

Procedure and Privileges Committee
Of the Legislative Assembly

Report on a Code of Conduct for Members of the
Legislative Assembly of Western Australia

Minority Report

Presented by Dan Sullivan MLA and Katie Hodson-Thomas MLA

27th February 2003

Our recommendation...

We strongly recommend that the Code of Conduct should include the following provisions:

- While acknowledging that members have a broad duty to the State and other responsibilities, such as to political parties, **their first duty and paramount responsibility as elected representatives is to represent the interests of their own electorate and their constituents;** and
- Notwithstanding the legitimate role of political parties, **no member who is a member of a political party shall be constrained by, or obliged to follow, any directive from, or decision by, any body of that political party in connection with his or her Parliamentary duties.**

The explanation...

West Australians uphold the principle that, under our representative Parliamentary system, a member's first responsibility is to his or her electorate and constituents.

And yet this most fundamental aspect of our democratic Parliamentary system is not set out in any official way. It is not referred to in our constitutional legislation or in any other Act. Nor is it contained in the Legislative Assembly's Standing Orders.

While the party-orientated system in Australia generally has delivered strong and stable government there is, unfortunately, a growing negative perception within the community that political parties dominate the processes of Parliament and Government. Members of Parliament representing the major parties, in particular, often stand accused of putting party political interests ahead of their electorate and constituency priorities.

We believe that any non-prescriptive Code of Conduct should have at its very heart a clear requirement for members, in performing their Parliamentary duties, to look after their electorates and their constituents first and foremost – ahead of any party political allegiances.

These recommended changes to the draft Code of Conduct, along with some technical amendments (eg: re-numbering of clauses) would achieve this aim.

Why use this Code...

This Code of Conduct only refers to members of the Legislative Assembly. As such, it is limited in its application.

However, as a measure limited to Legislative Assembly members, this Code is ideally suited to the sort of provision recommended here. After all, the role of Legislative Council members differs to that of Legislative Assembly members significantly. Indeed, the Commission on Government made the point that Upper House members do not have the same constituency-based representative role as their Lower House counterparts but, instead, they have a broader role to play, especially in reviewing legislation.

This makes the Code of Conduct the ideal place to include a provision setting out the prime role of an elected Lower House member.

Comparing the political parties...

When a political party allows its members a free vote, or a “conscience vote”, they are able to vote any way they choose without fear of recrimination. This is a rare occurrence and the only occasion the two major parties have allowed their members a free vote during the writers’ six year tenure in office was in relation to the Acts Amendment (Abortion) Bill in 1998.

However, most political parties allow their members to “cross the floor” in Parliament and vote against their party’s position on any matter under consideration, regardless of whether a conscience vote has been allowed in a formal sense.

For example, three Liberal Party members have crossed the floor in recent times: Rod Sweetman MLA and Katie Hodson-Thomas MLA during the last Parliament, and Sue Walker MLA on the Third Reading of the Family Court Bill on 8th November 2001. Dan Sullivan MLA even gave notice during the last Parliament that he would resign from his party if an important local constituency matter was not resolved.

The Liberal Party has a tradition that dissent of this kind is legitimate, so long as the member has deeply held convictions on the matter, and when they feel compelled to act in the best interests of their electorate or in response to the clear wishes of their electorate. It is only expected that they inform their Party colleagues in advance of their action.

We hold to the principle that while Liberal members of Parliament owe loyalty to their party and parliamentary team, they have a moral responsibility to act in the best interests of their electors on specific questions, and to exercise an independent judgement.

Other parties in this Parliament also allow dissent. On four occasions the members of One Nation voted on different sides during divisions: on 27th June 2001, 12th December 2001, 21st August 2002 and 4th November 2002.

One member of the Greens voted against her colleagues on a clause of the Industrial Relations Bill on 22nd May 2002, and the Greens were divided over the Criminal Law Amendment Bill on 18th August 2002.

By stark contrast, the Australian Labor Party has a constitution and a practice that can fairly be described as authoritarian. It is only on rare occasions that their members are granted a conscience vote, such as abortion legislation, either where the ALP knows from bitter experience that it would lose votes in the electorate if it enforced uniformity, or that it risks serious and damaging divisions within its ranks.

Clause 26.3.4 of the current Constitution and Rules of the Australian Labor Party (WA Branch) is particularly relevant. A Labor Party candidate for preselection must pledge to:

“On all questions before the Parliament vote as a majority of the Parliamentary Labor Party may decide at a properly constituted Caucus meeting.”

In other words, a person cannot be pre-selected to run for the Labor Party unless he or she agrees to toe the party line in Parliament.

Indeed there is no mention of conscience votes. Members of the Australian Labor Party in the Legislative Assembly only ever get a free vote on sufferance, not through any declared entitlement.

Not so many years ago, in 1977, a Labor stalwart and former Tonkin Government Minister, Ronald Thompson MLC, resigned from his party and sat out the remainder of his term as an independent because he had crossed the floor in disagreement with his colleagues. At other times moderate, conservative Labor members like the late Gerry Dolan were harassed for exercising conscience votes.

Recently, eight Labor members of the Legislative Assembly voted for legislation which would reduce the level of Parliamentary representation enjoyed by the very communities they are supposed to represent.

These members, who represent the country electorates of Albany, Bunbury, Burrup, Collie, Eyre, Geraldton, Kimberley and Mandurah, were prepared and willing to support legislation reducing regional representation in Parliament. This was directly at odds with their duty to represent the interests of their local communities.

At least two of these members are known to oppose the legislation but all were required to put the political interests of the Labor Party ahead of any other consideration.

This example is a very recent reminder of the sort of dominant party politics which the community is growing to resent.

It is precisely for this reason that the proposed Code of Conduct should contain explicit provisions setting out the most fundamental responsibilities of all elected members of the Legislative Assembly.

That is, to represent their electorate and their constituency ahead of their political party.

Conclusion...

If the State Government is serious about implementing a Code of Conduct which reflects the most important community expectations about our elected representatives in the Legislative Assembly, then it should embrace these recommendations.

Failure to do so will demonstrate conclusively that Labor politicians are prepared to put the interests of their political party ahead of their responsibility to the broader community. And it will render this Code of Conduct useless.

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