



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

To the Registrar of Members' Interests

**Statement of Member's qualifications relating to
sections 44 and 45 of the Constitution
47th Parliament**

FAMILY NAME	Le		
GIVEN NAMES	Dai Trang		
ELECTORAL DIVISION	Fowler	STATE	NSW

Attestation under paragraph (5) of the resolution adopted on 4 April 2019

The material I provided to the Australian Electoral Commission (AEC) in respect of my last nomination for election, in accordance with Part XIV of the *Commonwealth Electoral Act 1918*, is complete and accurate.

☐ Yes

☒ No

Supplementary material

If you have marked 'no' or wish to provide supplementary material to augment, explain or correct information provided to the AEC, please separately complete the form 'Supplementary material regarding Member's qualifications relating to sections 44 and 45 of the Constitution'.

Signed

19/08/2022
Date: [DD Month Year]

Notes

1. The requirement to make this statement is contained in a resolution adopted by the House of Representatives on 4 April 2019.
2. Signed statements should be emailed to Members.Interests.Reps@aph.gov.au.

DAI TRANG LE

MEMORANDUM OF ADVICE IN RELATION TO SECTION 44(i) OF THE COMMONWEALTH CONSTITUTION

1. INTRODUCTION AND RELEVANT BACKGROUND

1.1 I have been asked to advise on whether Dai Trang Le was eligible to stand for election for the House of Representatives in the Parliament of Australia for the seat of Fowler in the Australian federal election held on 21 May 2022. In particular, I am asked to advise on whether Ms Le is disqualified from being chosen as a member of the House of Representatives by reason of section 44(i) of the Commonwealth of Australia Constitution Act (**the Constitution**).

1.2 I am instructed that the relevant chronology is as follows:

- (a) On 1 April 1968 Ms Le was born in Vietnam.
- (b) In about 1975, as a seven year old, Ms Le left Vietnam with her mother and two sisters.
- (c) During the period 1975 to 1979 Ms Le was stateless and in refugee camps.
- (d) In about December 1979 Ms Le was processed by the United Nations High Commissioner for Refugees and accepted for humanitarian resettlement and arrived at Wollongong Migrant Hostel in Fairy Meadow.
- (e) In or about 1983 Ms Le was granted Australian citizenship.
- (f) On 16 December 2021 Ms Le sent an email to the Consulate General of Vietnam indicating she did not believe she had the right to be a citizen of

Vietnam and in effect seeking to renounce her Vietnamese citizenship if she held it.

(g) On about 21 December 2021 the Consulate General of Vietnam stated it was processing Ms Le's applications to:

(i) verify if she still possesses Vietnamese citizenship; and

(ii) renounce her Vietnamese citizenship if she has one.

(h) On 14 February 2022 the Consulate General of Vietnam stated that the Consulate General had "not found sufficient evidence stating that [Ms Le] holds Vietnamese citizenship."

(i) On 14 April 2022 Ms Le signed a nomination form to nominate as a member of the House of Representatives and a qualification checklist relating to eligibility under s 44 of the Constitution.

1.3 I am also instructed in relation to Vietnamese law that:

(a) prior to 2008, an individual's citizenship of Vietnam was annulled on their becoming a citizen of another country; and

(b) in 2008 the law of Vietnam was changed to permit dual citizenship but in order to reclaim lost citizenship an individual is required to apply and needs to have justified cause and permission from the President of Vietnam.

1.4 I am instructed that Ms Le has not made any such application to reclaim her Vietnamese citizenship after becoming an Australian citizen.

2. SUMMARY

2.1 As at 14 April 2022, being the date of Ms Le's nomination as a member of the House of Representatives Ms Le:

- (a) did not hold Vietnamese citizenship; and
- (b) if she did hold it, took reasonable steps to renounce it.

2.2 In my opinion, Ms Le is not disqualified from being chosen as a member of the House of Representatives by reason of section 44(i) of the Constitution.

3. **DISQUALIFICATION: S 44 OF THE CONSTITUTION**

Provision and relevant legal principles

3.1 Section 44 of the Constitution relevantly provides:

“Any person who—

(i.) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power: or

...

shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.”

3.2 If a sitting member is disqualified then their seat becomes vacant by reason of s 45 of the Constitution.

3.3 The relevant principles emerge from *Re Canavan; Ludlam; Waters; Roberts [No 2]; Joyce; Nash; Xenophon* (2017) 263 CLR 284 (*Re Canavan*).

3.4 In summary:

- (a) the temporal focus for the purposes of s 44(i) is upon the date of nomination as the date on and after which s 44(i) applies until the completion of the electoral process: *Re Canavan* at [3];
- (b) s 44(i) has two limbs:

- (i) the first limb, which deals with acknowledgment, adherence and obedience to a foreign power, looks to the conduct of the person concerned;
 - (ii) the second limb, concerning being a subject or citizen of a foreign power or being entitled to the rights of such a citizen or subject, does not require proof of actual allegiance as a state of mind, rather, the focus of the inquiry is the existence of a duty to a foreign power as an aspect of the status of citizenship: *Re Canavan* at [19], [25]-[26].
- (c) whether a person has the status of the subject or citizen of a foreign power depends upon the law of the foreign power, as that is the source of the status of citizenship and its rights and duties. However, that foreign law is not determinative of the operation of s 44(i) of the Commonwealth Constitution: *Re Canavan* at [37], [39] and [71];
- (d) proof of the person's knowledge of his or her foreign citizenship status is not necessary to bring about the disqualifying operation of s 44(i): *Re Canavan* at [60] and [71];
- (e) where the personal circumstances of a person give rise to disqualification the reasonableness of the steps taken by way of inquiry to ascertain whether those circumstances exist is immaterial to the operation of s 44(i): at [61] and [71]; and
- (f) the reasonable steps that must be taken are those required by the foreign law for renunciation of citizenship: at [68], [69] and [72].

Application: Ms Le

3.5 The first issue to be determined is whether Ms Le is, or was as at 14 April 2022 (being the date of her nomination as a candidate), a Vietnamese citizen. This depends on the law of Vietnam.

3.6 Assuming that the law is as set out in paragraph 1.3 of this Advice, then Ms Le is not a Vietnamese citizen because:

- (a) on becoming an Australian citizen in 1983 she lost any Vietnamese citizenship; and
- (b) she has not applied to reclaim her Vietnamese citizenship.

3.7 Accordingly, she is not disqualified from being chosen as a member of the House of Representatives by reason of section 44(i) of the Constitution.

3.8 However, if this is wrong and the law of Vietnam is such that Ms Le remained, or became, a citizen of Vietnam the question is whether she has taken all steps that are reasonably required by Vietnamese law to renounce her citizenship prior to 14 April 2022.

3.9 In my opinion, in circumstances where:

- (a) Ms Le applied, in 2021, to the Consulate General of Vietnam to determine whether she held Vietnamese citizenship and if so to renounce it; and
- (b) the Consulate General of Vietnam informed her that it had “not found sufficient evidence stating that [Ms Le] holds Vietnamese citizenship” and did not otherwise inform her of additional steps required to renounce any citizenship,

Ms Le had taken reasonable steps, prior to 14 April 2022, to renounce her Vietnamese citizenship (assuming she held such citizenship).

3.10 As the High Court explained in *Re Canavan* the High Court at [67]-[68]:

“[67] No member of the majority in Sykes v Cleary said that a candidate who does not know that he or she is a citizen of a foreign country can be said to take reasonable steps to renounce that citizenship by doing nothing at all in that regard. It is true that Dawson J said that what is reasonable will “depend upon such matters as the requirements of the foreign law for the renunciation of the foreign nationality, the person’s knowledge of his foreign nationality and the circumstances in which the foreign nationality was accorded to that person.” His Honour may be taken, consistently with the views expressed by the plurality and by Brennan J, with whom he agreed, to have had in mind cases where not only the tenacity but also the inaccessibility of the foreign law was apt practically to prevent an Australian citizen from exercising the choice to participate in the system of representative government established by the Constitution. It may be that not all foreign states afford their citizens the levels of assistance in relation to the ascertainment and renunciation of their citizenship that is available from states such as most members of the Commonwealth of Nations. Some foreign states may be unwilling or unable to provide necessary information in relation to the ascertainment and means of renunciation of their citizenship.

[68] The plurality in Sykes v Cleary said that the steps reasonably available to a candidate to free himself or herself from the ties of foreign citizenship depend on “the situation of the individual, the requirements of the foreign law and the extent of the connexion between the individual and the foreign State”. The circumstance that Mr Kardamitsis had participated in a naturalisation ceremony in which he had expressly renounced his foreign allegiance was not sufficient to justify the conclusion that he had taken reasonable steps to divest himself of his foreign citizenship because under the foreign law he could have applied for the favourable exercise of a discretion by the appropriate Minister of the Greek government to release him from his citizenship. The application for the favourable exercise of the discretion was a step reasonably open to him.” (footnotes omitted)


3.11 Ms Le, in enquiring of the Vietnamese Consulate General whether she held Vietnamese citizenship and if so to renounce it, and such enquiry being accepted by the Vietnamese Consulate General as applications of the same, has taken the required reasonable steps.

ARTHUR MOSES SC
New Chambers

28 June 2022



THE CONSULATE GENERAL OF THE SOCIALIST REPUBLIC
OF VIETNAM IN SYDNEY - AUSTRALIA

—  —
Suite 205, Level 2, Edgecliff Centre
203-233 New South Head Road - Edgecliff, NSW 2027
Tel: (02) 93272539, 93271912 Fax: (02) 93281653
Email : vnconsula@inet.net.au
Website : www.vnconsulate.org.au

Sydney 21st December, 2021

Dear Sir/Madam,

The Consulate General of Viet Nam in Sydney, New South Wales, Australia has the honour to inform that the Consulate General has received the following applications from Ms Dai Trang Le (born on April 01, 1968, Australian passport number [REDACTED]):

- To verify if Ms Dai Trang Le still possesses Vietnamese citizenship;
- To renounce her Vietnamese citizenship if she has one.

The Consulate General of Viet Nam has further the honour to certify that the above applications by Ms Dai Trang Le are being duly processed.

Yours faithfully,



[REDACTED]
Nguyen Thi Ha
Deputy Consul General

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

Candidate's name

Dai Le

Please fill out this checklist.

Be aware that completing this checklist does not guarantee that you are eligible to be elected under section 44 of the Australian Constitution or under the *Commonwealth Electoral Act 1918*.

If you have any doubts about your eligibility, you should seek independent legal advice.

If you provide information in this checklist that you know is false or misleading, you may commit an offence against the *Criminal Code* with a maximum penalty of imprisonment for 12 months, \$12,600 or both.

You must answer every question in the checklist that has check boxes by marking one, and only one, of the boxes provided. Your nomination will be rejected if you do not mark any of the boxes, or if you mark more than one of the boxes, provided for any of these questions.

Please provide supporting documentation as appropriate. You may provide additional documents if you are unable to fit all your responses in this checklist.

Note: If you answer 'yes' in question 10 then you **must provide at least one document** in response to question 10a.

You should not include information in this checklist, or in any additional documents you provide, that is inappropriate in any way. If you do, the information may be redacted by the Electoral Commissioner and not published on the Australian Electoral Commission's website.

You may choose to redact information (for example, your own or another person's personal information) from additional documents before providing them. Redactions must be in accordance with any directions of the Electoral Commissioner.

The candidate statement and declaration that you have made elsewhere in this nomination also relate to your eligibility to be elected. In that statement and declaration:

- (a) you have declared that you are qualified under the Constitution and the laws of the Commonwealth to be elected as a Senator or member of the House of Representatives; and
- (b) you have stated that you are an Australian citizen.

Questions marked with an asterisk (*) are mandatory

1. Do you know the place of birth of each of your parents and grandparents (whether biological or adoptive)?*

<input checked="checked" type="checkbox"/>	YES
<input type="checkbox"/>	NO

- 1a. Please provide any relevant details (for example, why you do not know the place of birth of a parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' places of birth

Parents and grandparents born in Vietnam. They are all deceased.

[Please provide particulars of, or documents related to, any details provided in response to question 1a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

2. Do you have a parent or grandparent that you know was born in another country? This may be a biological or adoptive parent or grandparent. *

(If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)

<input checked="" type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	N/A

- 2a. If 'yes', please provide the following details, to the extent known:

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

Relationship
to you (e.g.
mother or
adoptive father)

Place of Birth

Date of Birth / /

- 2b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' places and dates of birth

All my parents and grandparents are deceased.

[Please provide particulars of, or documents related to, any details provided in response to questions 2a and 2b. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

3. Have you provided details in question 2a in relation to each parent and grandparent that you know was born in another country?*
- (If you do not know any of your parents' or grandparents' places of birth, please mark the 'N/A' box.)
- ☒ YES
☐ NO
☐ N/A

- 3a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each parent and grandparent that you know was born in another country

4. Do you know which citizenships have been held by each of your parents and grandparents (whether biological or adoptive)?*
- ☒ YES
☐ NO

- 4a. Please provide any relevant details (for example, why you do not know the citizenships held at a particular time by a particular parent or grandparent):

Other relevant details relating to your knowledge of your parents' and grandparents' citizenships

Deceased grandparents were Vietnamese citizens under former South Vietnam.

Deceased mother was a refugee and not considered a citizen as she escaped at the end of the war in April 1975.

[Please provide particulars of, or documents related to, any details provided in response to question 4a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

5. Do you have a parent or grandparent that you know acquired citizenship of another country by descent, naturalisation or other means? This may be a biological or adoptive parent or grandparent.*

<input checked="" type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	N/A

(If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)

- 5a. If 'yes', please provide the following details, to the extent known:

Relationship to you (e.g. mother or adoptive father)	Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship	Country of foreign citizenship
Period foreign citizenship held	Period foreign citizenship held
Relationship to you (e.g. mother or adoptive father)	Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship	Country of foreign citizenship
Period foreign citizenship held	Period foreign citizenship held
Relationship to you (e.g. mother or adoptive father)	Relationship to you (e.g. mother or adoptive father)
Country of foreign citizenship	Country of foreign citizenship
Period foreign citizenship held	Period foreign citizenship held

- 5b. Please provide any other relevant details:

Other relevant details relating to your parents' and grandparents' foreign citizenships

My deceased mother became a citizen of Australia on June 28th, 1983.

[Please provide particulars of, or documents related to, any details provided in response to questions 5a and 5b. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

6. Have you provided details in question 5a in relation to each parent and grandparent that you know acquired citizenship of another country by descent, naturalisation or other means?*
- (If you do not know any of your parents' or grandparents' citizenship, please mark the 'N/A' box.)
- ☒ YES
☐ NO
☐ N/A

- 6a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each parent and grandparent that you know acquired citizenship of another country

7. Do you know which citizenships have been held by each of your current and former spouses and similar partners?*
- (If you do not have a current or former spouse or similar partner, please mark the 'N/A' box.)
- ☒ YES
☐ NO
☐ N/A

- 7a. Please provide any relevant details (for example, why you do not know the particular citizenships held at a particular time by a current or former spouse or similar partner):

Other relevant details relating to your knowledge of the citizenships of your current and former spouses and similar partners

My husband is an Australian citizen.

[Please provide particulars of, or documents related to, any details provided in response to question 7a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

8. Do you have a current or former spouse or similar partner who you know is or was a citizen of another country?*
- (If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)
- | | |
|--|-----|
| <input checked="checked" type="checkbox"/> | YES |
| <input type="checkbox"/> | NO |
| <input type="checkbox"/> | N/A |

8a. If 'yes', please provide the following details, to the extent known:

Relationship to you
(e.g. wife or former de facto partner) Husband

Country of foreign citizenship Germany

Was foreign citizenship held at the time
of marriage (if applicable)? No

Relationship to you
(e.g. wife or former de facto partner)

Country of foreign citizenship

Was foreign citizenship held at the time
of marriage (if applicable)?

8b. Please provide any other relevant details (for example, whether you acquired foreign citizenship because of a spouse's foreign citizenship):

Other relevant details relating to your current or former spouse's or similar partner's foreign citizenship

NO

[Please provide particulars of, or documents related to, any details provided in response to questions 8a and 8b. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

9. Have you provided details in question 8a in relation to each current or former spouse or similar partner that you know is or was a citizen of another country? *

(If you do not have a current or former spouse or similar partner, or you do not know the citizenship of any of your current or former spouses or similar partners, please mark the 'N/A' box.)

<input checked="" type="checkbox"/>	YES
<input type="checkbox"/>	NO
<input type="checkbox"/>	N/A

- 9a. If 'no', please explain why you have not provided those details:

Explanation of why you have not provided details relating to each current or former spouse or similar partner that you know is or was a citizen of another country

10. Have you ever been a subject or citizen of any country other than Australia? *

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

- 10a. If 'yes', please provide the following details, to the extent known:

Country of foreign
citizenship

Manner in which foreign
citizenship was lost
(if applicable)

Date of losing foreign
citizenship (if applicable) / /

* [If you contend that you have renounced or lost your foreign citizenship, you **must provide at least one document** that you are satisfied supports your contention. (The document may be an official document, or if you have no official document, a statutory declaration.) This will be published with this checklist on the Australian Electoral Commission's website.]

- 10b. Please provide any other relevant details (for example, how you lost your foreign citizenship, or why the response to question 10 is unknown):

Other relevant details relating to the loss of your foreign citizenship

[In addition to the requirement to provide at least one document mentioned under question 10a, please provide particulars of, or documents related to, any other details provided in response to questions 10a and 10b. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

11. Are you now a subject or citizen of any country other than Australia? *

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

11a. If 'yes', please provide the following details, to the extent known:

Country of foreign
citizenship

Date of acquiring
foreign citizenship / /

Country of foreign
citizenship

Date of acquiring
foreign citizenship / /

11b. Please provide any other relevant details (for example, why you are prevented from renouncing your foreign citizenship, or why the response to question 11 is unknown):

Other relevant details relating to possible disqualification by reason of section 44(i) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to questions 11a and 11b. These will be published with this checklist on the Australian Electoral Commission's website.]

12. Are you under sentence or subject to be sentenced, for an offence for which you have been convicted, which is punishable by imprisonment for one year or longer? *

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO

NOTE: A person convicted of an offence with a maximum penalty of imprisonment for one year or longer may be disqualified even if the sentence imposed on the person for the offence is less than the maximum penalty.

12a. If 'yes', please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(ii) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 12a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

13. Are you an undischarged bankrupt or insolvent? *

☐ YES
☒ NO

13a. If 'yes', please provide any relevant details:

Relevant details relating to possible disqualification by reason of section 44(iii) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 13a. These will be published with this checklist on the Australian Electoral Commission's website.]

14. Do you hold an office of profit under the Crown, other than an office expressly exempt from section 44(iv) of the Australian Constitution? *

(Offices of profit under the Crown include, for example, many public sector jobs in Australia.)

☐ YES
☒ NO
☐ UNKNOWN

14a. Please provide any relevant details, to the extent known (for example, the relevant body in which you hold the office of profit and your role, or why the response to question 14 is unknown):

Relevant details relating to possible disqualification by reason of section 44(iv) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 14a. These will be published with this checklist on the Australian Electoral Commission's website.]

Continued overleaf

QUALIFICATION CHECKLIST

Relating to your eligibility under Section 44 of the Australian Constitution

15. Do you have a direct or indirect financial interest in any contract or other agreement with the Commonwealth public service? *

Do not count an interest that is expressly excluded from section 44(v) of the Australian Constitution, such as a shareholding in a company that has 25 or more other shareholders.

NOTE: Section 44(v) may disqualify you even if you are not a party to the relevant contract or agreement. A disqualifying financial interest may arise, for example, from an agreement between the Commonwealth public service and a trustee of a family trust of which you are a beneficiary.

<input type="checkbox"/>	YES
<input checked="" type="checkbox"/>	NO
<input type="checkbox"/>	UNKNOWN

- 15a. Please provide any relevant details, to the extent known (for example, your direct or indirect financial interests, or why the response to question 15 is unknown):

Relevant details relating to possible disqualification by reason of section 44(v) of the Australian Constitution

[Please provide particulars of, and documents related to, any details provided in your response to question 15a. These will be published with this checklist on the Australian Electoral Commission's website.]

16. Please provide any additional details relating to your qualification under the Australian Constitution or the *Commonwealth Electoral Act 1918*:

[Please provide particulars of, and documents related to, any details provided in your response to question 16. These will be published with this checklist on the Australian Electoral Commission's website.]

I confirm the information in the checklist provided above, and any additional information provided in support of my statements, to be true and correct, to the best of my knowledge.

Signature of candidate

Date

04/25