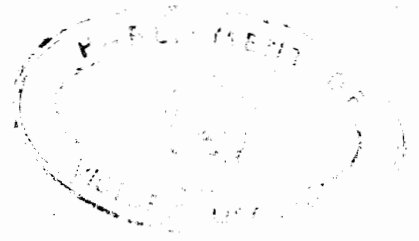


1973-74

VICTORIA



# PROGRESS REPORT

FROM THE

## QUALIFICATIONS COMMITTEE

UPON THE

QUESTION OF CONFLICTS OF INTEREST OF MEMBERS OF  
PARLIAMENT AND MINISTERS OF THE CROWN

TOGETHER WITH AN

APPENDIX

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EXTRACTED FROM THE MINUTES OF PROCEEDINGS OF THE  
LEGISLATIVE COUNCIL.

TUESDAY, 19TH JUNE, 1973.

- 17. QUALIFICATIONS COMMITTEE.—The Honorable V. O. Dickie moved, by leave—That, contingent upon the enactment, this session, of legislation for the establishment of a Joint Select Committee of the Legislative Council and the Legislative Assembly to inquire into and report upon the Law relating to certain Disqualifications for Membership of the Legislative Council and the Legislative Assembly, to amend *The Constitution Act Amendment Act 1958* and for other purposes, the following Members of this House be appointed members of the Committee, viz :—The Honorables J. W. Galbally, C. A. M. Hider, S. R. McDonald, I. A. Swinburne, and J. M. Tripovich.

Question—put and resolved in the affirmative.

TUESDAY, 17TH JULY, 1973.

- 12. QUALIFICATIONS COMMITTEE.—The Honorable Murray Byrne moved, by leave—That the Honorable J. W. Galbally, C. A. M. Hider, R. J. Long, S. R. McDonald, and J. M. Tripovich be members of the Qualifications Committee.

Question—put and resolved in the affirmative.



EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE  
LEGISLATIVE ASSEMBLY.

TUESDAY, 19TH JUNE, 1973.

- 30. QUALIFICATIONS COMMITTEE.—Motion made, by leave, and question—That, contingent upon the enactment, this session, of legislation to constitute a Joint Select Committee to inquire and report into the Law relating to certain Disqualifications for Membership of the Legislative Council and the Legislative Assembly, Mr. Holding, Mr. Lacy, Mr. Ramsay, Mr. Ross-Edwards, the Honorable V. F. Wilcox and Mr. Wilkes be appointed members of the Committee ; that the Committee have power to move from place to place in Victoria or elsewhere, and to sit on days on which the House does not meet ; five to be quorum (*Mr. Hamer*)—put and agreed to.

# REPORT



Your Committee has the honour to report as follows :—

1. During the third session of the forty-fifth Parliament, the Qualifications Joint Select Committee was established to examine and inquire into and report on the existing law relating to parliamentary disqualification and to make such recommendations as it thought necessary to improve and simplify such laws in relation to possible conflicts of interest. On the 5th January, 1973, a press release was issued informing members of the public of the appointment of the Committee with an invitation to submit their views on the matters to be considered. The "Age" daily newspaper printed the release on the 6th January and at a later date, 9th August, 1973, ran an editorial on the progress of the Committee's inquiry. In reply to the press release the Committee received one submission from the public. The Committee also sought views from Members of Parliament.

2. Mr. B. L. Murray, C.B.E., Q.C., Solicitor-General, and Mr. J. C. Finemore, O.B.E., Q.C., Chief Parliamentary Counsel, were asked to assist the Committee and did so by preparing submissions outlining the problems of the present law and in suggesting lines of inquiry to be pursued by the Committee. Because of the dissolution of Parliament, the Committee did not have sufficient time to complete its investigation and on the 11th April, 1973, an interim report was presented to Parliament outlining the progress of the inquiry, with the recommendation that a new Committee be appointed from the next Parliament to continue the examination of the matters raised.

3. *The Constitution Act Amendment Act (Qualification Joint Select Committee) Act 1973* established your Committee with the same terms of reference and at its first meeting on Thursday, 28th June, 1973, appointed the Hon. V. F. Wilcox, Q.C., M.P., as Chairman, and the Hon. J. W. Galbally, Q.C., M.L.C., as Deputy Chairman. An examination was undertaken of the various submissions and extracts prepared for the previous Committee together with the evidence of Mr. Finemore and Mrs. F. B. Lewis, Parliamentary Counsel. It was agreed that Mr. Finemore and Mrs. Lewis should reappear before the Committee in order that the members of the Committee could have the opportunity of discussing matters arising from their examination of the previous evidence.

4. Following an examination of his submission, Mr. Murray appeared before the Committee to give evidence and, in addition, the Clerk of the Legislative Council, Mr. A. R. B. McDonnell and the Clerk of the Legislative Assembly, Mr. J. H. Campbell, met with the Committee on two occasions and assisted with advice on matters which the Committee had under consideration.

Appended \* to this report are the Minutes of Evidence of these meetings.

5. Following the hearing of evidence, and a study of the various extracts and papers prepared, it was proposed that the Committee focus its attention on the following three major aspects :—

1. A Code of Conduct for the Members and Ministers of the Crown.
2. A register of Members' private interests.
3. An examination of the present law relating to disqualification.

To date the Committee has completed its work on a code of conduct.

## CODE OF CONDUCT.

6. As long as Members continue to conduct and involve themselves in community, business and professional activities whilst holding public office, there must always be the risk that their private and public activities may become intermingled. However, it must be recognized that the knowledge and experience gained by Members in these activities may very well assist and, in some cases, make them better equipped to perform their duties as Members of Parliament.

The Committee is of the opinion that Members could not be expected to completely divorce themselves from outside activities, but that there should exist some guidelines to prevent any possible conflict of interest.

7. The previous Committee in presenting its report made mention of a study of the standards adopted for Ministers of the Crown in New Zealand and the United Kingdom. Your Committee has continued the examination of these two codes in addition to the code recommended by the House of Representatives Committee on Standards of Official Conduct in the United States of America. The Clerk of the Legislative Assembly, Mr. Campbell, on his return from attachment in the House of Commons, was able to present to the Committee further material on the practices of the House of Commons and other Commonwealth Parliaments.

\* Minutes of Evidence not printed.

8. One of the problems associated with formulating a code of conduct for members was the absence of any similar type of code specifically designed for members. The codes in practice in New Zealand and the U.K. were both designed for Ministers of the Crown, as instanced by the guidelines in the United Kingdom set down in 1952 by the then Prime Minister, the Rt. Hon. Winston Churchill, O.M., C.H., M.P., and by principles recommended in 1956 by the New Zealand Ministers' Private Interests Committee. The two codes are set out in Appendix "A" to this report.

9. Included in the reference material from the Parliamentary Library, the Committee examined a number of articles written on the conduct of members, and it was soon evident that the type of code that was required should not extend beyond broad principles, as difficulties arose as soon as it was sought to make the code too detailed.

The Committee also believes that any attempt to formulate detailed and restrictive rules will discourage persons from entering public life and agrees with the following statement from the Harvard Student Legislative Research Bureau 1964 :—

"In drafting a conflict-of-interests statute it is easy to become overzealous and to forget the impact which a broad restriction may have. A well-drawn statute should prohibit conflicts of interest which are most damaging to the standards of good government and yet not prohibit so much that competent people will be discouraged from serving."

(International Encyclopedia of the Social Sciences—Vol. 3, p. 244.)

10. The Report from the Select Committee on Members' Interest (Declaration) (H. of C. 57/1969) recommended to the House of Commons that the following two resolutions should be adopted which together would comprise a code of conduct for its members :—

(i) That in any debate or proceeding of the House or its Committees or transactions or communications which a member may have with other members or with Ministers or servants of the Crown, he shall disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have.

(ii) That it is contrary to the usage and derogatory to the dignity of this House that a member should bring forward by speech or question, or advocate in this House or among his fellow members any bill, motion, matter or cause for a fee, payment, retainer or reward, direct or indirect, which he has received, is receiving or expects to receive."

Your Committee understands that these resolutions have yet to be adopted.

11. In formulating a code for Victoria, your Committee has attempted to lay down broad principles for all Members of Parliament with a more stringent series of principles for Ministers of the Crown. It is recognized that Ministers with the knowledge and authority that their positions confer have a particular responsibility not only to avoid any conflict of interest, but to ensure that such conflict is seen to be avoided. The Committee favours the principles recommended in the New Zealand report and has incorporated the basic recommendations in the code.

12. Your Committee recommends the adoption of the following code for all Members :—

#### A. MEMBERS OF PARLIAMENT.

1. Persons elected as Members of Parliament shall :—

(a) 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 ;

(b) ensure that their conduct as Members of Parliament must not be such as to bring discredit upon the Parliament.

2. Members shall not advance their private interests by use of confidential information gained in the performance of their public duty.

3. 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 of Parliament.

4. A Member should make full disclosure to Parliament of any direct pecuniary interest that he has in relation to any matter upon which he speaks in the Parliament.\*

\* Standing Orders of both Houses provide that no Member shall vote upon any question in which he has a direct pecuniary interest.

## B. MINISTERS OF THE CROWN.

*Basic Principles :*

1. A Minister shall ensure that no conflict exists, or appears to exist, between his public duty and his private interests.

This principle should be observed by a Minister in the arrangement of his private affairs on assuming office under the Crown, and while he continues to hold office he should not allow a situation to arise in which his personal or private interests interfere with the proper performance of the duties of his office.

In the application of the principle the conflict of interest must be sufficiently direct and substantial to exert an influence on the impartial performance of public duties.

2. A Minister of the Crown is expected to devote his time and his talents to the carrying out of his public duties.

Subject to reasonable reservations for personal affairs and family life a Minister should give his attention to the carrying out of the duties of his office without the distraction of other active or competing interests.

*The Application of the Principles :**Directorships—*

1. A Minister should, on assuming office, resign any directorship in a public or private company, where either of the basic principles apply.

*Shareholdings—*

2. A Minister is entitled to retain shares held by him in incorporated companies on assuming office or to invest in shares while a Minister. He should dispose of shares in any company where the basic principle of conflict of interest applies.
3. A Minister should avoid speculative investments in securities where he has, or may be thought to have, early or confidential information likely to affect the price of those shares.

*Professional and Personal Business Interests—*

4. A Minister who, prior to assuming office under the Crown, was engaged in professional practice or in the conduct of his own business whether alone, in partnership or as an incorporated company, should cease to carry on the daily routine work or take active part in its ordinary business, subject to the application of the basic principles he should not be required to dispose of his business or to dissolve his partnership nor should he be precluded from continuing to advise in matters of family trusts, guardianships and similar matters of a personal nature.

*Disclosure of Interest—*

5. A private or personal interest properly retained should be disclosed in Cabinet if any matter of public business coming up for consideration impinges upon it and the Minister should not take part in the discussion or be a party to the decision on that matter.

## C. OBSERVANCE OF CODE.

The principles set out above are not rules of law. They have the force of rules of propriety to the extent that they set the standard which Parliament and the people expect Members of Parliament and Ministers of the Crown to observe.

## CONTINUATION OF INQUIRY.

13. The two remaining aspects of the inquiry mentioned in paragraph 5, namely, a register of Members' private interests and an examination of the present law relating to disqualification require further examination before your Committee would be in a position to report and it, therefore, respectfully recommends that a Committee be appointed in the next session to further the inquiry.



## APPENDIX "A".

## GUIDELINES FOR MINISTERS OF THE CROWN IN THE UNITED KINGDOM.

1. It is a principle of public life that Ministers must so order their affairs that no conflict arises, or appears to arise, between their private interests and their public duties.

2. Such a conflict may arise if a Minister takes an active part in any undertaking which may have contractual or other relations with a Government Department, more particularly with his own Department. It may arise, not only if the Minister has a financial interest in such an undertaking, but also if he is actively associated with any body, even of a philanthropic character, which might have negotiations or other dealings with the Government or be involved in disputes with it. Furthermore Ministers should be free to give full attention to their official duties, and they should not engage in other activities which might be thought to distract their attention from those duties.

3. Each Minister must decide for himself how these principles apply to him. Over much of the field, as is shown below, there are established precedents; but in any case of doubt the Prime Minister of the day must be the final judge, and Ministers should submit any such case to him for his direction.

4. Where it is proper for a Minister to retain any private interest, it is the rule that he should declare that interest to his colleagues if they have to discuss public business in any way affecting it, and that he should entirely detach himself from the consideration of that business.

5. Ministers include all Members of the Government except unpaid Assistant Government Whips.

## DIRECTORSHIPS.

6. Ministers must on assuming office resign any directorships which they may hold, whether in public or in private companies and whether the directorship carries remuneration or is honorary. The only exception to this rule is that directorships in private companies established for the maintenance of private family estates, and only incidentally concerned in trading, may be retained subject to this reservation—that if at any time the Minister feels that conflict is likely to arise between this private interest and his public duty, he should even in those cases divest himself of his directorship. Directorships or offices held in connection with philanthropic undertakings should also be resigned if there is any risk of conflict arising between the interests of the undertakings and the Government.

## SHAREHOLDINGS.

7. Ministers cannot be expected, on assuming office, to dispose of all their investments. But if a Minister holds a controlling interest in any company considerations arise which are not unlike those governing the holding of directorships and, if there is any danger of a conflict of interest, the right course is for the Minister to divest himself of his controlling interest in the company. There may also be exceptional cases where, even though no controlling interest is involved, the actual holding of particular shares in concerns closely associated with a Minister's own Department may create the danger of a conflict of interest. Where a Minister considers this to be the case, he should divest himself of the holding.

8. Ministers should scrupulously avoid speculative investments in securities about which they have, or may be thought to have, early or confidential information likely to affect the price of those securities.

H. C. Deb (1951-52) 496 cc. 701-3.

## PRINCIPLES RECOMMENDED FOR MINISTERS OF THE CROWN IN NEW ZEALAND.

Basic Principles which should be observed by Holders of Ministerial Office Under the Crown in the Reconciliation of Their Public Duties and Private Interests.

## A. BASIC PRINCIPLES.

1. *A Minister must ensure that no conflict exists, or appears to exist, between his public duty and his private interests.*

This principle should be observed by a Minister in the arrangement of his private affairs on assuming office under the Crown, and while he continues to hold office he should not allow a situation to arise in which his personal or private interests interfere with the proper performance of the duties of his office.

In the application of the principle the conflict of interests must be sufficiently direct and substantial to exert or appear to be likely to exert an influence on the impartial performance of public duties.

2. *A Minister of the Crown is expected to devote his time and his talents to the carrying out of his public duties.*

Subject to reasonable reservations for personal affairs and family life a Minister should give his attention to the carrying out of the duties of his office without the distraction of other active or competing interests.

## APPENDIX "A"—continued.

## B. THE APPLICATION OF THE PRINCIPLES.

*Directorships.*

(1) A Minister should, on assuming office, resign any directorship in a public or private company, where either of the basic principles apply.

*Shareholdings.*

(2) A Minister is entitled to retain shares held by him in incorporated companies on assuming office or to invest in shares while a Minister. He should dispose of shares in any company where the basic principle of conflict of interest applies.

(3) A Minister should avoid speculative investments in securities where he has, or may be thought to have, early or confidential information likely to affect the price of those shares.

*Professional Practice.*

(4) A Minister who, prior to assuming office under the Crown, was engaged in professional practice, should cease to carry on the daily routine work of the firm or to take an active part in its ordinary business. He should not be required, however, to dissolve his partnership or to allow his annual practising certificate to lapse, nor should he be precluded from continuing to advise in matters of family trusts, guardianships and similar matters of a personal nature.

*Personal Business Interests.*

(5) A Minister who, prior to assuming office under the Crown, was engaged in the conduct of his own business whether alone, in partnership, or as an incorporated company, should cease to carry on the daily routine work of the business or to take an active part in its day to day management. Subject to the application of the basic principles he should not be required to dispose of his business.

*Disclosure of Interests.*

(6) A private or personal interest properly retained should be disclosed in Cabinet if any matter of public business coming up for consideration impinges upon it and the Minister should not take part in the discussion or be a party to the decision on that matter.

*Qualifications of Minister.*

(7) Subject to the observance of the above principles it is not only proper, but desirable in the public interest that Ministers should be allocated the portfolios which they are best qualified by their background and experience to administer.

*Observance of Principles.*

(8) The principles set out above are not rules of law. They have the force of rules of propriety to the extent that they set the standard which Parliament and the people expect a Minister of the Crown to observe.

Report from Ministers' Private Interests Committee, New Zealand, I.17/1956.