by deception and attempting to gain, for himself or another, by an unwarranted demand with menaces.

³ In *Question of Law Reserved (No 2 of 1996)* (1996) SASR 63; A Crim R 417, Doyle CJ, after holding that the offence existed but could not be defined with precision, described the scope of the offence as follows –

“ I consider, that the generic offence.. strikes at the public officer who deliberately acts contrary to the duties of the public office in a manner which is an abuse of the trust placed in the office holder and which, to put it differently, involves an element of corruption. It may be that the mere deliberate misuse of information is sufficient to give rise to an offence, but the further allegation of an intent to receive a benefit clearly, in my opinion, brings the matter within the ambit of the common law offence.”

⁴ *Russell on Crime* (12th Ed., 1964, Vol 1 p 381; *R v Glynn* (1994) 71 A Crim R 537, 541-2.

“(c) Members shall not solicit or receive any fee, payment, retainer, reward or compensation to their financial benefit or that of any political party of which they are members, for or on account of, or directly or indirectly as a result of, their position as Members, or of any public office held by them as Members, including the position of responsible Minister of the Crown or Shadow Minister; “

The importance of these matters cannot be overstated. By their conduct, our political leaders set standards for the whole community. What Justice Brandeis said many years ago is as true now as it was then -

“Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.”⁵

⁵ *Olmstead v United States* (1927) 277 US 438, at 485

ATTACHMENTS

Attachment A: Suggested Changes⁶ to the Code of Ethical Standards, Legislative Assembly⁷

1. PURPOSE OF THE CODE

The purpose of this code is

- assist members to better understand the nature of their public office and the distinct obligations that arise by virtue of that office;
- provide an educative tool to assist members manage conflicts of interest and resolve ethical dilemmas; and
- provide an overview of the current obligations which members are required to observe.

The supremacy of the institution of Parliament in a representative democracy is acknowledged. The underlying basis of this code is that the mandate of a member of the Legislative Assembly (“member”) is

⁶ Shown with track changes

⁷ Adopted by the Legislative Assembly on 17 May 2001. Legislative Assembly (Queensland), *Votes and Proceedings*, No. 12, 17 May 2001, p 112.

granted by the free choice of the people and the power conferred is entrusted to each member by the people to be exercised at all times by the member in the best interests of the people, and that members are primarily responsible to the people.

2. STATEMENT OF FUNDAMENTAL PRINCIPLES

The following six fundamental principles draw together the various concepts underpinning the duties of, and obligations on, a member of Parliament, to assist members to better understand their representative role and responsibilities.

1. Integrity of the Parliament

The public's confidence in the institution of Parliament is essential. Members are to strive at all times to conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and avoid any action which ~~may~~ might diminish its reputation, standing, authority or dignity.

2. Primacy of the public interest

Members are elected to act in the public interest and make decisions solely in terms of the public interest. Members also have a continuing duty to avoid conflicts of interests and a continuing duty, to declare any private interests relating to their public duties as they arise, and ~~to take steps to avoid, resolve or disclose any conflicts, resolve them~~ arising in a way that protects the public interest.

1A Holding the Executive to Account

The Westminster principles of responsible government apply and members have a continuing duty to hold the Executive Government to account.

3. Independence of action

Parliamentary democracy requires that members make decisions, and be seen to make decisions, in accordance with the public interest and not because they are under any financial obligation or influence or motivated by personal or party benefit. Therefore, members are not to place themselves, or appear to place themselves under any financial or other obligation to outside individuals or organisations, including the executive government, that might influence them in the discharge of their duties and responsibilities, and must act at all times in accordance with rules set down by the Parliament for outside appointments.

4. Appropriate use of information

In the course of their duties members often receive information which is either confidential or prized (that is, not available to the general public). Members are not to misuse any confidential or prized information, particularly for personal gain.

5. Transparency and scrutiny

It is vital to parliamentary democracy that the public has confidence in the integrity of the decision-making process of Parliament. To ensure transparency, public scrutiny and public confidence, it is necessary that each member disclose their pecuniary interests on a continuing and ad hoc basis when the need arises

6. Appropriate use of entitlements

Members are provided certain entitlements to assist them to discharge their duties and responsibilities