CASE NOTES

ELLIS v ATKINSON*

I INTRODUCTION

To be chosen as a member of an Australian Parliament, a person must possess certain qualifications prescribed by statute. Statutes also specify circumstances in which a person is disqualified from being chosen as a member of a Parliament or from sitting and voting as such a member. There can be dispute about whether a person was qualified to be chosen as a member of Parliament, and also dispute about whether a member of Parliament has, since his or her election, become disqualified from continuing as a member and thus should be required to vacate his or her seat.[1] The dispute in *Ellis v Atkinson* was one of the latter kind.

The defendant in the case, the Honourable Bruce Norman Atkinson, had been elected to represent the Province of Koonung in the Legislative Council of the Parliament of Victoria. The plaintiffs in the case brought suit in the Supreme Court for a declaration that the seat occupied by the defendant had become vacant by operation of s 55 of the *Constitution Act* 1975 (Vic), a section which, broadly, disqualifies members of the State Parliament from occupancy of parliamentary office by reason of specified business relationships with branches of the executive government of the State. The plaintiffs in the suit claimed that, since his election to membership of the Council, the Honourable Bruce Atkinson had engaged in certain business transactions in contravention of s 55.[2] The defendant (supported by the Attorney-General as intervener) protested the Supreme Court's jurisdiction in the suit.[3]

On 3 July 1997 Vincent J, after hearings before him on 17 and 18 June, dismissed the plaintiffs' suit on the ground that the Supreme Court lacked jurisdiction to entertain it. The question raised by the plaintiffs was, Vincent J held, for the Legislative Council to decide, in exercise of the powers and privileges vested in it by s 19(1) of the *Constitution Act* 1975 (Vic).[4] It was a question the Supreme Court could decide only if the Council resolved to refer it to the Court — sitting as the Court of Disputed Returns — pursuant to s 300 of the *Constitution Act Amendment Act* 1958 (Vic).[5]

* Supreme Court of Victoria, Vincent J, 3 July 1997.

1 The statutory qualifications and disqualifications are described in Peter Hanks, *Constitutional Law in Australia* (2nd ed, 1996) 51–9.

2 *Constitution Act* 1975 (Vic) s 55 deals with government contractors. Section 56 defines the classes of contracts to which s 55 relates and s 57 excepts certain contracts.

3 The plaintiffs were all electors.

4 *Ellis v Atkinson* (Supreme Court of Victoria, Vincent J, 3 July 1997) 16.

5 *Constitution Act* 1975 (Vic) s 300 was first enacted in the *Electoral Act* 1934 (Vic).

Section 19(1) of the *Constitution Act* 1975 (Vic) gives to each of the Houses of the Parliament of Victoria the like powers and privileges which

> as at the 21st day of July, 1855 were held enjoyed and exercised by the House of Commons of Great Britain and Ireland ... so far as the same are not inconsistent with any Act of the Parliament of Victoria whether such privileges ... or powers were so held possessed or enjoyed by custom statute or otherwise.

Vincent J was satisfied that, as of 21 July 1855, the House of Commons had exclusive jurisdiction to determine questions concerning the qualifications of its members, except in cases in which common informers brought court proceedings to recover statutory penalties for sitting and voting in the House of Commons whilst disqualified.[6] The Parliament of the United Kingdom had power to legislate to alter that state of affairs and had in fact so legislated.[7] The Parliament of Victoria had, in the *Constitution Act Amendment Act* 1958 (Vic), modified the law otherwise applicable under s 19(1) of the *Constitution Act* 1975 (Vic). But s 85(1) of the *Constitution Act* 1975 (Vic), the section which defines the jurisdiction of the Supreme Court,[8] could not be interpreted as endowing the court with a jurisdiction not possessed by English courts at the relevant date; here, a jurisdiction to decide a dispute concerning the qualifications of a member of the Parliament otherwise than by a reference under s 300 of the *Constitution Act Amendment Act* 1958 (Vic).

In his reasons for judgment in *Ellis v Atkinson*, Vincent J expressed regret that it should have been necessary to dismiss the plaintiffs' suit for want of jurisdiction in the cause. It is, he said,

> to put it mildly, unfortunate that the entitlement of a member of the Legislature of this State to sit and vote on matters of great public importance cannot be determined through some independent and impartial process, and may ultimately depend upon the balance of political power within the House itself.[9]

The creation of some structure to enable judicial determination of issues concerning the disqualification of members of the Parliament was, his Honour suggested, 'long overdue'.[10]

The decision in *Ellis v Atkinson* is undoubtedly correct. It is also a decision which has relevance in nearly all other Australian jurisdictions, for the law operating in these jurisdictions is, in relevant respects, substantially the same as Victorian law.[11] The case for reform of this law is strong and the strength of the

[6] *Ellis v Atkinson* (Supreme Court of Victoria, Vincent J, 3 July 1997) 6–9. Vincent J referred to *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (first published 1844; 2nd ed, 1851); *Holmes v Angwin* (1906) 4 CLR 297; and *Stott v Parker* [1939] SASR 98.

[7] *House of Commons Disqualification Act* 1957 (UK) 5 & 6 Eliz 2, ch 20, since superseded by the *House of Commons Disqualification Act* 1975 (UK) ch 24.

[8] *Constitution Act* 1975 (Vic) s 85(1) has to be read in conjunction with s 85(2) (repealed by the *Supreme Court Act* 1986 (Vic)) and the *Judicature Act* 1874 (Vic).

[9] *Ellis v Atkinson* (Supreme Court of Victoria, Vincent J, 3 July 1997) 16–17.

[10] Ibid 17.

[11] See below n 23. All Houses of Australian Parliaments (except the Houses of the Parliament of New South Wales and Tasmania) have been invested, by statute, with the powers and privileges of the House of Commons: *Australian Constitution* s 49; *Parliamentary Privileges Act* 1987

case is underlined by the circumstances which gave rise to the suit in *Ellis v Atkinson*.

This commentary on the case describes those circumstances, surveys the development of the law which Vincent J found to be unsatisfactory, and offers proposals for reform of that law.

II PROCEEDINGS IN THE LEGISLATIVE COUNCIL

The Honourable Bruce Atkinson is a member of the Liberal Party. He has been a member of the Legislative Council of the Parliament of Victoria since 1992. On 2 April 1996 he was appointed Parliamentary Secretary for Planning and Local Government. At the relevant time, the Liberal Party, which also formed the Government, commanded a substantial majority in the Council.

On 9 April 1997 the Honourable Theo Theophanous MLC (Australian Labor Party) moved a motion in the Council to record various concerns about the activities of the Honourable Bruce Atkinson, among them entry by a business in which he was involved into certain consultancy contracts with several local government councils. The motion sought the removal of the member from the office of Parliamentary Secretary for Planning and Local Government and also reference to the Privileges Committee of the Council of the question whether the Honourable Bruce Atkinson had been in breach of the code of conduct prescribed by s 3 of the *Members of Parliament (Register of Interests) Act* 1978 (Vic).[12] The motion was defeated on party lines by 32 votes to nine.[13]

Later in April, Sharon Ellis and others instituted the proceedings in question in the Supreme Court. On 22 April 1997, the Honourable Theo Theophanous sought from the Minister for Industry, Science and Technology an assurance that the Government would not initiate a motion under s 61A of the *Constitution Act* 1975 (Vic) to relieve the Honourable Bruce Atkinson from the consequences of any disqualification from membership of the Council. This section, enacted in 1977, enables both Houses to relieve a member from those consequences if satisfied that the act, matter or thing which disqualifies the member:

(a) has ceased to have effect;
(b) was in all the circumstances of a trifling nature; and
(c) occurred or arose without the actual knowledge or consent of the person or was accidental or due to inadvertence.[14]

The Minister stated that the possibility that s 61A might be invoked had not been considered.[15]

(Cth) s 5; *Constitution Act* 1867 (Qld) s 40A; *Constitution Act* 1934 (SA) s 38; *Parliamentary Privileges Act* 1891 (WA) s 1. The Parliaments of the Australian Capital Territory and Northern Territory have been given the privileges of the House of Representatives: *Australian Capital Territory (Self Government) Act* 1988 (Cth) s 24; *Legislative Assembly (Powers and Privileges) Act* 1992 (NT) s 4.

12 Victoria, *Parliamentary Debates*, Legislative Council, 9 April 1997, 183.

13 Ibid 213–4.

14 See also *Constitution Acts Amendment Act* 1899 (WA) s 39; *House of Commons Disqualification Act* 1975 (UK) s 6(2).

15 Victoria, *Parliamentary Debates*, Legislative Council, 22 April 1997, 281.

On 28 May 1997 the Honourable Theo Theophanous moved another motion in the Council that the House note that the Honourable Bruce Atkinson had misled the House in claiming, on 9 April (during debate on the prior motion), that he had not done any work for local traders or local government councils since becoming a Parliamentary Secretary on 2 April 1996. The motion averred that documents which had been obtained under the *Freedom of Information Act* 1982 (Vic) showed that the Honourable Bruce Atkinson had, since that date, been involved in consultancy work for the Moira Shire Council. The motion called on him to relinquish office as Parliamentary Secretary.[16] On this occasion, the motion was defeated by 30 votes to eight.[17]

Throughout the proceedings in the Legislative Council, the Honourable Bruce Atkinson denied any misconduct on his part. At no stage was there a motion before the Council that the question of whether, by virtue of s 55 of the *Constitution Act* 1975 (Vic), his seat in the Council had become vacant be referred to the Supreme Court. Had such a motion been moved it would, no doubt, have been defeated.

III JURISDICTION TO DETERMINE DISPUTES ABOUT THE QUALIFICATIONS OF MEMBERS OF PARLIAMENT

The claim by the Commons House of the English Parliament to an exclusive jurisdiction to decide questions about the qualifications of persons to be, and remain, members of the House was first asserted during the reign of Elizabeth I.[18] It was one of the claims made in the course of the Commons' endeavours to establish their independence from both the Lords and the Crown, at a time when the judges of the royal courts were not assured independence from the Crown.[19]

Eventually the Commons came to recognise that courts of law could assist them in enforcement of the laws regarding qualifications for membership of the House. From the reign of William III, the Parliament enacted a series of statutes which endowed courts with jurisdiction to entertain proceedings by common informers for recovery of monetary penalties from persons who sat and voted in the House whilst disqualified.[20] The *Parliamentary Elections Act* 1868 (UK)[21] endowed courts with jurisdiction to try disputed elections.[22]

15 Victoria, *Parliamentary Debates*, Legislative Council, 22 April 1997, 281.

16 Victoria, *Parliamentary Debates*, Legislative Council, 28 May 1997, 1157.

17 Ibid 1175–6.

18 See, eg, William Anson, *The Law and Custom of the Constitution* (5th ed, 1922) vol 1, 177–84; Geoffrey Elton, *The Tudor Constitution: Documents and Commentary* (1960) 259–60.

19 The independence of the superior royal courts was secured by the *Act of Settlement* 1701 (UK) 12 & 13 Will 3, ch 2.

20 The statutes are listed in Barnett Cocks (ed), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (first published 1844; 17th ed, 1964) 217, [a]. The last of the statutes was the *House of Commons (Disqualifications) Act* 1801 (UK) 41 Geo 3, ch 52. On the use of common informers, see Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (1956) vol 2, 138–47.

21 *Parliamentary Elections Act* 1868 (UK) 31 & 32 Vict, ch 125.

22 See now *Representation of the People Act* 1983 (UK) ch 2, ss 120–86.

Courts of Disputed Returns have been established in all Australian jurisdictions. In the States and the self-governing Territories of the Commonwealth they are the Supreme Courts, and for the Commonwealth itself, the High Court of Australia.[23] These courts have exclusive jurisdiction to determine disputed elections, including those concerning a person's qualifications to be elected. All Australian Houses of Parliament retain jurisdiction to determine whether a member who has been validly elected has, since being elected, become disqualified from sitting and voting in the House, but most of the Houses have been authorised by statute to refer such questions to the relevant Court of Disputed Returns for determination.[24] Whether a matter of this kind should be so referred is for the House alone to decide.

In 1906 Barton J, Australia's first Prime Minister and one of the first Justices of the High Court, expressed his appreciation of the reasons why Australian Parliaments had chosen to enact legislation along the lines of the United Kingdom statute of 1868 in the following way:

> The validity of elections, and kindred questions, such as that of membership, were, until the passing of recent statutory law, within the exclusive privilege of elective Houses of legislature. They had the right to determine, by their own domestic tribunals, questions of that kind as they arose, and had always asserted that right, so far as the House of Commons was concerned, and the legislative bodies of Australian and other Colonies were in fact given power to assert it by the various Constitution Acts, and used to assert it by such tribunals as their own Committees of Elections and Qualifications composed respectively of members of the House concerned. It was found, no doubt, that the feeling of partisanship which necessarily arose from such a method of determination tinged that method with disadvantages outweighing the advantage of keeping in the hands of Parliament the right of determining these questions. Parliament has therefore in many instances ... transferred the right to a separate tribunal, not on the ground that it wished to deal with these questions as matters of litigation; but, as I judge, on the ground that it wished to remit such matters to men of experience and known fairness of mind, who should merely declare their findings upon the questions involved, and any enforcement of such decision by the substituted tribunal was, in the absence of clear legislative authority, quite out of the question.[25]

These observations of Barton J were made in the context of a case in which the question was whether a determination by the Supreme Court of Western Australia, sitting as a Court of Disputed Returns, was a judgment of the Supreme Court for the purposes of s 73 of the *Australian Constitution* and thus a judgment subject to appeal to the High Court. The High Court held that the decision of the State judges, sitting as a Court of Disputed Returns, was not a decision of the Supreme Court, but rather one made by them as *personae designatae* (designated

[23] The current legislation is listed in Hanks, above n 1, 54, 59–60.

[24] *Commonwealth Electoral Act* 1918 (Cth) s 376; *Electorates and Elections Act* 1912 (NSW) ss 175B, 175H; *Electoral Act* 1992 (Qld) ss 143, 146(b); *Electoral Act* 1985 (Tas) s 234; *Constitution Act Amendment Act* 1958 (Vic) s 300; *Electoral Act* 1995 (ACT) s 252; *Electoral Act* 1995 (NT) pt XIII, div 2; cf *Constitution Act* 1934 (SA) s 43.

[25] *Holmes v Angwin* (1906) 4 CLR 297, 307–8.

persons). Their decision was not, therefore, appealable to the High Court under s 73 of the *Australian Constitution*.[26]

In Victoria, there is still one way in which a question regarding the qualifications of a member of Parliament to continue as a member may be brought before a court of law, otherwise than by a reference from one of the Houses of the Parliament. It is by prosecution of a member under s 59 of the *Constitution Act* 1975 (Vic). This section provides that:

> Any person who wilfully contravenes or fails to comply with any of the foregoing provisions of this Division [Division 8 of Part II, headed 'Offices and Places of Profit'] shall be guilty of an offence against this Act.
>
> Penalty $500.

This section replaced s 31 of the *Constitution Act Amendment Act* 1958 (Vic) which had provided for recovery of monetary penalties, and full costs of suit, by common informers.[27] In introducing the Bill for the *Constitution Act* 1975 (Vic) the Government did not offer any explanation for the change, though at the committee stage in the Legislative Assembly the Honourable Barry Jones drew attention to it, as an example of a provision which would effect a change in the law, notwithstanding the Government's assurance that the Bill did no more than consolidate prior legislation.[28] Enactment of what is now s 59 of the *Constitution Act* 1975 (Vic) was not opposed.

In Great Britain, the statutory provisions which had imposed statutory penalties for sitting and voting whilst disqualified, and provided for recovery of the penalties by common informers, were, effectively, repealed by the *House of Commons Disqualification Act* 1957 (UK).[29]

Proceedings of this nature can still be brought against members of the New South Wales and Queensland Parliaments who are alleged to have entered into certain contracts with government,[30] and against members of the South Australian Parliament who sit and vote whilst subject to any disqualification.[31]

Section 46 of the *Australian Constitution* provides that:

> Until the Parliament otherwise provides, any person declared by this Constitution to be incapable of sitting as a senator or as a member of the House of Representatives shall, for every day on which he so sits, be liable to pay the sum of one hundred pounds to any person who sues for it in any court of competent jurisdiction.[32]

[26] Ibid. See also *Webb v Hanlon* (1939) 61 CLR 313.

[27] *Constitution Act Amendment Act* 1958 (Vic) s 31 was repealed by *Constitution Act* 1975 (Vic) s 96.

[28] Victoria, *Parliamentary Debates*, Legislative Assembly, 1 May 1975, 5833.

[29] *House of Commons Disqualification Act* 1957 (UK) 5 & 6 Eliz 2, ch 20. The repealed statutes are listed in Cocks, above n 20, 217, [a].

[30] *Constitution Act* 1902 (NSW) s 14(2); *Constitution Act* 1867 (Qld) s 7(2).

[31] *Constitution Act* 1934 (SA) s 46(2).

[32] Section 46 of the *Australian Constitution* has never been invoked: Commonwealth of Australia, Senate Standing Committee on Constitutional and Legal Affairs, *The Constitutional Qualifications of Members of Parliament* (1981) [8.4].

The Commonwealth Parliament provided otherwise by the *Common Informers (Parliamentary Disqualifications) Act* 1975 (Cth).[33] This Act abolished suits under s 46 of the Constitution, but enabled any person to bring suit in the High Court of Australia for recovery of a penalty of $200 for a past breach of disqualification provisions, and for recovery of a further penalty of $200 for every subsequent day on which the disqualified member sits after service of the originating process.[34] Proceedings under the Act must be instituted no later than 12 months after the sitting which is the subject of complaint.[35]

IV LAW REFORM

The question of whether a member of a Parliament has become disqualified from sitting and voting in the House to which he or she has been elected will involve consideration of issues of both law and fact. Sometimes there will be dispute about matters of fact. There may also be dispute about the interpretation and application of the relevant statutory provisions. Whatever body has the task of determining the question of whether a seat in Parliament has become vacant by reason of the disqualification of a member may find it necessary to conduct an inquiry at which evidence is received from witnesses, and submissions on legal issues are invited.

Should a House of a Parliament choose to exercise its own jurisdiction to determine whether one of its members has become disqualified, it may commit the task of inquiry to a committee of its members.[36] But if it has statutory authority to do so, the House may decide rather to refer the matter to the appropriate Court of Disputed Returns for determination.[37] Alternatively the House may, without any formal inquiry, but after debate, decide the matter by vote.

When Houses of a Parliament exercise their own jurisdiction to try questions about the qualifications of members, there is always a danger that those questions will be decided (or be seen to have been decided) on party political lines. Certainly there is no assurance that such questions will be decided fairly and impartially. Even when a House is authorised to refer these questions to a Court of Disputed Returns, party political considerations may lead a majority of members of the House to defeat any motion that a question be so referred. In 1974 the Senate clearly divided on party lines to defeat a motion by the Attorney-General, Senator Lionel Murphy, that the question of whether (and when) Senator Vincent Gair had vacated his seat be referred to the High Court of Australia, pursuant to s 203 (now s 376) of the *Commonwealth Electoral Act* 1918 (Cth).[38]

[33] See generally ibid [8.5] for the background.

[34] *Common Informers (Parliamentary Disqualifications) Act* 1975 (Cth) s 3(1).

[35] Ibid s 3(2).

[36] A parliamentary committee may be authorised by the House appointing it to send for persons and papers: see, eg, *Parliamentary Evidence Act* 1901 (NSW).

[37] This would be done in accordance with the Acts listed in above n 24.

[38] On the case of Senator Gair, see Peter Hanks, 'Parliamentarians and the Electorate' in Gareth Evans (ed), *Labor and the Constitution 1972–1975* (1977) 166, 191–4.

Senator Murphy took the view that s 203 of the *Commonwealth Electoral Act* 1918 (Cth) had ousted the jurisdiction of the Houses of the federal Parliament to decide whether vacancies in their membership had arisen, leaving them only with power to decide whether to refer such questions to the High Court.[39] Opposition senators, correctly in my view, rejected this interpretation of the section.[40] Nevertheless Senator Murphy offered cogent reasons why the Senate should refrain from exercising the jurisdiction which the Opposition claimed it still possessed. Section 203, the Senator said, 'provides a proper means of ensuring that complicated questions involving the interpretation of the Constitution can be determined by the highest judicial tribunal in the country'.[41] Later in the debate on his motion he asked:

> Is this Senate now to embark upon a course which means that it will decide these questions — legal questions affecting rights ... — and that they will be determined here on party political lines? Where is it to stop? Are we to say that because one side has a sufficient majority in the place it can do whatever it likes and exclude other persons, ignore disqualifications or alleged disqualifications which might arise, and just carry on as if legal rights can be determined on a party political vote?[42]

If, he suggested, the view were to be taken

> that the only way such questions may be dealt with by this Senate is by referring them or not referring them [to the High Court], then we will start on a road which is away from the rule of law ... and will determine to use naked numbers rather than appeal to the rule of law.[43]

Houses of Parliaments may be reluctant to surrender to the courts their jurisdiction to decide disputes about the qualifications of validly elected members. Houses having power to refer such disputes to a Court of Disputed Returns may also wish to retain their discretion to refer or not refer those disputes to the relevant court. The fundamental issue is, however, whether it is desirable to preserve a legal regime under which the only ways in which disputes of this nature may be brought before a court for adjudication are by a reference by the House concerned, or, where it is possible, by proceedings for recovery of statutory penalties.

The Parliaments of the United Kingdom and of Western Australia have both chosen to enact statutes which repeal prior legislation imposing penalties for sitting and voting as an elected member of the Parliament whilst disqualified. Neither has gone to the length of expressly abrogating a House's jurisdiction to determine questions about a member's qualifications to continue as a member.

[39] Commonwealth, *Hansard*, Senate, 4 April 1974, 681–6. Senator Murphy referred to an opinion of Garfield Barwick given on 2 February 1952: Commonwealth, *Hansard*, Senate, 4 April 1974, 686.

[40] For other opinions in support of this author's view see also the works cited in Hanks, above n 1, 60, fn 205 and Senate Standing Committee on Constitutional and Legal Affairs, above n 32, [8.10].

[41] Commonwealth, *Hansard*, Senate, 4 April 1974, 682.

[42] Ibid.

[43] Ibid 685–6.

But each of these Parliaments has enacted legislation which makes it possible for such questions to be placed before courts for determination, upon application by interested members of the public.

The United Kingdom Parliament led with its *House of Commons Disqualification Act* 1957 (UK),[44] an Act since displaced by a consolidating Act, which was accorded the same short title and enacted in 1975. The essential elements of the United Kingdom's legal regime are these:

a) It is enacted that a person who claims that a person purporting to be a member of the House of Commons is disqualified by reason of any disqualifying cause identified in the Act, and has been so disqualified at any time since election, may apply to Her Majesty in Council for a declaration to that effect. (The reference to Her Majesty in Council, translated into Australian terms, is to a vice-regal representative advised by the relevant Executive Council. For practical purposes that Executive Council will decide according to the wishes of the political executive of the day.)

b) Upon receipt of an application for a declaration of the kind described in (a) above, the Queen in Council is obliged to refer the application to the Judicial Committee of the Privy Council, established pursuant to the *Judicial Committee Act* 1833 (UK).[45]

c) The Judicial Committee of the Privy Council is, upon that reference, to deal with the application as if it were an appeal from a court to the Judicial Committee.[46]

The reason why the Judicial Committee of the Privy Council should have been chosen as the 'court' to try disputes about whether members of the House of Commons had become disqualified from continuing as members of that House was that the United Kingdom's own highest court happens to be the House of Lords, its upper chamber, albeit a chamber whose appellate jurisdiction has, since 1876, been exercisable by the Lords of Appeal in Ordinary.[47]

Western Australia's counterpart to the corresponding section in the United Kingdom statute is s 41 of the *Constitution Acts Amendment Act* 1899 (WA). This section was enacted in 1984 to implement a recommendation made in 1971 by the State's Law Reform Committee.[48] What s 41 does is enable any elector to seek from the State's Supreme Court, constituted by a Full Court, a declaration that a seat of a member of either House of the State Parliament has become vacant by operation of ss 36, 37 or 38 of the same State Act.[49] The Supreme Court may require the applicant to lodge up to $500 by way of security for costs.

Provisions of this kind are, in my view, preferable to those which authorise only Houses of a Parliament to refer a question of disqualifications to a superior

[44] *House of Commons Disqualification Act* 1957 (UK) 5 & 6 Eliz 2, ch 20.

[45] *Judicial Committee Act* 1833 (UK) 3 & 4 Will 4, ch 41.

[46] *House of Commons Disqualification Act* 1975 (UK) ch 24, s 7. Under s 7(3) the applicant may be required to give security for costs (up to £200).

[47] *Appellate Jurisdiction Act* 1876 (UK) 39 & 40 Vict, ch 59, s 6.

[48] Western Australian Law Reform Committee, *Disqualification for Membership of Parliament — Offices of Profit under the Crown and Government Contracts*, Project No 14 (1971) [38].

[49] These sections of the *Constitution Acts Amendment Act* 1899 (WA) relate to disqualifications.

court and should be adopted by the other Australian Parliaments.[50] Legislation along the lines of s 41 of Western Australia's *Constitution Act Amendment Act* 1899 (WA) should make the imposition of penalties for sitting and voting whilst disqualified unnecessary.[51]

ENID CAMPBELL*

50 There is no provision for references in the United Kingdom and Western Australian legislation.

51 Both the Senate Standing Committee on Constitutional and Legal Affairs, above n 32, [8.18]; and the Western Australian Law Reform Committee, above n 48, [37] recommended the abolition of penalties.

* BEc (Tas), LLB (Hons) (Tas), LLD (honoris causa) (Tas), PhD (Duke); Sir Isaac Isaacs Professor of Law, Monash University.