Terms of Reference

In 1969 the Committee was asked to consider whether any alteration was desirable in the law relating to persons holding offices of profit under, or having contracts with, the Crown in relation to their right to be Members of Parliament.

Background of Reference

Australia inherited from England its laws relating to the disqualification from Parliament of a person holding an office of profit under the Crown, or being party to a contract with the Crown. These laws reflect the principle of the separation of legislative and executive power. The English law in this area developed somewhat haphazardly and in an overly technical manner. As a result certain aspects of the law inherited by Australia were unsatisfactory. For example, many persons were disqualified from membership of Parliament notwithstanding that their relationship with the Crown was such that they could not be said to be subject to Crown influence at all. In other areas the law was so obscure that it was uncertain if a person was disqualified or not. Further, under s 39 of the Constitution Amendments Act 1899–1969 (WA) a Member who sat or voted in Parliament whilst disqualified was subject to a penalty of $400. Any person could sue for this penalty in the Supreme Court under the ‘common informer’ procedure.

In the United Kingdom, these problems had been acknowledged and resulted in reform of the law. The House of Commons Disqualification Act 1957 (UK) amended and simplified the law in several ways. Firstly it provided a comprehensive schedule of the offices of profit under the Crown that would disqualify a person from entering Parliament. Secondly it provided that contracts with the Crown were no longer a sufficient reason for disqualification from Parliament. It also provided that the ‘common informer’ procedure be abolished.

Nature and Extent of Consultation

Because of the technical nature of the subject the Committee refrained from issuing a working paper. However the Committee was strongly influenced by the reforms that had occurred in the United Kingdom. It submitted its report to Parliament in March 1971 with the recommendation that the report be considered as a working paper and referred to a Parliamentary Select Committee for consideration.

Recommendations

The Committee made the following recommendations:

- The disqualifying offices of profit should be listed by name in a statute that should also contain a statement of the general principles in a Preamble.
- The law relating to office holders standing for Parliament should remain unchanged.
- Office holders in other jurisdictions of Australia should be disqualified.
- Contracting with the government should no longer be a disqualification.
- The ‘common informer’ procedure under s 39 of the Constitution Amendments Act 1899–1969 (WA)

1 Western Australia, Parliamentary Debates, Legislative Assembly, 4 October 1979, 3263 (Sir Charles Court, Premier).
3 Ibid 4.
5 Ibid 15.
should be abolished. In its place a provision should be enacted empowering any person to apply to the Full Court for a declaration as to a Member’s qualifications.

Legislative or Other Action Undertaken

In 1979 the Acts Amendment and Repeal (Disqualification for Parliament) Bill was introduced into Parliament. This Bill was drafted according to the Committee’s recommendations but lapsed on prorogation. In October 1980, Parliament established a Joint Select Committee to inquire into the law relating to offices of profit under the Crown. In particular the Select Committee was asked to consider the Committee’s report and the 1979 Bill. It generally approved the 1979 Bill, recommending only minor modifications.

In 1984 a modified version of the 1979 Bill was introduced into Parliament and subsequently passed as the Acts Amendment and Repeal (Disqualification For Parliament) Act 1984 (WA). It incorporated the modifications suggested by the Joint Select Committee and substantially implemented the Committee’s recommendations.

6 Western Australia, Parliamentary Debates, Legislative Assembly, 30 October 1984, 3131 (Mr Grill, Minister for Transport).
7 Ibid.