

The Secretary
 Joint Standing Committee on Electoral Matters
 Department of House of Representatives
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Inquiry into the 2007 Election

I wish to make this submission in relation to your Term of Reference ‘g.’, *the public funding of candidates whose eligibility is questionable before, during and after an election with the view to ensuring public confidence in the public funding system.*

This submission is based on the following points, which are subjected to and resulting from the election of members to both Houses of Parliament of Australia. The points I wish to make are set in an evolutionary framework, from pre-election to, and including, the term of service to the Commonwealth by an elected member. This submission is also made to combat the failure to date, of the Parliament of Australia and its many associated committee sittings on this and related matters. I therefore, respectfully make my submission.

- a) when a person decides to stand for a parliamentary seat, or they are nominated by a political party to contest a seat in either of the Parliamentary Houses, they are seen to be making a **moral contract** with the people of their electorate and the Commonwealth of Australia. Therefore, there should be a binding joint contract between the newly elected member (of either house), the electorate, and the Commonwealth and the State, with set conditions of service for the elected member of the Parliament of the Commonwealth from the time of the declaration of the poll. This agreement should be incorporated within a Code Of Conduct (see items *f.* to *j.*);
- b) at present there appears to be only a vague moral agreement of acceptance between the people of Australia and their newly elected Members and Senators, agreeing that they will serve the full term for which they were elected. Whereas all other persons employed by the Commonwealth, or serving for remuneration in private enterprise are normally required to meet set terms and or award condition of employment, they are legally obliged to abide by those conditions. Therefore, I ask why should an elected Member or Senator be treated any differently to any other citizen of Australia?;
- c) there is an apparent lack of commitment on the part of some long serving reelected members, who because they are now only members of the opposition, have stated they will resign from parliament or they have already resigned (as in the case of Hon. Peter McGauran, Gippsland). This is without a doubt a breach of their moral contract to serve the full term for which they were elected. I believe that there should be a prescribed financial penalty for early retirement, in part to offset the cost of a by-election or the nomination of a replacement Senator by their state;
- d) currently the ease of retirement without continued commitment to the electorate by an elected Member of the House of Representatives, is an appalling situation. Currently an elected member of the House of Representatives can retire at any time without penalty by simply abiding by the condition set in our Constitution, “**Resignation of member. Section 37.** *A member may by writing addressed to the Speaker, or to the Governor-General if there is no Speaker or if the Speaker is absent from the Commonwealth, resign his place, which thereupon shall become vacant.*” Should this course of action be pursued there is then the need for a by-election to be held at the expense of the tax payer, while there is no expense or penalty to the retiring member who will receive all his or her retirement benefits (where applicable);
- e) a Senator retiring during their elected term should also be held responsible for breaching their moral contract to their State and the Parliament. I believe there should be a penalty clause in both contract/electoral agreements for a financial penalty to partially offset the cost of a by-election or a similar amount as a deterrent. Their penalty should be set at a comparable sum to that of a Member of the House of Representatives;
- f) the terms of a Contract/Electoral Agreement between the newly elected Member or Senator, the Electorate and the Commonwealth should be incorporated in a Code of Conduct which would be applicable to all members of the Parliament. The Code should stipulate a penalty to be imposed on a Member or Senator for early retirement where the Member or Senator is in breach of such a Contract/Electoral Agreement within the said Code of Conduct. The penalty should be as a part offset of the cost of a by-election for a member of the House of Representative and a comparable sum for the early resignation of a Senator. This should be considered in light of the ever increasing cost of by-elections and the retiring persons breach of their moral contract with the people of Australia;

- g) the only exception should be to allow for cases of special circumstances which would apply, where there is a death or a terminal illness, which may cause the need for the early retirement of an elected Member or Senator. This should however, not include any case of a legal conviction, or criminal act;
- h) currently, it would appear that many of the elected Members and Senators, are not in favour of such a Code of Conduct being introduced, as this matter has been brought before both Houses and their committees at different times in the last decades without any decision being made. That there is a definite need for a Code of Conduct incorporating the details of a Contract/Electoral Agreement is evident by the fact that Parliamentarians of both houses are openly considering resignation from the Parliament during their current term. It is acknowledged that there is currently a Code of Conduct which only applies to Ministers, however this is inadequate in that it does not cover all details or any new Contract/Electoral Agreement, nor a strict level of responsibility. In past decades many attempts have been made to develop such a Code of Conduct that would be applicable to all Parliamentarians. Such a document should also incorporate terms of *Parliamentarian's Responsibility and Accountability* which should include acceptance of moral and ethical responsibility in their actions as Parliamentarians, their *Declaration of Pecuniary Interests, post-separation Employment of Ministers and Members, Electoral Expenses*. These are all instances of electoral costs which are currently in need of change. With Terms of Responsibility established for all parliamentarians this current situation of early retirements in breach of moral agreement would be avoided;
- i) after a search of the following documents and many others documents available on the web, I have been unable to find any document which specifically sets out the details of the obligations of a member of the House of Representatives to their electorate. The only information produced for the Members of the House of Representatives appears to be a comprehensive moral code of behavior/conduct, including terms of responsibility to their electorate and conditions of employment, including the resignation of a member during their elected term of office, *House of Representatives Practice 5th Edition*, *House of Representative, Guide to Procedures*, and *Standing Orders and Other Orders of the House of Representatives*;
- j) after a further search of the following documents and others available on the web, I have been unable to find any document which sets out in specific details the obligation of Senators to the state which elected them, with regards to a comprehensive moral code of behavior/conduct, including their terms of responsibility to their electorate and conditions of employment, including the issue of resignation of a Senator during their elected term of office. The information produced for the Senators such as *Odggers Australian Senate Practice – 11th Edition*, *Standing Orders and other orders of the Senate*, and *Senate Briefs*, do not appear to cover the issue of early retirements;

It is interesting to note that only four Australian states have separate Codes of Conduct for Ministers and Members, (McKeown 2006). All Australian parliaments have adopted registers of pecuniary interests and five have introduced codes governing the post-separation employment of ministers. Two Australian parliaments (New South Wales and Queensland) have ethics or standards mechanisms in place (McKeown 2006). This is a sad reflection on Australian Governance when the States and Territories cannot establish a Code of Conduct which is standard to all States. All of these factors should be included in an Australia wide Code of Conduct for all Parliamentarians. I refer the members to (McKeown 2006, and Brien, 1998) for more details on other Parliamentary actions with regards to Codes of Conduct and some variations thereof.

It is noted that in England the **House of Commons** and the **House of Lords** have both established Codes of Conduct as recently as recently as 1998.

To date the **Canadian Parliament** has not established a Code of Conduct as such. The Code of Conduct for Senators established in June 2003 has been changed considerably. To my reading it is not really a Code of Conduct. It has been claimed that it has become more a statement of integrity, rather than a Code of Conduct. I argue that regardless of the stand taken by other countries on this matter it is now desirable that a Code of Conduct including the above suggestions should be established forthwith as in the current environment the acceptance of moral and ethical statements no longer appears to carry much weight.

There does not appear to be a Code of Practice in use in the **Parliament of New Zealand**. They rely on their *Standing Orders, Procedural Guides*, and *Fact Sheets*.

The Parliament of the **Republic of South Africa** has a *Code of Conduct* for their Members. They also have a code for Assembly and Permanent Council Members which is far stricter than the Code for the members.

The members of the two houses of the **Indian Parliament** are different in that they rely on a *Code of Conduct for Members of Rajya Sabha* (Council of the States) whereas the Lok Sabha (House of the People) does not have a Code of Conduct. They have to rely on their *Hand Book for Members* for guidance on their behaviour.

The **Parliament of Kenya** has taken a fragmented way of covering the points which have been raised in this submission. It appears to be necessary to go to the following documents to cover all of the topics from the Parliament of Kenya: *Members Hand Book*, *The Constitution* (revised 2001), *Parliament Guide*, *Standing Orders*, *National Assembly Speakers Rules*, and the National assembly (Powers and Privileges) Act

References

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The above is my submission to the Joint Standing Committee on Electoral Matters. I have made this submission after due research in to the matters raised and believe that it is now time for consideration on establishing a Code of Conduct and that action should be taken on the above matters.

Yours sincerely

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