

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**THE CONSTITUTIONAL QUALIFICATIONS OF MEMBERS OF  
PARLIAMENT**

Report by the Senate Standing Committee on Constitutional and Legal Affairs

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## Recommendations

### Age, citizenship, residence and allegiance (ss. 16, 34 and 44 (i))

1. Section 34 of the Constitution should be deleted and a section to the following effect inserted in its stead:

34. A member of the House of Representatives must be at least eighteen years of age and must be an Australian citizen (paras 2.5, 2.13).

2. As an immediate measure the following amendments should be made to section 69 of the *Commonwealth Electoral Act* 1918:

(i) section 69 (1) (b) should be amended by omitting the words 'a British subject' and substituting the words 'an Australian citizen' (para. 2.13).

(ii) section 69 (1) (c) should be deleted (para. 2.8).

(iii) section 69 (1) (d) should be deleted (para. 2.23).

3. Section 44 (i) of the Constitution should be deleted (para. 2.19).

4. Following the deletion of section 44 (i) of the Constitution, a new provision should be inserted in the *Commonwealth Electoral Act*, 1918 along the following lines:

73A. (1) A person shall declare at the time of nomination whether, to his knowledge, he holds a non-Australian nationality.

(2) If the declaration made pursuant to subsection (1) is in the affirmative, he shall further state:

(a) that he has taken every step reasonably open to him to divest himself of the non-Australian nationality; and

(b) that for the duration of any service in the Australian Parliament, he will not accept, or take conscious advantage of, any rights, privileges or entitlements conferred by his possession of the unsought nationality (para 2.20).

### Criminal offences (s. 44 (ii))

5. Section 44 (ii) of the Constitution should be amended by repealing the words 'is attainted of treason' and substituting the following words: 'has been convicted under the law of the Commonwealth, and not subsequently pardoned, of the offence of treason' (para. 3.11).

6. Section 44 (ii) of the Constitution should be amended by omitting the words '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' (para. 3.30).

### Bankruptcy and insolvency (ss. 44 (iii) and 45 (ii))

7. Sections 44 (iii) and 45 (ii) of the Constitution should be deleted (para. 4.45).

### Offices of profit: public servants and other public office-holders

8. Sections 7, 8 and 9 of the *Defence (Parliamentary Candidates) Act* 1969 should be amended so as to make the grant by a chief of staff of a transfer, discharge or termination, as the case may be, mandatory, once the applicant satisfies the chief of staff that he intends to become a candidate for election to the Parliament (para. 5.31).

9. Sections 10, 11 and 12 of the *Defence (Parliamentary Candidates) Act* 1969 should be amended to make re-instatement of a person who has been granted a transfer, or a

discharge, or whose continuous full-time service has been terminated because that person was a candidate for election to the Parliament, mandatory (para 5.31).

**10.** The Bill entitled the Constitution Alteration (Holders of Offices of Profit) Bill 1981 should not proceed (para. 5.43).

**11.** 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;
- (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 (para. 5.83).

**12.** 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 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 (para. 5.83).

**13.** 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 place in the first House upon the declaration of the poll in respect of his election to the second House (para. 5.83).



**Offices of profit: ministers and assistant ministers (s. 44 (iv))**

14. If the recommendations which we propose in Chapter 5 in respect of section 44 (iv) are not accepted, the proviso to section 44 (iv) of the Constitution should be amended by inserting after the words, 'the Queen's Ministers of State for the Commonwealth' the following words: 'or of any of the Queen's Assistant Ministers of State for the Commonwealth or any person holding a like office' so as to enable the appointment and remuneration of assistant ministers, parliamentary secretaries and the like without causing their disqualification under section 44 (iv) (para. 6.34).

**Pecuniary interests (ss. 44 (v) and 45 (iii) )**

15. Sections 44 (v) and 45 (iii) of the Constitution should be deleted and a provision to the following effect inserted in their stead:

45A. The Parliament may make laws with respect to:

- (a) the interests, direct or indirect, pecuniary or otherwise, which shall not be held by a senator or member of the House of Representatives;
- (b) the circumstances which constitute the exercise of improper influence by or in relation to a senator or member of the House of Representatives and the action which shall be taken with respect to such an exercise; and
- (c) the procedures by which any matters arising under such laws may be resolved (para. 7.37).

16. Upon acceptance by referendum of a constitutional amendment along the lines recommended in paragraph 7.37, the Parliament should, pursuant to the constitutional amendment, enact legislation which encompasses within its terms the sorts of considerations with regard to conflicts of interests and improper influence discussed in this chapter (para. 7.45).

**Procedural questions (ss. 15, 33, 46 and 47)**

17. Section 203 of the *Commonwealth Electoral Act* 1918 should be amended along the following lines:

Any question respecting the qualifications of a senator or of a member of the House of Representatives or respecting a vacancy in either House of the Parliament may be determined by the House in which the question arises or may be referred by resolution of the House to the Court of Disputed Returns and the Court shall thereupon have exclusive jurisdiction to hear and determine the question (para. 8.12).

18. The *Common Informers (Parliamentary Disqualifications) Act* 1975 should be amended, deleting the penalty provisions, and providing simply for an action for a declaration to be brought in the High Court of Australia at the suit of any person as to whether or not a senator or member of the House of Representatives is disqualified (para. 8.19).

## Summary

The table below shows the existing constitutional provisions and proposed provisions which, if the Committee's recommendations are accepted, will replace them.

<i>Existing Provisions</i>	<i>Proposed Provisions</i>
<p>34. Until the Parliament otherwise provides, the qualifications of a member of the House of Representatives shall be as follows:—</p> <p>(i) He must be of the full age of twenty-one years, and must be an elector entitled to vote at the election of members of the House of Representatives, or a person qualified to become such elector, and must have been for three years at the least a resident within the limits of the Commonwealth as existing at the time when he is chosen:</p> <p>(ii) He must be a subject of the Queen, either natural-born or for at least five years naturalized under a law of the United Kingdom, or of a Colony which has become or becomes a State, or of the Commonwealth, or of a State.</p> <p>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.</p> <p>44. Any person who—</p> <p>(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</p> <p>(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</p> <p>(iii) is an undischarged bankrupt or insolvent: or</p> <p>(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</p> <p>(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:</p> <p>shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.</p> <p>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.</p>	<p>34. A member of the House of Representatives must be at least eighteen years of age and must be an Australian citizen.</p> <p>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.</p> <p>44. Any person who has been convicted under the law of the Commonwealth, and not subsequently pardoned, of the offence of treason shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.</p> <p>44A. Any person who—</p> <p>(i) is employed at a wage or salary in the Public Service of the Commonwealth or in the permanent Defence Force;</p> <p>(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;</p> <p>(iii) is a member of the Parliament of a State or of a Territory;</p> <p>(iv) is employed at a wage or salary in the Public Service of a State or of a Territory; or</p> <p>(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,</p> <p>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.</p>

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*Existing Provisions*

*Proposed Provisions*

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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.

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.

45A. The Parliament may make laws with respect to—

- (a) the interests, direct or indirect, pecuniary or otherwise, which shall not be held by a senator or member of the House of Representatives;
  - (b) the circumstances which constitute the exercise of improper influence by or in relation to a senator or member of the House of Representatives and the action which shall be taken with respect to such an exercise; and
  - (c) the procedures by which any matters arising under such laws may be resolved.
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