

Integrity of Parliamentary Process Bill 2005

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Western Australia

LEGISLATIVE COUNCIL

Integrity of Parliamentary Process Bill 2005

A Bill for

An Act to protect the integrity of the Parliamentary Process from undue influence from outside or within the Parliament and to assist Members in taking decisions as a parliamentary representative in the best interests of their electorate.

The Parliament of Western Australia enacts as follows:

Preamble

Whereas:

- 5 A. Each member of parliament is elected to represent an electorate as part of a representative democracy.
- B. The Constitution has set up a bicameral system in order to provide a check upon excesses by one House of the Parliament.
- 10 C. Members associate in political parties with each other and with persons who are not Members with whom they share political aims so as to further the attainment of those political aims.

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- 5 D. Political parties have instituted varying degrees of discipline with regard to members to ensure they observe the policies of the party.
- 10 E. Whilst recognising the reality and benefits of political parties, the Parliament is of the view that party discipline may go beyond what is necessary or acceptable for the ordinary workings of Parliament and may interfere with a member's primary obligations and duties to the electors who elected them and whom they represent and furthermore it recognises that other processes may give the Executive undue influence over the processes of the Parliament.
- 15 F. The Parliament has therefore set out certain matters that it perceives as the minimum limitation on party discipline so as to safeguard the processes of a representative democracy.

1. Short title

This Act may be cited as the *Integrity of Parliamentary Process Act 2005*.

20 **2. Commencement**

This Act shall come into effect on the day on which it receives the Royal Assent.

3. Definitions

- 25 (1) In this Act, unless the contrary intention appears:
- “Aligned Member”** means a Member who is also a member of a party or avowedly represents a Party in the Parliament or who, when last elected, was a member of a party and stood in that capacity and **“aligned”** has a corresponding meaning.

“Cabinet” means that meeting of members of the Executive Council of Western Australia that is commonly called Cabinet.

5 **“Member”** means a member of the Legislative Assembly or of the Legislative Council and includes a former member.

“member of a party” means a person who is a member of a Party whether or not also a Member.

“Party” has the same meaning as **“registered political party”** is given by the *Electoral Act 1907*.

10 **“party room”** means a meeting of members of a party or of a coalition of Parties for the purpose of deciding the manner in which Aligned Members of that Party or those Parties will vote in the Parliament, howsoever such meeting is called and includes a meeting of any subdivision or part or
15 faction of that party.

“relevant person” means a person who is a member of a party that is the same Party as the Party with which a Member was aligned at the time the Member was last elected to Parliament.

20 (2) Terms which are defined in the *Equal Opportunity Act 1984* shall have the same meaning when used in this Act.

4. **Cabinet Processes**

25 In Cabinet it shall not be lawful to take any vote upon any matter being considered by Cabinet and the Cabinet shall seek to reach a consensus upon any matter for decision.

5. **Party Room processes**

30 Where Aligned Members meet outside the Chamber in order to make decisions about the manner in which the Aligned Members of that party will vote in the Parliament and a vote is taken amongst the Aligned Members upon that matter which in the ordinary course of events will be seen by an Aligned

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Member as binding the manner in which the Aligned Member votes in the Parliament then —

- 5 (a) any person who is a member of the Cabinet may not vote upon that decision if that matter has been discussed by Cabinet; and
- 10 (b) it shall be unlawful for the persons calling for, counting or recording the votes of the members of the party to permit, count or record the vote of any person who is a member of Cabinet and shall declare the result as if any such vote which had purported to be exercised as if it had not been exercised.

6. Right to declare that a matter affects the member's electorate

15 Subject to section 9 where a measure before the Parliament is such that in the opinion of an Aligned Member it will adversely affect the interests of the electorate which the Member represents, then notwithstanding that it may also affect other electorates adversely, the Aligned Member may declare his or her opinion to the party room and shall then be permitted by the party and shall have the right to vote in what the Member perceives as the best interests of the Member's electorate.

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7. Right to declare that a matter affects the member's conscience

25 Subject to section 9 where a measure before the Parliament is such that —

- (a) an Aligned Member considers that he or she in conscience cannot support it; and
- (b) a person could reasonably hold that view;

30 the Aligned Member may declare to the party room his or her inability to support the measure and shall then be permitted by the party and shall have the right to vote according to his or her conscience.

8. House of Review to function independently

5 An Aligned Member who is a member of the Legislative Council is not bound by a vote of a Party meeting at which persons who are not members of the Legislative Council are present and on that matter an Aligned Member is entitled to vote as he or she thinks fit.

9. Cabinet solidarity

10 Sections 6,7 and 8 shall not prevent the Premier requiring a member of Cabinet to abide by the consensus decision of Cabinet or resign his or her office.

10. No participation in voting decisions by Aligned Members if not an Aligned Member

15 A person who is not an Aligned Member shall not be present at or in any way participate in a meeting that purports to bind an Aligned Member as to the manner in which Aligned Members are to vote in the Parliament upon a particular matter.

Penalty: \$50,000.

11. Act of victimisation

20 (1) A relevant person who takes or threatens to take any detrimental action against a Member because he or she has exercised or intends to exercise a right conferred by sections 6,7 or 8 commits an act of victimisation.

(2) A relevant person who —
25 (a) attempts to commit an act of victimisation;
(b) intending that an act of victimisation be committed, incites another person to commit an act of victimisation;
or

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- (c) intending to cause detriment to a Member incites another person to do an act which if done by a relevant person would have been an act of victimisation;

commits an act of victimisation.

- 5 (3) A person who commits an act at the incitement of a relevant person which if done by a relevant person would have been an act of victimisation commits an act of victimisation.

12. Victimisation an offence

10 A person who commits an act of victimisation commits an offence.

Penalty: \$50,000 or imprisonment for 4 years.

13. Civil remedies for acts of victimisation

- 15 (1) An act of victimisation under this Act may be dealt with under the *Equal Opportunity Act 1984* as if it were an act that was unlawful under section 67 of that Act.

- (2) A person who commits an act of victimisation commits a tort but no action lies with respect to such tort unless and until the Tribunal has found that the complaint of victimisation has been substantiated.

- 20 (3) Where the Tribunal has found that the complaint of victimisation has been substantiated, the complainant shall be entitled to register the order of the Tribunal as a judgement with a court of competent jurisdiction and set the matter down for assessment of damages.

- 25 (4) In assessing damages for an act of victimisation, the Court shall disregard any compensation ordered to be paid to the complainant pursuant to the *Equal Opportunity Act 1984*.

14. Action by corporate bodies

(1) An act by a person which constitutes an act of victimisation which occurs in any of the following circumstances —

- (a) pursuant to the official processes of a corporate body;
- 5 (b) when the person doing the act is an officer of a corporate body and acts in that capacity;
- (c) where the act is carried out by two or more persons who are members of a Party and that Party is incorporated;

10 shall be deemed also to be the act of the corporate body and the corporate body shall be liable to be prosecuted and to civil proceedings for that act.

(2) It shall be a defence by a Party where a Party is prosecuted or sued relying on subsection 13 (1) for the Party to prove that the Party —

- 15 (a) was not knowingly involved in the act of victimisation;
- (b) did not know and could not reasonably be expected to have known of the act of victimisation; and
- (c) could not, by the exercise of reasonable care and the powers of discipline of the Party, have prevented or
20 brought to an end the act of victimisation.

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