



ACTS AMENDMENT AND REPEAL (DISQUALIFICATION FOR  
PARLIAMENT) BILL, 1984

EXPLANATORY MEMORANDUM

PART I - PRELIMINARY

Clause 1: Short Title.

Clause 2: Commencement.  
The proposed new provisions will not commence until a date to be fixed by proclamation. This will enable members to divest themselves of any positions that could prevent them from continuing as members of Parliament after the coming into operation of the amendments. A similar provision was contained in the 1979 Bill.

PART II - ALCOHOL AND DRUG AUTHORITY ACT 1974

Clause 3: Amendment to section 16:

Section 16 specifically permits members of Parliament to be appointed to the Alcohol and Drug Authority. This provision is no longer needed - the Authority is not one of the bodies specified in Part 3 of proposed Schedule V. A similar provision was contained in the 1979 Bill.

PART III - AUDIT ACT 1904

Clause 4: Amendment to section 7:

Subsection (1) of section 7 of the Audit Act provides that the Auditor General is incapable of being a member of the Parliament. The Auditor General is listed in Division 2 of Part 1 of Schedule V and, accordingly, section 7(1) is no longer necessary.

PART IV - CONSTITUTION ACT 1889

Clause 5: Amendment to Section 6:

One aim of the Bill is to consolidate the various provisions dealing with disqualification for Parliament into a compact group of sections. Another is to do away with the concept of "office of profit under the Crown". The substance of the second paragraph of section 6 will be retained.

(with modifications) by Part V of this Bill. The third paragraph is duplicated in section 43 of the Constitution Acts Amendment Act, 1899, and can be removed. The first paragraph has been redundant since 1893. However, there is no reason why it should not be left in the Act as part of the historical record. A similar provision was contained in the 1979 Bill.

Clause 6: Repeal of Sections 16 and 17:

These sections prevent a person from simultaneously being a member of both the State Parliament and the Federal Parliament. They will be re-enacted and extended in Part V of this Bill. A similar provision was contained in the 1979 Bill.

PART V - CONSTITUTION ACTS AMENDMENT ACT 1899

Clause 7: Citation.

Clause 8: Insertion of new section 31:

This clause adds a new interpretation section. The definitions are self-explanatory. References to members of boards and the like and holders of offices include reference to their deputies and to persons acting in their places. A similar provision was contained in the 1979 Bill.

Clause 9: Amendments to section 31: (The section is to be renumbered to enable the natural numerical sequence of section numbers to be maintained.)

- (a) The phrase "disqualified for membership of the legislature" has been inserted so as to be consistent with the proposed section 34 (see clause 10).
- (b) The substance of paragraphs (1), (2) and (3) of the section is retained by later clauses in this part.

A similar provision was contained in the 1979 Bill.

Clause 10: Repeal of section 32 and substitution of sections 33 - 37:

Repeal of section 32: The removal of this section was recommended by the Law Reform Committee which was of the opinion that the disqualifying provisions relating to Government contracts should be repealed, as had been done in the United Kingdom. The 1956 Select Committee of the House of Commons pointed out the extreme difficulty of drafting satisfactory provisions to cover all the possible contractual arrangements in which a member may theoretically become subject to the influence of the Government. The 1979 Bill contained a similar provision. The October 1982 Report of the Joint Select Committee on Offices of Profit of Members of Parliament and Members Contracts with the Crown ("the Select Committee"), agreed that the concept of members' contracts with the Crown be abolished.

Substitution of Section 33: The substance of existing section 33 reappears in the proposed new section 35.

The proposed section 33 is intended to make it clear that the old "office of profit" doctrine no longer applies. Any question as to whether the holding of an office or place debars a person from membership of Parliament is to be determined solely in accordance with the proposed new provisions of the Constitution Acts Amendment Act. The 1979 Bill contained a similar provision. The Select Committee recommended that the concept of office of profit be dispensed with.

Substitution of Section 34: The comments made on the repeal of existing section 32 also apply to the repeal of the existing section 34.

The proposed section 34 will disqualify for membership of Parliament those office holders listed in Part 1 of proposed Schedule V (see clause 14), namely:

- (a) A Judge or holder of other office of a judicial, quasi-judicial or arbitral nature;
- (b) The Auditor General (clause 4 above refers);
- (c) Permanent Heads of the Public Service;
- (d) Senior Officers within the meaning of

- the Public Service Act 1978;
- (e) The Agent General;
  - (f) The Clerks of the Parliament;
  - (g) The Commissioner of Police;
  - (h) The Parliamentary Commissioner;
  - (i) The Solicitor General;
  - (j) Holders of prescribed offices within the meaning of the Salaries and Allowances Act 1975.
  - (k) A member of the Commonwealth Parliament or the legislature of a Territory or another State.

A member of one House is disqualified for membership of the other House. Comparable provision in respect of a member of the other House, and a Judge of the Supreme Court presently exists in section 31(1) and (2) of the Constitution Acts Amendment Act, and in respect of members of the Commonwealth Parliament 1899 at sections 16 and 17 of the Constitution Act, 1889-1978. The extension of the prohibition to cover other judicial officers as well as Judges of the Supreme Court and to cover State and Territory Parliamentarians as well as Federal Parliamentarians was suggested by the Law Reform Committee, and adopted in the 1979 Bill. The Select Committee supported these provisions. The other disqualifications listed above were recommended by the Select Committee.

The effect of the proposed section, when read with proposed sections 35(2) and (3), and proposed 38(b) (see clause 11) is that if a disqualified person is elected as a member of Parliament his election is void, and if a member becomes disqualified he vacates his seat.

Substitution of Section 35: The comments made on the repeal of section 32 again apply to the repeal of existing section 35.

The proposed section 35 corresponds with existing section 33. Subsection (1) would render void the election of a person who does not possess the necessary qualifications for election set out in section 7 or 20, as the case may require. The effect of subsections (2) and (3) is explained above. A similar provision was contained in the 1979 Bill.

Substitution of Section 36: The comments made on the repeal of section 32 again apply to the repeal of the existing section 36. The proposed section 36 applies to persons in the service of the Commonwealth or another State or a Territory and members of commissions, boards and other bodies appointed by the Commonwealth or another State or a Territory. Because of this all embracing coverage, subsection (2) has been included to enable particular offices to be exempted in appropriate cases by Order in Council on a resolution by both Houses of the Parliament (a recommendation of the Select Committee).

The proposed new section 36 will apply to members of the armed forces, other than citizen and reserve members. This contrasts with existing sections 37 and 38 which exempt all members of the sea and land forces from disqualification. This was recommended by the Law Reform Committee, and a similar provision was contained in the 1979 Bill. The Select Committee agreed.

If a person to whom the proposed section applies is elected to the Legislative Council or the Legislative Assembly, the election will not be void, but the person will not be able to take a member's oath or take his seat until he resigns from or otherwise vacates the office or place in question. If he does not do so by 22 May next following his election, in the case of a person elected to the Legislative Council at a general election, or within 21 days after being elected, in any other case, his seat will automatically become vacant. These provisions were recommended by the Select Committee.

If a sitting member becomes the holder of an office or place referred to in this section, his seat will immediately become vacant - see proposed section 38(c) (clause 11). This is consistent with the Select Committee's recommendations.

Substitution of Section 37: The proposed section covers basically the same ground as the existing provision. However, as the intention is to do away with the concept of "offices of profit under the Crown" the

Bill, as did the 1979 Bill, aims to set out clearly the offices to which the section applies. These are, firstly, the offices set out in Part 2 of the Schedule (not being an office also mentioned in Part 1 of the Schedule) contained in clause 14 and, secondly, the offices of members of the many boards and other bodies set out in Part 3 of that Schedule. Division 1 of Part 1 of the Schedule refers to ordinary members of workers' compensation boards and various arbitral bodies. Division 2 refers to various offices and places in the service of the State, including statutory offices, offices in the State Public Service, and offices in the service of State instrumentalities. Bodies have been included in Part 3 on the same criteria as provided for in the 1979 Bill, namely, on the criterion of whether some or all of their members are Government or Ministerial appointees. Account has not been taken of whether or not members receive remuneration allowances, or expenses except in the case of the boards of educational or cultural bodies which have only been included if their members receive remuneration or sitting fees as distinct from reimbursement of expenses. The list of bodies in Part 3 is therefore very comprehensive.

The section does not apply to a Minister of the Crown who, by reason of his office, is also a member of a board or other body.

The election to Parliament of a person to whom section 37 applies will not be void. Any person declared to be elected shall, by virtue of being so declared, vacate the office. A sitting member will lose his seat on becoming the holder of an office or place referred to in this section - see proposed section 38(c) (clause 11).

The Select Committee recommended this approach.

Clause 11: Amendment to section 38:

- (a) This amendment is consequential to the provisions of the proposed section 39 under which the Parliament would have power to grant relief from the provisions of proposed section 38.

The term "member of the legislature" has been included since it is to be defined in proposed section 31 (see clause 8 above).

- (b) The proposed paragraphs (a), (b) and (c) of section 38 will replace the existing paragraphs (1) and (6) of that section. The operation of paragraphs (b) and (c) has already been considered above.
- (c) Self-explanatory.
- (d) This amendment merely rewords and re-designates the existing paragraph (5) of section 38.
- (e), (f), (g),  
These amendments would delete paragraph (6) of section 38 and the provisos to the section. The reference in paragraph (6) to pensions during pleasure or for a term of years is archaic. The balance of paragraph (6) and the provisos relate to the "office of profit" concept which it is proposed to remove from the Act. A similar provision was contained in the 1979 Bill.

Clause 12: Substitution of Sections 39, 40, 41, 42 and repeal of sections 39A, 39B and 41A.

Substitution of section 39: The sidenote to the existing section 39 is misleading. The section actually enables any person to recover a penalty of \$400 from a person who sits or votes as a member of Parliament when disqualified from so doing. The Law Reform Committee recommended that this provision be removed and that the matter be left to be dealt with under Parliament's ordinary disciplinary powers, together with a provision which allowed for an application to the Supreme Court for a declaration. The 1979 Bill contained such a provision. The Select Committee also recommended the repeal of this provision.

The proposed section 39 would enable Parliament, by resolution of both Houses, to take action to restore to a member a seat vacated by the operation of paragraph (b) or (c) of section 38. Action of this

kind might be justified where, for example, an error, oversight or misunderstanding results in a person being appointed as a member of a board or other body without his knowing of it. It would be necessary for the person concerned to resign from the office before action was taken to reinstate him as a member of Parliament.

In case the vacancy should occur during a Parliamentary recess, subsection (4) of the proposed section will prevent immediate action being taken under the Electoral Act to fill the vacancy until Parliament has had an opportunity to consider the matter.

Proposed subsections (2) and (3) provide that the resolution of the Parliament shall have effect notwithstanding any action or proposed action by the Supreme Court. This is consistent with the Select Committee's recommendations.

Substitution of Section 40: This clause merely expands and re-words the existing section 40 to make it consistent with the preceding provisions. In any event, it is expected that the greater precision of the new provisions regarding disqualification would greatly reduce the possibility of an unqualified person sitting and voting in Parliament. A similar provision was contained in the 1979 Bill.

Substitution of Section 41: The existing section 41 need not remain since the office of Administrator is not listed in Schedule V as an office that cannot be held by members of Parliament.

Proposed section 41 gives effect to recommendations of both the Law Reform Committee and the Select Committee that the law empower any person to apply to the Full Court for a declaration as to whether or not a member of Parliament is disqualified. To discourage needless harassment, the applicant will be required to give security for costs. Proposed subsection (3) gives effect to the Select Committee's recommendation in respect of the effect of a resolution of the Parliament (see substitution of section 39, above).



Substitution of Section 42: The existing section 42 is once again linked to the office of profit doctrine and will no longer be required.

The proposed section 42 will enable additions and alterations to be made to, and deletions to be made from, the lists of offices and bodies contained in the proposed Schedule V by Order in Council on a resolution of both Houses of Parliament. This gives effect to a recommendation of the Select Committee.

Where an Order adds the name of an office or body to the Schedule, the operation of the Order will be suspended for 30 days to enable any member of Parliament who holds such an office or is a member of such a body to resign his office or membership and thus avoid losing his seat.

Repeal of Sections 39A, 39B and 41A:  
Sections 39A and 39B are no longer required.

Section 41A was designed to protect members from jeopardising their seats by serving as members of Parliamentary Committees or Royal Commissions, or as Honorary Ministers, or as representatives of Parliament or of the Commonwealth Parliamentary Association. With the disappearance of the "office of profit" doctrine, this protection is no longer needed. The discontinuance of the expenses allowance referred to in the section will not affect members since remuneration for such services is payable under the determinations of the Salaries and Allowances Tribunal. Provision to repeal these sections was contained in the 1979 Bill.

Clause 13: Addition of Section 44A:

The office of "Honorary Minister" is at present given indirect statutory recognition by section 41A. Section 41A is to be repealed and it is appropriate that some statutory reference to the office be retained. The proposed section 44A would specifically allow the appointment of Honorary Ministers, but would prevent them from being paid more than an allowance for expenses incurred.

Clause 14: Addition of Schedule V :

The composition of the proposed Schedule V has been discussed above.

PART VI - CONSTITUTIONAL CONVENTION ACT 1974

Clause 15: Repeal of Constitution Convention Act 1974:

This Act was passed to protect members from forfeiting their seats under the office of profit doctrine as a result of receiving certain payments in respect of attendance at meetings of the Australian Constitutional Convention. Since the office of profit doctrine is to be done away with, there will be no further need for the Act. A similar provision was contained in the 1979 Bill.

PART VII - ELECTORAL ACT 1907-1976

Clause 16: Amendments to section 67:

The amendments to subsections (2) and (3) are complementary to subsection (4) of the proposed new section 39 of the Constitution Acts Amendment Act, which is discussed above.

Clause 17: Regulations affecting certain candidates:

This clause allows for the making of regulations to provide for the taking of leave by persons who have nominated for election.

PART VIII - FREMANTLE PORT AUTHORITY ACT 1902

Clause 18: Section 18 of the Fremantle Port Authority Act 1902 provides that the office of Commissioner and any person employed by the Authority shall not be deemed to be an office of profit. As the Fremantle Port Authority and other Port Authorities are listed in Part 3 of the Schedule, it is appropriate to repeal this reference.

PART IX - NATIONAL PARKS AUTHORITY ACT 1976

Clause 19: Amendment to Schedule:

Paragraph 10(3) of the Schedule provides that if a member of Parliament is also a member of the Authority he is not entitled to any remuneration as a member of the Authority other than repayment of expenses incurred. Since the Authority is to be included in Part 3 of the proposed Schedule V of the Constitution Acts Amendment Act the provision will no longer be of any effect - a member of Parliament will not be able to be a member of the Authority. A similar provision was contained in the 1979 Bill.

PART X - SALARIES AND ALLOWANCES ACT 1975

Clause 20: Amendment to section 4:

A definition of "Minister of the Crown" is to be inserted to make it quite clear that the only person who can be remunerated as a Minister is a holder of one of the principal executive offices of the Government.

Clause 21: Amendments to Section 6 :

- (a) The proposed subsection (5a) would apply where a newly-elected member is a person to whom the proposed section 36 or 37 of the Constitution Acts Amendment Act applies, i.e. he holds an office or place that he must vacate before or on taking up his seat. The provision would prevent him from receiving any remuneration as a member of Parliament until he has in fact vacated that office or place.
- (b) The proposed subsection (7) aims to restrict the payment of remuneration to members who carry out duties on behalf of the Government or a Minister. Such remuneration will not be payable unless Executive Council has approved the carrying out of the duties. This restriction will not apply to Ministers, Honorary Ministers or the Parliamentary Secretary to the Cabinet.

Similar provisions were contained in the 1979 Bill.

PART XI - WATERWAYS CONSERVATION ACT 1976

Clause 22: Amendments to Section 18:

Subsection (3) of section 18 contains a provision similar to that described in the notes on clause 19 and, as Management Authorities under the Act are included in the proposed Schedule V, a similar amendment is appropriate. A similar provision was contained in the 1979 Bill.

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