

Monday 15th November, 2021

Senator the Hon James McGrath
Chair
Parliamentary Joint Committee on Electoral Matters

By email: em@aph.gov.au
Submission re: *Candidate Qualification Checklist*

Dear Chair,

I was invited to participate in a round-table, in-person hearing of this Committee last Tuesday 9th November around its reference on the *Candidate Qualification Checklist*, for the purpose of section 170A (1) of the Electoral Act, and I was delighted to do so.

I was informed late on the evening before the hearing that it had been cancelled, and I was waiting to see if the Committee would be reconvened for that purpose and have maintained contact with the Committee's secretariat.

Having not had further details around an in-person meeting by the end of that week, I now provide a short submission to the Committee, and I am still happy to appear in person to elaborate.

Nomination Process

When an election is called, sometime between now and 21 May of 2022, a person who decides to run for election is required under section 170 of the Electoral Act to complete a nomination to run as a candidate, which involves completing a nomination checklist.

170A(1) The objects of the qualification checklist are:

(a) To ensure that electors are informed about the eligibility under the Constitution and this Act of candidates in elections.

An exposure draft of that form for the next election is now being reviewed by the Committee.

That checklist is seeking to ensure that person's nominating have sufficiently considered the elements under section 44 of the Constitution that would disqualify that person from nominating.

One key aspect of that section, is 44(1) regarding dual citizenship.

Australia's multicultural composition

The checklist is seeking to ensure that the almost 49% of Australians who were born overseas or whose parents were born overseas or indeed whose grandparents were born

overseas will properly determine whether they may be dual or multiple citizens and ineligible for nomination.

The further information is being highlighted to ensure that the nominee realises that each country's citizenship laws are different. In some circumstances, the generous reach of inclusion by countries of their expatriate or descendant citizenry risks the real possibility of exclusion for Australians thinking of activating their otherwise right to exercise the highest form of active citizenship, representing the community in the Australian Parliament

The potential difficulties for Australian citizens wanting to fulfill the highest form of citizenship continues, despite the recommendations of the Joint Standing Committee on Electoral matters (JSCEM) 2018 report [Excluded](#) recommending changes to section 44 of the Constitution.

It is a continuing concern for those wanting Parliament to be more representative of the citizenry, that there has been no leadership for change as recommended.

Indeed, as the report acknowledged, the decision of the High Court in [Re Gallagher](#) in 2018 expanded the possibility of *exclusion* because despite Katy Gallagher having done all that she could have to renounce her British citizenship before nominating for the 2016 election, the United Kingdom Home Office had not processed her application at the time of her nomination.

This led to the High Court determining that she was ineligible and she stood down from Parliament. Fortunately for Katy Gallagher, by the 2019 election, she was 'free' to run.

The Draft Check-list

This 26-page amplified version of the form is one outcome from the earlier experience of dual citizens, as a way of reminding potential candidates of the 'dangers' ahead of them at the next election. It is a step that [I have long championed](#) while section 44 (1) remains in the Constitution.

Within these 26 pages are questions about a candidate's maternal and paternal parents, grandparents, biological or adoptive, dates of births and countries of citizenship (because the citizenship laws in each of those other countries may have changed since their birth) and then the same for one's spouse, as a spouse's country's laws may extend to them. The reach is massive.

Having found out all this information (if indeed possible and I note the compelling points provided in existing submissions to this Committee by others), the candidate then must be sure they are not a citizen of any of those countries, and not only that, according to the decision of Gallagher, be freed of that other citizenship *before* nominating for Parliament.

That means, if a person gets to the end of that form and does the proper diligence of finding out there is in fact a *lurking* citizenship of another country, then that person cannot

complete the nomination process for Parliament until completing the formal renunciation process of that other country's citizenship laws.

In other words, many Australian citizens may discover they are not eligible to run after all – as it will be too late to do anything to free themselves from that other country's citizenship because of the other country's citizenship processes.

This is not an outcome that enhances Australia's democracy; indeed, it continues to undermine it.

This continuing dilemma for many Australians should not be viewed as a 'problem' but in fact could be proclaimed as the successful outcome of Australia's multicultural democracy.

The fact that so many first- and second-generation Australians are wanting to affirm their Australian citizenship by actively nominating for Parliament is something our civics and citizenship courses could be proclaiming.

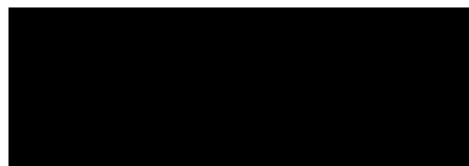
In a representative democracy where dual citizenship has been fully affirmed since 2002 in Australian's citizenship legislation, it is anomalous that Parliament has not sooner moved to repeal section 44(l).

The key component on all of this is political leadership and will to craft a better polity than is currently the case.

This is not about protecting politicians – but rather enabling all its citizens the substantive capacity to nominate to run as a future representative of the people. This is about protecting and enhancing Australia's democracy which will be all the richer and representative of our truly independent and multicultural society when this is achieved.

As indicated at the beginning of this submission, I am still able to appear in person before the Committee to expand upon this short submission.

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Professor Kim Rubenstein

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