Members of Parliament (Standards) Bill 2010

Introduction Print

EXPLANATORY MEMORANDUM

General
The main purpose of this Bill is to promote public trust and confidence in Members of the Parliament of Victoria by establishing a Statement of Values, setting out a Code of Conduct, and establishing a Register of Interests for Members of Parliament.

Clause Notes

PART 1—PRELIMINARY

Part 1 sets out the purposes of the Bill. It also defines a number of key words and phrases and provides for the commencement of the Bill on 1 July 2010.

Clause 1 sets out the main purposes of the Bill, which are to promote public trust and confidence in Members of Parliament by establishing a Statement of Values for Members, setting out a Code of Conduct for Members, and establishing a Register of Interests for Members, and to repeal the Members of Parliament (Register of Interests) Act 1978.

Clause 2 provides that the Bill comes into operation on 1 July 2010.

Clause 3 defines certain words and references in the Bill.

Subclause (1) contains the following definitions—

beneficial interest includes an interest in a private superannuation fund;

Clerk means the Clerk of the Parliaments;

debt does not include a debt—

• owed to a member of the Member's family; or

• owed to an authorised deposit-taking institution; or
owed to a person whose ordinary business includes the lending of money; or

arising from the supply of ordinary household or office-related goods and services;

domestic partner of a person means—

a person who is in a registered domestic relationship with the person; or

an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person for fee or reward or on behalf of another person or an organisation;

family, in relation to a Member, means a Member's spouse, domestic partner, child, grandchild, parent or grandparent, or any other person reasonably considered to be a member of the Member's family;

gift includes a transfer of property or the conferral of a financial benefit, including hospitality, made without consideration or without adequate consideration, but does not include a political donation or a gift made by a member of the Member's family;

hospitality does not include hospitality provided to the Member when the Member is acting in an official capacity;

income has the same meaning as assessable income has in the Income Tax Assessment Act 1997 of the Commonwealth but does not include parliamentary salaries and allowances, or income from savings or investment accounts and public superannuation funds;

listed corporation has the same meaning as in section 9 of the Corporations Act;

Member means a person who is for the time being a member of the Legislative Assembly or a member of the Legislative Council;
official capacity, in relation to a Member, means acting as, or on behalf of, a Member or a Minister;

political donation has the same meaning as in the Electoral Act 2002;

prescribed person means—

- a member of the Member’s family; or
- a corporation or entity in which the Member has an interest as an officer, a person with a controlling beneficial interest or a member; or
- a creditor or debtor of the Member, except where the debt is owed to or by a member of the Member’s family, an authorised deposit-taking institution or other persons whose ordinary business includes the lending of money or the supply of ordinary household or office-related goods or services; or
- a donor of a gift to the Member;

private superannuation fund means a self managed superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth;

public superannuation fund means a superannuation fund that is not a private superannuation fund;

Register means the Register of Interests established and maintained under section 26;

return period, in relation to an ordinary return of a Member, means—

- in the case of a Member whose last return was a primary return, the period between the date of the primary return and 30 June next following; and
- in the case of any other Member, the period between the date of the Member's last ordinary return and 30 June next following.

Subclause (2) provides guidance in relation to the definition of domestic partner in subclause (1).
PART 2—STATEMENT OF VALUES

Part 2 contains a Statement of Values, which provides a framework to guide Members' conduct.

Clause 4 sets out seven values that Members should demonstrate when carrying out their public duties: (a) serving the public interest, (b) upholding democracy, (c) integrity, (d) accountability, (e) respect for the diversity of views and backgrounds within the Victorian community, (f) diligence, (g) leadership. The Code of Conduct in Part 3 sets out the manner in which a Member demonstrates the values in the Statement of Values.

PART 3—CODE OF CONDUCT

Part 3 contains the Code of Conduct that Members must observe when carrying out their public duties. Sanctions for breaches are specified in Part 5.

Clause 5 provides that Part 3 sets out the Code of Conduct that Members must observe when carrying out their public duties and describes the relationship between the Statement of Values in Part 2 and the Code of Conduct.

Clause 6 provides that Members must make the performance of their public duties their prime responsibility, exercise reasonable care and diligence in performing public duties, and submit themselves to the lawful scrutiny appropriate to their office.

Clause 7 provides that Members must treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

Clause 8 outlines obligations for Members regarding conflicts of interest.

Subclause (1) provides that Members must avoid actual and perceived conflicts of interest and declare any actual or perceived conflict of interest when speaking in parliamentary proceedings, including the proceedings of parliamentary committees.

Subclause (2) provides guidance on the circumstances where a Member will have a conflict of interest. A Member has a conflict of interest if the Member participates in, or makes a decision in the execution of, the Member's office which furthers their private interests or the private interests of a prescribed person.

Subclause (3) provides further guidance on conflicts of interest, stating that a Member will not have a conflict of interest where the Member or a prescribed person is affected as a member of the public or as a section of the public.
Clause 9 provides that except for parliamentary salaries and allowances, Members must not use their position for profit.

Clause 10 makes provision in relation to Members' outside employment and activities.

Subclause (1) provides that Members may engage in employment, business and other activities, but must avoid actual or perceived conflicts of interest from those activities.

Subclause (2) provides that Ministers must devote their professional time and talents to carrying out their public duties.

Clause 11 provides that Members must not accept gifts, hospitality or other benefits which create an actual or perceived conflict of interest, or might create a perception of an attempt to influence the Member in the exercise of his or her public duties.

Clause 12 provides that Members must exercise their influence as Members responsibly and not use their influence to improperly further their own interests or the interests of a prescribed person.

Clause 13 makes provision in relation to Members' use of public resources.

Subclause (1) provides that Members must comply with any laws or applicable rules regarding the use of parliamentary allowances and facilities.

Subclause (2) provides that Members must use all public funds and resources provided to them as Members responsibly and only for legitimate purposes.

Clause 14 makes provisions in relation to Members' personal conduct.

Subclause (1) provides that Members must ensure that their conduct as Members does not bring discredit upon the Parliament.

Subclause (2) provides that Members must act with honesty and integrity in all official dealings and must not deliberately mislead the Parliament or the public about any matter relating to the performance of their duties.

Subclause (3) provides that Members must be fair, objective and courteous in their dealings with the community and, without detracting from the importance of robust public debate in a democracy, their colleagues.
Clause 15 makes provisions for the management of confidential and personal information.

Subclause (1) provides that Members must not use confidential information gained in the performance of their public duties to further their own interests or the interests of a prescribed person.

Subclause (2) provides that Members must respect the confidentiality of information they receive in the course of their public duties.

Clause 16 provides that Part 3 is not intended to affect the operation of Division 8 of Part II of the Constitution Act 1975. Division 8 of Part II of that Act contains provisions relating to offices and places of profit. The clause is included to prevent any potential overlap between the operation of Part 3 and the operation of the Constitution Act 1975.

PART 4—REGISTER OF INTERESTS

Part 4 contains provisions in relation to the Register of Interests.

Clause 17 provides that a person who becomes a Member after the Bill commences must submit a primary return to the Clerk within 30 days after taking and subscribing the oath or affirmation as a Member.

Clause 18 provides that a Member must submit an ordinary return to the Clerk within 30 days of 30 June 2010 and within 30 days of 30 June for each subsequent year.

Clause 19 Subclause (1) provides that a primary return must be in the prescribed form, and that it must include the following information as at the date of the primary return—

- the source of any income that the Member has or expects to have before 30 June in the following year;
- the name of any corporation, partnership or other body in which the Member holds a beneficial interest, or in which a private superannuation fund holds a beneficial interest for the benefit of the Member, a description of that interest including the number of any shares held and, except in the case of a listed corporation, the address of the corporation, partnership or body, and a description of its objects or activities;
• the location by suburb or town or, where that is not applicable, the nearest town, of any land in which the Member holds a beneficial interest, other than by way of security for a debt, that is used as a primary or secondary place of residence by any person;

• the address or, if there is no address, a precise description of the location of any land, other than land referred to in subclause (1)(c), in which the Member holds a beneficial interest, other than by way of security for a debt;

• the name of any corporation, partnership or other body in which the Member holds office, a description of that office and, except in the case of a listed corporation, the address of the corporation, partnership or body, and a description of its objects or activities;

• a description of any personal debt held by the Member, including the name of the creditor;

• a description of any trust under which the Member holds a beneficial interest or in respect of which the Member is a trustee and a member of the Member's family holds a beneficial interest, and a description of the activities of the trust;

• in the case of a trust referred to in subclause (1)(g)—
  • the information referred to in subclauses 19(1)(a) to 19(1)(d), of which the Member is aware or ought to be aware, as if a reference in those subclauses to the Member were a reference to the trust; and
  • any other substantial interest held or received by the trust, of which the Member is aware or ought to be aware, whether of a pecuniary nature or not, that would raise, or reasonably be seen to raise, a material conflict between the Member's private interest and their public duty;

• the name of an estate in which the Member is appointed as executor and holds a beneficial interest, and a description of that interest;
the name of any other organisation of which the Member is a member or with which the Member is otherwise associated, if a conflict of interest could arise, or reasonably be seen to arise, because of that membership or association;

• a description of any other interest that the Member has where a conflict of interest could arise, or reasonably be seen to arise, because of that interest.

Subclause (2) provides that a Member need only provide the name and address of a person who manages a trust in a primary return if the trust in which the Member holds a beneficial interest is a blind trust.

Subclause (3) provides that the Member may also include the name of any other organisation of which the Member is a member or with which the Member is otherwise associated, if the Member chooses to do so.

Subclause (4) provides that this clause is subject to clauses 22 to 24.

Clause 20 Subclause (1) provides that an ordinary return must be in the prescribed form and contain certain information in relation to the return period.

The information required to be included in an ordinary return is the same as required in a primary return (clause 19) except that the information relates to the period between the date of the last ordinary return and 30 June of the following year.

In addition, the following information must be included in an ordinary return—

• details of any gifts received by the Member, including the name and address of the donor;

• details of any travel undertaken by the Member outside of Victoria that is funded by a third person that was not the State or a member of the Member's family.

Clause 21 provides that if, after a Member has submitted a primary return or an ordinary return to the Clerk but before submitting an ordinary return for the following return period, the Member becomes aware of a material change in any information required to be submitted under section 19 or 20, the Member must submit to the Clerk, as soon as is practicable, a description in the prescribed form of the material change.
Clause 22 provides that a Member is not required to include the following information in a return—

- a source of income if the total amount of income from that source does not exceed the threshold amount for income; or
- a beneficial interest in a particular corporation, partnership or other body if the total value of the beneficial interests held in that corporation, partnership or other body does not exceed the threshold amount for beneficial interests; or
- a personal debt with a particular creditor if the total value of personal debts with that creditor does not exceed the threshold amount for debts; or
- a gift from a particular source if the total value of gifts from that source does not exceed the threshold amount for gifts; or
- travel contributions from a particular source if the total value of travel contributions received from that source does not exceed the threshold amount for travel contributions.

Subclause (2) provides that for the purposes of subclause (1), the value of any income, beneficial interests or gifts held or received by a trust referred to in clause 19(1)(g) or 20(1)(i) (other than a blind trust) is to be taken into account in determining the total value of income, beneficial interests or gifts.

Clause 23 provides details for the threshold amounts for the matters referred to in clause 22 in the year ending 30 June 2011.

Clause 24 provides a mechanism for adjusting the threshold amounts by reference to CPI.

Clause 25 requires the Clerk to notify Members of a CPI adjusted threshold before 30 June 2012 and before 30 June for each subsequent year.

Clause 26 imposes obligations on the Clerk in relation to the Register of Interests.

Subclause (1) provides that the Clerk must establish and maintain the Register of Interests.

Subclause (2) provides that the Clerk must enter information submitted in the ordinary and primary returns in the Register.
Subclause (3) prevents the Clerk from communicating any information received by him or her under the Act or use that information for any purpose other than in accordance with the Act.

Clause 27 requires the Clerk to report a Member to the Presiding Officer of the Member's House if: (a) the Member does not submit a return within the required time, and after the Clerk has given the Member a further reasonable time to submit the return it is still not submitted, or (b) the Clerk reasonably believes that a Member has submitted an inaccurate return and the return remains inaccurate after the Clerk has given the Member a reasonable opportunity to correct it.

Clause 28 prevents any person from publishing in the Parliament or outside of the Parliament: (a) any information derived from the information entered into the Register unless that information amounts to a fair and accurate summary of the information entered into the Register, or (b) any comment on the information entered into the Register unless that comment is fair and published in the public interest without malice.

Clause 29 provides that the Clerk must cause a return submitted under Part 4 to be laid before each House of Parliament as soon as practicable after receiving that return.

**PART 5—GENERAL**

Part 5 contains the consequences of a Member's failure to comply with obligations relating to the Code of Conduct and the Register of Interests.

Clause 30 Subclause (1) provides that any wilful contravention of a requirement under Part 3 or 4 is a contempt of Parliament and may be dealt with accordingly.

Subclause (2) provides that in addition to any other punishment that may be awarded by either House of the Parliament for a contempt of the House of which the Member is a Member, the House may determine and impose a fine on a Member of an amount not exceeding 35 penalty units.

Clause 31 provides that if a Member does not pay his or her fine within the time required by the House, the seat of the Member will become vacant.
Clause 32 empowers the Governor in Council to make regulations prescribing any matters or things authorised or required or necessary to be prescribed under the Act.

Clause 33 provides that the Members of Parliament (Register of Interests) Act 1978 is repealed.