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**Liberty Victoria submission to the Review of the Members of Parliament
(Register of Interests) Act 1978
Victorian Parliament's Law Reform Committee**

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1. Introduction

- 1.1 Liberty Victoria - The Victorian Council for Civil Liberties Inc is an independent non-government organisation which traces its history back to the first Australian civil liberties body established in Melbourne in 1936. Liberty is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognised by international law. Liberty Victoria believes that these objectives cannot be met without open, transparent and accountable government. Liberty Victoria has campaigned extensively in the past on issues concerning democratic processes government accountability, transparency in decision-making and open government.
- 1.2 We welcome this opportunity to comment on the Review of the Members of Parliament (Registry of Interests) Act 1978

2. Liberty Victoria submission to the Public Accounts and Estimates Committee Strengthening Government and Accountability in Victoria

- 2.1 On the 3 August 2007 Liberty Victoria provided submissions to the Public Accounts and Estimates Committee Strengthening Government and Accountability in Victoria.
- 2.2 It that submission Liberty Victoria supported the seven criterion of the Nolan Committee (United Kingdom) which it determined were essential to a citizen's trust in Parliamentarians and the workings of the political system itself. Liberty Victoria reasserts its support for the criterion set out below:

Selflessness:- Holders of public office should only make decisions solely in terms of the public interest. They should not do so in order to obtain financial or other material benefits for themselves, their family or their friends.

Integrity:- Holders of public office should not place themselves under any influence or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

Objectivity-In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness:- Holders of public office should be as open as possible about all the decisions and actions that they take, They should give reasons for their decisions and restrict information only when they wider public interest clearly demands it.

Honesty:- Holders of Public Office have duty tot to declare any private interests relating to heir public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership:-Holders of the public office should promote and support these principles by leadership and example

3.3 Reasons why Self-Regulation is not an option

- 3.1 Luke Raffin in his paper titled “ Individual ministerial responsibility during the Howard years: 1996-2007” in the *The Australian Journal of Politics and History* (54.2 (June 2008) page 225) makes a compelling argument why self regulation is not an option.
- 3.2 The paper clearly demonstrates, through case studies, how the Howard government’s *Guide on Key Elements of Ministerial Responsibility* (1996) was interpreted by the Howard government to achieve it political needs rather than address the citizen scepticism in Parliamentarians and the cynicism in the workings of the political system itself. We suggest that the Register and any new Codes addressing politician’s behaviour and interests must be transparent in its motivation and in its applicability.

4. Reasons for amending/strengthening the Members of Parliament (Register of Interests) Act 1978

- 4.1 There is a need to address:
 - The scepticism of the citizen in Parliamentarians. This requires parliamentarians to explain and justify their actions.
 - The cynicism of citizen in the political system because of actual or perceived unethical conduct/ behaviour of Parliamentarians. This requires the citizen to identify ethical behaviour which is required to instil citizen confidence in the political system.

This is more difficult to achieve where distrust exists because:

- The perception that the government is not see as serving the interests of the wider community because of interventionist actions in disputes by government

and where policies appears to b driven by blind ideology self interest or pressure groups rather than the needs and aspiration of the community.

There is a need to overcome:

- The political culture which sees parliamentary positions as a prize to be acquired and retained at any cost rather than a responsibility.

5. The two purposes of a Code of Conduct

5.1 Public:

To provide the public with criterion by which they can judge which actions of Parliamentarians are acceptable and those which are unacceptable.

5.2 Institutional:

Enhancing the workings of Parliament through guiding the behaviour of parliamentarians, both inside and outside the Parliament. The latter covers relationship which parliamentarians may have which may cause the public to question their objectivity in the performances of their duties.

- 5.3 A Code of Conduct provides a foundation for the development or responsible and honourable action, a basis for developing the skills and patterns of behaviour necessary for honourable public life.

6. Narrow Codes of conduct versus Wide Code of Conduct

- 6.1 Narrow Codes of Conducts are those that focus on financial conflicts of interest and gifts. Wider Codes of Conduct misconduct encompass broader activities and legislative functions.

- 6.2 As the aim of the code of Conduct is to strengthen the democratic process, this can only be achieved through accountability and transparency which promotes a higher standard of behaviour amongst parliamentarians and trust in the system of government.

- 6.3 Victoria has a narrow based Code of Conduct and we believe that it should adopt a wider Code of Conduct which meets the standards of conduct required for citizens to have trust in the workings of the political system. In Ontario (Canada) a wider code of conduct, *The Member's Integrity Act 1994* has been enacted. It imposes a wider range of duties and prohibitions regarding a member's conduct than that of the Victorian Legislation.

- 6.4 **Liberty Victoria submits that The Member's Integrity Act should be considered when considering amending the Members of Parliament (Register of Interests) Act 1978 Act.**

6.5 Preamble to a the Act

The preamble of the Member's Integrity Act, 1994 sets out principles which aim to reconcile "private interests and public duties" of parliamentary members. The following three principles are stated:

(1) Parliament can most effectively represent its people if members have experiences and knowledge in relation to many aspects of life in Ontario and if they can continue to be active in their own communities, whether business, in practice or a professions.

(2) The Members have a duty to their constituents' interests in Parliament and the Government.

(3) Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Parliament's dignity and justifies the respect in which society holds the Assembly and its members.

In substance they appear to be similar to the Members of Parliament (Register of Interests) Act 1978 Act except they require Member to think in terms of integrity which is omitted in the Victorian legislation.

7. Proposed Amendments by Liberty Victoria

Definition of family and exercise of voting rights

7.1 The Members of Parliament (Register of Interests) Act 1978 Act currently fails to define "Members family". This should be clearly defined in the Act both for the following purposes:

- disclosure of information which needs to be placed on the Register of Members.
- the exercise of Members voting rights. This is limited to members using insider information for their own purpose benefit and receiving a financial benefit to through misuse of his/her position

7.2 Under the Member's Integrity Act:

- disclosure for the purposes of the register applies to Members, Members spouse, minor children and dependant children. This is a correct approach as to require public disclosure of a wider range to persons interests which a Members have a family connect would be a breach of that persons privacy.
- for the purposes of the exercise of voting rights a Member is prohibited from making a decision or participating in the decision making if the "Member knows or reasonably should know that in making of the decision there is an opportunity to further the member's private interest or improperly to further another person's

private interest.” There is also a prohibition on the use of insider information for the benefit of the member or to further another person’s private interest.

7.3 These provisions reflect approach taken in the Australian Corporations Law 2001 which imposes specific duties on Directors, Officers and employees not to use their position to further their own interests and those of other persons. Under s191 of the Corporations Law the Director must disclose any material personal interest that they have to the board and the common law requirements in some cases is more onerous.

7.4 It submitted that the Victorian legislation should impose specific duties on Members identical to those on set out in the Members Integrity Act. Further that there be specific requirement to disclosure any conflict to Parliament. Failure to do this should carry penalties.

8. Awarding f Government contracts to Former members

8.1 There is an obligation placed on both the Executive Council and former members of the executive council

Obligation of the executive council

The executive council is prohibited from

- awarding government contract or grant a benefit to a former members within a 12 month period of that members resigning.
- awarding a contract where a member makes representations on that contract or benefit for their own behalf or on behalf of another during 12months after ceasing to be a member.

The former member

- The former member is prohibited for a period of leaving parliament on members from the executive from:
- accepting government contracts
- making representations before parliament regarding government contracts for their own benefit or another’s.
- receiving any benefit from another who has received or benefited from government contract.

8.2 The Australian Democrats in their former Bill for a Code of Conduct argued that a 2 year prohibition is more acceptable. Liberty submits that the longer the prohibition period the less likely the person’s position as a minister would be seen as giving him/her a benefit.

9. Obligation on Members to report non compliance of duties of Member

- 9.1 Under the *Members of Parliament (Register of Interests) Act 1978* there is no provision which compels a member to report another Member's non compliance with the provisions of the Code of Conduct. It is submitted that the Code of Conduct should impose a specific duty on Members to disclose such information about other Member.

10. Penalties

- 10.1 Under the *Members of Parliament (Register of Interests) Act 1978* failure to comply is provision of the Code of Conduct results in a \$2,000 monetary fine and failure to pay that fine results in the Members seat being vacated.
- 10.2 Under the *Members Integrity Act* the Commissioner in charge of Administering the Act can make the following range of recommendation to the Assembly:
- no penalty be imposed.
 - the member be reprimanded.
 - that the members rights to sit and vote in the assembly be suspended for a specified period or condition imposed by the Commissioner is fulfilled
 - that the member's seat be declared vacant.
- 10.3 It is submitted that:
- the Victorian Act include a wider range of Penalties
 - that some form or penalty be imposed where a Member breaches the Code of Conduct
 - profits made by Members in breach of their duty be disgorged as they profits made by directors of companies in breach of their fiduciary duties
 - monetary penalties should be more severe.

Failure of both Acts

Both the abovementioned Acts fail to address wider issues involved in responsible government. Both Acts connect integrity with avoidance of conflict of interest. Some of the more evident failures are listed below.

11. Ministerial responsibility of the actions of his/her department's actions

- 11.1 Under the Westminster system of government ministers were responsible for "culpable" acts of their Departments and would resign for such actions.
- 11.2 Self regulation is not plausible in this area. Under the Howard government Ministerial guidelines, ministers were held accountable if they were aware of problems but had not acted to rectify them. For significant department wrongdoings they were responsible for the matter in so much as they should have known about matters of departmental administration which came under scrutiny. As the guide was not law, the then Prime Minister interpreted the guide as requiring the Minister to only resign where there was deliberate wrongdoing or illegality.

11.3 Under the Australian *Corporations Law 2001* directors are required to act with due care and diligence. Although they are permitted to delegate their duties (the degree to delegation not being a settled matter) the acts of the delegate are seen as the acts of the directors thus the directors are liable. There are exemptions. Reliance on the advice of others is qualified by the need to read the advice, understand it and make an independent informed decision.

11.4 It is submitted that similar provisions be inserted in the code of conduct. Such duties would not be onerous on Members and would avoid scenarios such as the children overboard. It would lessen misleading information being presented to Parliament and the electorate.

12. Unwarranted or groundless actions against citizens and fellow Parliamentarians

12.1 Unwarranted attacks on citizens and Parliamentarians who have no effective means of redress. The Victorian Public Service Code of Conduct and Public Sector Ethics Act require that respect is shown for individuals. Respect would entail ensuring as far as possible that information presented to Parliament has a reasonable and warranted basis. Baseless attacks such as that by Senator Heffernan on Justice Michael Kirby should not be allowed. Parliamentary privilege should not be used in a vexatious manner. Such use should attract a penalty. Given the severe impact such statements have in individuals Penalties attached to breach of such a provisions should reflect this.

12.2 The Victorian Parliament has passed legislation dealing the use of confidential information of citizen's but it is submitted that this should be contained in Code of Conduct.

13. Requirement for induction course and continuing education for all Parliamentarians

13.1 As the aim of the Code of Conduct is to change the culture of Parliamentarians education about the Code of Conduct and what conduct is required of Parliamentarians is essential. Continuing legal education is a prerequisite for re-registration of Legal Practitioners and an attendance at an Ethics seminar is required every five years.

13.2 It is submitted that similar requirement is inserted into the Code of Conduct. Parliamentarians may be aware of the need to disclose their material interest but may fail to appreciate what other standards are required for them when discharging their duties.

14 Independence of Archivists be maintained and the protection of documents

14.1 Code of Conduct should prohibit Parliamentarians from destroying documents or information contained in any form or authorising others to do so.

15. Establishment of an independent body to administer the Act

- 15.1 There should be an independent person or body which administers the Code of Conduct. That person or oversight group should be able to carry out proper investigations and have access to all relevant documentation.

16. Other considerations include the following:

- 16.1 Government and members must represent all constituents and not just promote personal interests. Australia is a secular pluralistic democracy and parliamentarians should be mindful of promoting the values that contribute to the maintenance of democracy.
- 16.2 Whether under the Freedom of Information Act more information about government decisions should be accessible to the public. There has been a growing trend of hiding information under the guise of commercial-in-confidence. The option towards confidentiality favours the business sector. If there is a use of public funds in a project then the emphasis should be on public disclosure of information not private privilege.

17. Conclusion

- 17.1 Liberty Victoria submits that the amendments proposed above would satisfy the seven criterion of the Nolan Committee referred to at the beginning of this submission.