

Parliamentary Disqualification & Financial Conflict

Re Day (No 2) and Alley v Gillespie

G+T Constitutional Law Conference 2018

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Who is Qualified to Serve?



Roman Senate c 40 CE



Australia 2017

Constitution section 44(v)

- *direct or indirect*

pecuniary interest

in any *agreement* with the

Public Service of the Commonwealth

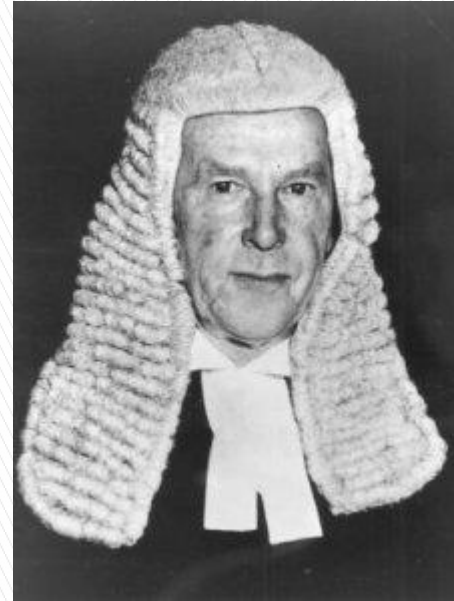
(otherwise than ... in common with ... incorporated company consisting of more than twenty-five persons)

- incapable of *being chosen or sitting* (as Commonwealth MP)

Re Webster (1975)



Senator Jim Webster
(Victorian Country Party)



Attorneys-General
Former and future



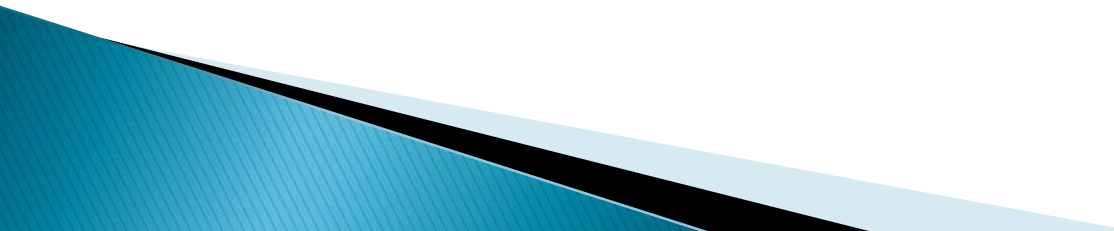
Re Webster reasoning

Fear: “pitfall into which men who wish to walk uprightly ... may unwittingly tumble”

Major premise: limited purpose to buttress freedom of Parliament from Crown

Minor premise: formalistic approach to contracts and corporations

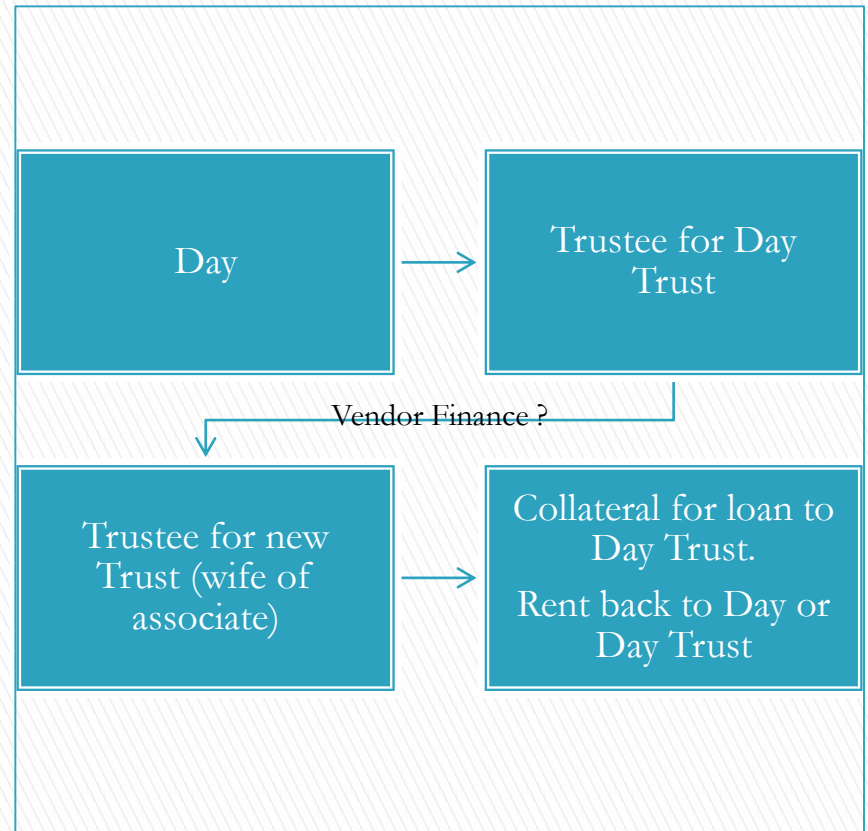
Ergo s 44(v) caught only sustained/ongoing agreements, of such significance that Crown might realistically exert influence



Re Day (No 2) 2017



Senator Bob Day
(Family First, South Australia)



Is complex ...

Re Day (No 2) Reasoning

Purpose of s 44(v)

Extends to MPs seeking ‘to *benefit* from agreements (with Commonwealth) *or* put themselves in position where their duty to people they represent and *personal interests may conflict.*’

Why was Day caught?

Vibe of shifty dealings?

Venal? But rent at market value.

That he might vote one day to expand office entitlements => ‘real risk’ ‘parliamentary affairs’ ‘influenced or perceived to be influenced’

‘Real risk’ parliamentary affairs influenced -> uncertainty?

Keane + Gageler JJ

- ▶ ‘Public Service’ read narrowly
- ▶ Focus on discretionary agreements

Nettle + Gordon JJ

- ▶ Reject narrow ‘Public Service’
 - ▶ ‘Perceived’ influence too vague
- ‘Conceivable’ influence needed

Headline result

Skirmish on the edge

Alley v Gillespie (2017-18)



**Common Informers (Parliamentary
Disqualifications) Act 1975**

Act No. 28 of 1975 as amended

Somewhere South of Port
Macquarie ...

Procedural Mire
Stillborn at 116 years old?

Pecuniary conflicts of interest and duty

Section 44(v)

Salutary but
Blunt, inflexible

Pecuniary Interest Registers

Webster had opposed register ...
Took until 1984(HoR) 1994(Sen)

Abstention Rules

Only apply to non-policy motions
Cf local government, AEC ...

Scrap section 44

(except perhaps for incarcerated)
Empower Parliament to :

1. Enact rules on pecuniary dealings
2. Audit at start of each term + rolling pecuniary register
3. Advice to MPs/Parliament from Integrity Commissioner
4. MP suspended until any serious conflict is foregone.

Reflection

Reform