Dear Committee Members,

Submission to the Committee for the Review of Parliamentary Entitlements

Thank you for the opportunity to provide a submission to your review of federal parliamentary entitlements. As the Auditor-General rightly concluded, ‘fundamental reform of the overall entitlements framework is needed’. 1– this inquiry presents an crucial opportunity for proposing a blue-print for such reform.

In this submission, I begin by sketching out the legislative basis of the federal parliamentary entitlements. This is followed by a discussion of the justification for parliamentary entitlements and also the dangers they pose to the health of Australia’s democracy. I then suggest three principles that should govern such entitlements and make six recommendations for the implementation of these principles.

Of the various Australian jurisdictions, what seems to be the most complicated framework governing parliamentary entitlements is that of the Commonwealth. This framework is comprised of five separate pieces of legislation. The salary of Commonwealth parliamentarians and their electorate allowance are provided under Remuneration and Allowances Act 1990 (Cth). 2 Various other entitlements are provided under Parliamentary Entitlements Act 1990 (Cth) including office accommodation; postage allowance; and travel entitlements. 3 The regulations of this statute authorises other entitlements, 4 notably, a printing and communications entitlement. 5 Finally, there are various allowances determined by the Commonwealth Remuneration Tribunal under Parliamentary Allowances Act 1952 (Cth) and

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2 Remuneration and Allowances Act 1990 (Cth) ss 6-7, Schedules 3-4.
3 Parliamentary Entitlements Act 1990 (Cth) s 4, Schedule 1.
5 Parliamentary Entitlements Regulations 1997 (Cth) reg 3AA.
Remuneration Tribunal Act 1973 (Cth)\(^6\) with no specific principles prescribed to guide the Tribunal’s determinations.

With the provision of parliamentary entitlements (whether federally or otherwise), one question immediately arises: Why provide public funding specifically to parliamentarians? The answer to this question lies with the distinctive duties of parliamentarians. Parliamentarians are not merely successful candidates but are also holders of public office. There are two key duties of the office of parliamentarians. They are, firstly, to represent the constituents of their electorate (and not just their supporters, the members of their party or party organisation). It is this duty that informs the description of parliamentarians as a ‘Member for (name of electorate)’. Second, parliamentarians have a duty to participate in governance of the country, State or Territory, notably, through participation in Parliament. Such participation will embrace involvement in law-making, scrutiny of executive action as well as deliberation of important public issues.

Performance of these duties encompasses a range of activities, most of which require money and personnel. They require the full-time commitment of Parliamentarians. To avoid elected office being the privilege of the wealthy, adequate remuneration should be provided to the Parliamentarians themselves. Basic infrastructure like an office with adequate facilities and staff are also necessary for the performance of these duties. Communication with constituents is also a key part of discharging these duties, some of which will require funding.

It is in recognition of the public duties of Parliamentarians (and the resources that are necessary for the performance of such duties) that all jurisdictions have established parliamentary entitlements. Common entitlements include, for example, parliamentary salaries, office accommodation and facilities, travel and accommodation entitlements and the use of government vehicles.\(^7\) Commonwealth,

\(^6\) Parliamentary Allowances Act 1952 (Cth) s 4; Remuneration Tribunal Act 1973 (Cth) ss 7(1), 7(4)
\(^7\) See New South Wales Department of Legislative Council, Legislative Council Members’ Guide (April 2007); New South Wales Department of Legislative Assembly, Members’ Handbook: A guide to the support available to Members of the New South Wales Legislative Assembly (November 2008); Parliamentary Service of Queensland Parliament, Members’ Entitlements Handbook: Benefits Afforded Members and Former Members of the Queensland Legislative Assembly (current at October 2009); South Australian Legislative Council, Handbook for Members of the Legislative Council of South
State and Territory parliamentarians are also provided with a (differing) range of allowances. For example, all of them are provided with an electorate allowance which, as the name suggests, is to be used to service the needs of their electorates.\(^8\)

Whilst the provision of parliamentary entitlements has, at its base, a compelling justification, it also carries two related risks: corruption in the misuse of public resources and unfairness in politics, specifically electoral unfairness. With parliamentary entitlements, corruption in the misuse of public resources occurs when these entitlements are used for a purpose other than the performance of parliamentary duties, for example, for personal benefit of the parliamentarians or to advance the electoral position of the parliamentarian or his or her party. In the latter situation, corruption in the misuse of public resources comes hand in hand with electoral unfairness.\(^9\)

There is little doubt that the risk of electoral unfairness is inherent in the provision of parliamentary entitlements. These entitlements are provided to parliamentarians but not to their unelected competitors and, further, parliamentary activities are inseparable from campaign activities in many cases.\(^10\) The result is that various parliamentary entitlements (e.g. office, staff and electorate allowance) could be easily used to resource the campaigns of parliamentarians to the detriment of their unelected rivals.

This is hardly an insignificant risk. Various examples can be given of the use of parliamentary entitlements for campaign purposes. The NSW Independent

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\(^8\)Queensland Parliamentarians are not entitled to an electorate allowance but are provided similar allowances, namely, the general and miscellaneous allowances: Parliamentary Service of Queensland Parliament, *Members’ Entitlements Handbook: Benefits Afforded Members and Former Members of the Queensland Legislative Assembly* (current at October 2009) 5, 7. Similarly, there is no specific electorate allowance for members of the ACT Legislative Assembly. These members are, however, entitled to a similar allowance, an annual Discretionary Office allocation. For members other than the Speaker or the Leader of the Opposition, the amount of the allocation is $4,600 per annum: *Members’ Guide: Guide to services, facilities and entitlements for non-executive members and their staff* (current as at 24 October 2008) (copy of file with author).


Commission Against Corruption, for instance, found in 2003 that Malcolm Jones, while a member of the NSW Legislative Council, engaged in corrupt conduct by improperly directed a parliamentary staff officer to engage in recruitment drives.\textsuperscript{11} In Victoria, a little-commented aspect of the controversy surrounding the Brimbank City Council (which has led the entire council to be dismissed by the Victorian government) was the use of the electorate allowance by Victorian MP, George Seitz, to fund the election campaigns of various ALP candidates for local council.\textsuperscript{12} At the Commonwealth level, the printing and communication allowances have been flagrantly (ab)used to resource the election campaigns of federal parliamentarians (discussed below); a development that has coincided with the trend of an increased use of the parliamentarians’ office accommodation and facilities during election periods.\textsuperscript{13}

In addressing the cognate dangers of corruption in the misuse of public resources and electoral unfairness, three principles should be followed:

- Principle One: The rules governing parliamentary entitlements should be accessible and transparent;
- Principle Two: These rules should clearly restrict the use of parliamentary entitlements to the discharge of parliamentary duties and prevent their use for electioneering;
- Principle Three: The amount of parliamentary entitlements should not be such so as to confer an unfair electoral advantage upon parliamentarians

The rationale for Principle One is clear: use of public funds should be transparent and publicly accountable. Principle Two goes to il/legitimate use of parliamentary entitlements. Principle Three recognises that, in the context of parliamentary activities being sometimes inseparable from campaign activities, Principle Two is insufficient to prevent electoral unfairness, hence, the need to ensure that amount of parliamentary entitlements does not unfairly advantage parliamentarians.

**Recommendation One:** The following principles should be codified in the statute governing federal parliamentary entitlements:

- Principle One: The rules governing parliamentary entitlements should be accessible and transparent;
- Principle Two: These rules should clearly restrict the use of parliamentary entitlements to the discharge of parliamentary duties and prevent their use for electioneering;
- Principle Three: The amount of parliamentary entitlements should not be such so as to confer an unfair electoral advantage upon parliamentarians

When the current arrangements governing federal parliamentary entitlements are evaluated against these principles, we see that they fall seriously short of these benchmarks.

**Principle One: The rules governing parliamentary entitlements should be accessible and transparent**

The rules governing federal parliamentary entitlements comprise the relevant legislation and determinations of the Remuneration Tribunal. They also include the handbook that is issued to federal parliamentarians on these entitlements. The relevant legislation and determinations are clearly accessible and transparent but the same cannot be said of the handbook.

**Recommendation Two:** The handbook on parliamentary entitlements issued to parliamentarians be made publicly available.\(^{14}\)

Principle One has also been breached through the development of opaque conventions, arguably, in breach of the formal legal rules. In its comprehensive report on these entitlements, the Auditor-General found that their use was influenced by two documents, ‘31 Statements’ and ‘42 Questions and Answers’, which purported to capture accepted practices.\(^{15}\) These documents, as the Auditor-General curtly


observed, were ‘not made public’.\textsuperscript{16} Moreover, the legal advice the Auditor-General received indicated that application of these documents to the use of the Printing Entitlement resulted in significant use outside the entitlement.\textsuperscript{17}

\textit{Recommendation Three:} Any conventions relating to the use of federal parliamentary entitlements should be made public.

\textit{Principle Two: These rules should clearly restrict the use of parliamentary entitlements to the discharge of parliamentary duties and prevent their use for electioneering}

This principle suggests four elements:

- a general policy that parliamentary entitlements only be used for parliamentary duties;
- a clear elaboration or definition of such duties;
- a general prohibition that these entitlements be used for electioneering; and
- specific rules elaborating upon this prohibition.

None of these elements currently apply to federal parliamentary entitlements. There is no general policy that these entitlements be only used for parliamentarian duties; nor is there a general prohibition against their use for electioneering. With a handful of entitlements (for instance, the postage allowance), there is an injunction that they be used for 'parliamentary or electorate business (other than party business)').\textsuperscript{18} Despite this restriction, these entitlements remain quite malleable and can fund electioneering activities. This malleability is due to the fact that the legislative instruments do not define either 'parliamentary or electorate business' or 'party business'. So it is that there is no statutory delineation between legitimate and illegitimate use. This is despite calls from bodies like the Australian National Audit Office for clearer definition and guidance.\textsuperscript{19} With some ambiguity, a liberal view has been taken of


\textsuperscript{18} \textit{Parliamentary Entitlements Act 1990} (Cth) sch 1, pt 1, item 3.

‘parliamentary or electorate business’ resulting in various forms of electioneering coming within the phrase. One stark example is the acceptance that the use of electorate staff to aid the re-election of incumbent parliamentarians comes within this phrase, thereby, constituting a permissible use of such entitlements.

Not only do the arrangements governing Commonwealth parliamentary entitlements not prohibit their use for electioneering and campaigning purposes, they have gone further by officially sanctioning such use. One of the most egregious examples is provided by the printing entitlement.\(^{21}\) Prior to October 2009, the *Parliamentary Entitlement Regulations 1997* (Cth) allowed the Special Minister of State to approve further categories of printed material that can be distributed to constituents through use of this entitlement.\(^{22}\) In 2004, approval was given by the then Minister to use this entitlement to print ‘postal vote applications and other voting information’.\(^{23}\) In its report on federal parliamentary entitlements, the Auditor-General found that such use of the printing entitlement often resulted in postal vote applications being accompanied by campaign material for the party.\(^{24}\) Worse, such use gave rise to obvious waste - 16.5 million applications printed in this way, 2.9 million more postal vote applications than number of voters enrolled.\(^{25}\) The Auditor-General found a similar (ab)use of the printing entitlement to print ‘How to Vote’ cards (included as ‘other voting information’)\(^{26}\) with the format of these cards standardised according to the party to which member belong in order to reflect key elements of the party’s election campaign strategy.\(^{27}\)

Here, the officially sanctioned use of the printing entitlement for particular electioneering purposes (i.e. printing ‘postal vote application and other voting


\(^{21}\) The printing entitlement has now been merged with the communications allowance: see *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AA.

\(^{22}\) *Parliamentary Entitlements Regulations 1997* (Cth) reg 3(1)(c), 3A(1)(c) (repealed).


information) intermingles with its illegitimate use for other electioneering purposes. This is clearly brought out by the Auditor-General’s analysis of items produced by printing entitlement in months leading up to 2007 federal election. It found that 74% of the analysed sample was at risk of being outside entitlement principally because of content of printed material, specifically, ‘high levels of material promoting party political interests and/or directly attacking or scorning the views, policies or actions of others, such as the policies and opinions of other parties’.  

In these circumstances, the steps the Federal Government has taken to curb the use of the printing entitlement and the communications allowance for electioneering is to be welcomed. With effect from 1 October 2009, amendments to the *Parliamentary Entitlements Regulations 1997* (Cth) have merged both allowances into one, a printing and communications entitlement, with a decrease in the amount of the entitlement. As a result, Senators are entitled to $40,000 per annum  while the annual entitlement of Members of the House of Representatives is now worth $75,000 plus an amount equal to the standard rate of postage times the number of voters enrolled in their respective constituencies. The amendments further stipulate that this entitlement ‘must only be used for parliamentary or electorate purposes and must not be used for party, electioneering, personal or commercial purposes’.  ‘Electioneering’ is defined as communication that explicitly:

- ‘seeks support for, denigrates or disparages’ ‘the election of a particular person or persons’ or ‘a particular political party or political parties’;
- ‘encourages a person to become a members of a particular political party, or political parties’;
- ‘solicits subscriptions or other financial support’.  

The ability of the Special Minister of State to approved further uses of this entitlement has been removed and also put in place is a prohibition on using the entitlement to produce how-to-vote material and limits on the number of postal vote applications.

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29 *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AC(2).
30 *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AB(6).
31 *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AA(3)-(4).
32 *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AA(11).
33 *Parliamentary Entitlements Regulations 1997* (Cth) reg 3AA(3).
that can be printed using the entitlement.\textsuperscript{34} The Federal Government has also committed to installing a more rigorous vetting and checking system within the Department of Finance to ensure that the entitlement is being properly used.\textsuperscript{35}

While welcome, the principles underlying these reforms should be extended to all other parliamentary entitlements.

\textit{Recommendation Four:} The statute governing federal parliamentary entitlements should adopt:

- a general policy that parliamentary entitlements only be used for parliamentary duties;
- a clear elaboration or definition of such duties;
- a general prohibition that these entitlements be used for electioneering; and
- specific rules elaborating upon this prohibition.

In implementing Recommendation Four, useful guidance can be drawn from the rules applying to NSW parliamentary entitlements. These rules are, firstly, based on a definition of ‘parliamentary duties’. As the NSW Independent Commission Against Corruption correctly observed, ‘(t)he concept of “Parliamentary duties” is fundamental to preventing the misuse of Members’ entitlements’\textsuperscript{36} and ‘explanation and guidance on the meaning of “Parliamentary duties” is needed because these are issues that require the exercise of judgment and the balancing of public and private responsibilities’.\textsuperscript{37}

The \textit{Parliamentary Remuneration Act 1989} (NSW) generally defines such duties as duties that attach to the office of parliamentarians including duties that parliamentarians ‘ordinarily expected to undertake, including participation in the

\textsuperscript{34} \textit{Parliamentary Entitlements Regulations 1997} (Cth) reg 3AA(10).
\textsuperscript{36} Independent Commission Against Corruption, \textit{Report on investigation into the conduct of the Hon Peter Breen MLC} (2005) 50.
\textsuperscript{37} Independent Commission Against Corruption, \textit{Report on investigation into the conduct of the Hon Peter Breen MLC} (2005) 50.
activities of recognised political parties’. The NSW Parliamentary Remuneration Tribunal has also issued guidelines on the meaning of ‘parliamentary duties’ in relation to use of additional entitlements. In guidelines that delineate the ill/legitimate use of such entitlements, the Tribunal has determined that these entitlements can be used for ‘(a)ctivities undertaken in representing the interests of constituents, but excluding activities of a direct electioneering or political campaigning nature’. The Tribunal has also elaborated upon the latter prohibition by specifying various activities as falling within its scope, for instance, funding party membership drive, fund-raising, election campaigns and pre-selection and use of electorate offices and staff for election campaigns. These guidelines are supplemented by additional ones in the New South Wales Handbook on parliamentary entitlements on the im/ permissible content of advertising financed by such entitlements.

**Principle Three: The amount of parliamentary entitlements should not be such so as to confer an unfair electoral advantage upon parliamentarians**

Parliamentary entitlements provide an enormous amount of resources to parliamentarians. For instance, in 2008-2009, the entitlements provided to federal parliamentarians was worth $331 million. Similarly, in the 1999–2000, the cost of

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38 *Parliamentary Remuneration Act 1989* (NSW) s 3. These duties include any duties prescribed by regulation to be included as well as excludes those that are prescribed by regulations to fall outside the definition; ibid.


federal parliamentary entitlements amounted to $354 million dollars.\textsuperscript{44} To get a sense of proportion, the budgets for the Australian Labor Party, the Coalition, Greens and Democrats for the three financial years of 1999, 2000–01, 2002 was less than this amount and stood at approximately $248 million.\textsuperscript{45}

There is a serious risk that these entitlements will provide an unfair electoral advantage to parliamentarians. As noted, several of these entitlements can easily (and unavoidably) be used for electioneering. This is especially the case with the electorate allowance and the printing and communication entitlement. Even if these amounts were not used for electioneering - an assumption that flies in the face of reality - the amounts involved in parliamentary entitlements are likely to confer an unfair electoral advantage upon incumbent parliamentarians. This is because the performance of parliamentary duties inseparable from campaigning activity.

Even among incumbent parliamentarians, this advantage is distributed inequitably with the Australian Labor Party and the Liberal Party reaping a disproportionate benefit. This is because their parliamentary representation would be greater than their electoral support. This can be explained by two features of Australia's electoral system. First, House of Representatives seats are single-member electorates whereas Senators are elected according to a proportional system.\textsuperscript{46} This favours the larger parties. For example, in the 2001 federal election, the Liberal Party and ALP respectively received 37.08 per cent and 37.84 per cent of the first preference votes while their share of the House of Representatives seats stood at 45.3 per cent and 43.3 per cent.\textsuperscript{47} Secondly, the number of House of Representatives members is constitutionally mandated to be twice the number of Senators.\textsuperscript{48}

In order to avoid, or at least ameliorate this risk, the following recommendations should be adopted:

\begin{itemize}
\item \textsuperscript{45} Joo-Cheong Tham and David Grove, ‘Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections’ (2004) 32(3) \textit{Federal Law Review} 397.
\item \textsuperscript{46} \textit{Commonwealth Electoral Act 1918} (Cth) ss 273 (Senate) and 274 (House of Representatives).
\item \textsuperscript{48} \textit{Commonwealth of Australia Constitution Act} s 24.
\end{itemize}
**Recommendation Five:** There should be an urgent review of the amount involved in federal parliamentary entitlements.

**Recommendation Six:** The Remuneration Tribunal, when determining the amount of federal parliamentary entitlements, should be required to ensure that the amount of such entitlements should not be such so as to confer an unfair electoral advantage upon parliamentarians.

Finally, I note that the Committee has yet to decide whether or not to make the submissions to its review public. As a general principle, submissions to public inquiries should be made public and I cannot see any reason why this review should depart from this general principle. I would therefore welcome the Committee making all submissions public (subject to securing consent of their authors).

Thank you for reading this submission.

Yours sincerely,

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