



29 April 2009

Submission No. MP/3  
Received 07/05/2009  
Law Reform Committee

Mr Johan Scheffer MLC  
Chair  
Law Reform Committee  
Parliament House  
Spring Street  
EAST MELBOURNE 3002

Dear Mr Scheffer

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

Thank you for your letter of 17 April 2009 in which you invite me to make a submission to the Law Reform Committee's review of the Victorian *Members of Parliament (Register of Interests) Act 1978*.

I am not competent to offer a view on the effectiveness or operation of the Victorian legislation but as the Registrar of Members Interests for the South Australian House of Assembly I can provide some details in relation to the South Australian regime for the declaration of Member's interests. I hope they may be of interest to the Committee.

#### **Code of Conduct**

The Parliament of South Australia's *Members of Parliament (Register of Interests) Act 1983*, unlike the Victorian Act, does not provide for a Code of Conduct for Members. There is no Code of Conduct for Members of the Parliament of South Australia. The idea of a Code of Conduct for Members was considered by a Joint Committee on a Code of Conduct for Members of Parliament in 2003. The Committee did not favour the idea of a Code and instead recommended a Statement of Principles. The Joint Committee's report tabled in the previous parliament sets out the Committee's reasoning and can be found on the Parliament of South Australia website.

A subsequent motion introduced in each House in 2005 for the adoption of the Statement of Principles recommended by the Joint Committee did not find enough support in either House to warrant much debate or a vote. Recently the motion has been reintroduced in the House of Assembly as an item of Private Members Business but to date no debate has occurred on the motion.

The Committee's terms of reference in the review of the Victorian legislation suggest that the Committee may be considering as part of the inquiry the sources and nature of advice Members may be provided with to assist them in recognising potential conflicts of interest and resolving ethical questions that they may face in the course of their parliamentary duties. The South Australian Joint Committee readily made the observation that Members, like every other citizen, are subject to the law. The Joint Committee's Report cites a number of examples such as the provisions of the *Constitution Act 1934*, the *Electoral Act 1985*, and the *Criminal Law Consolidation Act 1935*.

I would add that in South Australia all Members are in receipt of public funds for the conduct of their parliamentary affairs (Electoral Allowance, Global Allowance) and are therefore subject to scrutiny by the Auditor-General and are required to abide by the provisions of *Public Finance and Audit Act 1987* and the range of Treasurer's Instructions that govern the expenditure of public monies. Members employing staff (Electorate Office Assistants) are also 'employers' subject to the provisions of the *Public Sector Management Act 1995* under which their tax payer funded staff are employed. These provisions and the framework of governance and probity practices that Members are required to adhere to serve to further inform Members in relation to the standards of conduct the Parliament and the community expects of public officers.

### **Declaration of Interests**

The South Australian *Members of Parliament (Register of Interests) Act 1983* provides for the Clerk of each House to be the Registrar of Members Interests and requires the Registrar to obtain from each Member an annual declaration of interests in a number of categories such as Employment and Business, Directorships, Travel Contributions, Gifts, Contracts with the Crown, Interests in Land, Investments, Political and Professional Associations, Trusts, Contributions made to Funds for a Member's Benefit, Creditors and Debtors. The Act requires the declaration to be made in relation to both the Member and their immediate family.

As Registrar the Clerk is required to prepare the information in the form of a report to be tabled by the Speaker. The Report is then posted on the Parliament of South Australia website.

In 2006 the Act was amended to take account of changes in the law in relation to the recognition of domestic partners (same sex relationships and long term non-sexual relationships).

Such declarations do create real compliance difficulties for some Members.

A recent controversy in relation to the non-declaration of campaign donations by one of the Independent members of the Cabinet resulted in the Premier tabling Crown Law advice in relation to the Member's obligations under the Act. This drew attention to the fact that Members of the major parties can remain 'at arms length' from the receipt and management of campaign donations to the extent that they escape the definition of Gift under the provisions of the Act. This can place them at a distinct advantage over Independent Members who have either small or no electoral campaign management structures and often directly receive and manage campaign funds. Given the way such donations are received, it would, by a reasonable reading of the Act, be possible to suggest that such monies are Gifts or Funds for a Member's Benefit. I hasten to add that this was not the view of Crown Law in the advice tabled by the Premier.

A Member who had practiced in the Family Court found that they were unable to adequately declare information in relation to Debtors without being in breach of the Court's provisions in relation to client confidentiality. A number of Members with personal security concerns also have difficulty in complying fully with some of the provisions in relation to property and the interests of their immediate family.

Information in relation to the provisions of the Act and Members' obligations are provided as part of a new Member's induction and the Registrar provides advice to Members on request. The new Member induction also provides advice on taxation matters, rules governing access to the Parliamentary IT network, a Member's duty as an 'employer', and the use of the various entitlements and allowances available to them.

Finally, I would submit that the real purpose of such declarations should be born in mind. The effect of the published Registrar's Report is to make available a summary of a Member's pecuniary interests. In the main this information has been used as a material against which Member's personal conduct, public utterances, parliamentary speeches and voting patterns are assessed. It is a commonly held misunderstanding that the declaration serves the same purpose as the declaration of interests that Ministers are often required to make as a member of Cabinet.

House of Assembly Standing Order 170 provides that a Member may not vote in a division in which the Member has a 'direct pecuniary interest'. In determining such matters the South Australian House of Assembly has adopted the practice best explained in *May* (22<sup>nd</sup> ed, p. 361):

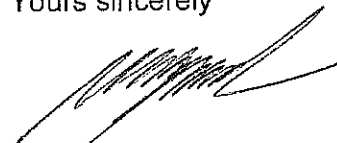
*No Member who has a direct pecuniary interest in a question is allowed to vote upon it; but, in order to operate as a disqualification, this interest must be immediate and personal and, not merely of a general or remote character. On 17 July 1811 the rule was explained by Mr Speaker Abbot: 'This interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy'.*

It has been subsequently argued that with few exceptions (Private or Hybrid Bills being examples) that all matters before the House are 'public policy'.

A Member voting on a matter of public policy in the Parliament as an individual has no ability to directly influence the expenditure of public monies or determine public policy as Minister's do. In accordance with the Speaker Abbot definition of 'direct pecuniary interest' it would be rare, and in South Australia unheard of, for a Member to have their vote disallowed on a matter before the House as result of a conflict of interest.

Thank you for the opportunity to provide information to the Committee's inquiry. I would be happy to provide further information in relation to any of the matters addressed in this submission.

Yours sincerely



Malcolm Lehman  
Clerk  
House of Assembly