Question of Privilege: Contention as to Resignation of Mrs Manu Alamein Kopu MP
McGrath J J 10 September 1997 Chairperson of the Privileges Committee

Parliamentary privilege - whether Alamein Kopu has resigned pursuant to s 55(1)(f) of the Electoral Act 1993 - whether MP can contract out of right to leave party and stay in Parliament - estoppel and public policy

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Our Ref: CLE182/10

1. As requested I set out my views as to whether Manu Alamein Kopu has in law resigned from Parliament pursuant to s 55 of the Electoral Act 1993 ("the Act").

2. Section 55 of the Act sets out the circumstances in which the seat of any Member of Parliament ("MP") shall become vacant. More particularly, s 55(1)(f) sets out the circumstances in which the seat of a Member becomes vacant by virtue of a resignation. The key question is whether, in all the factual circumstances, Mrs Kopu has resigned her seat.

3. The following advice is predicated on the assumption that the perception of the facts put to the Committee by the Alliance is correct. A summary of the facts as asserted by the Alliance is attached as Appendix A. Many of these statements are, of course, disputed by Mrs Kopu in the evidence and submissions she has put to the Committee. It may, however, assist the Committee to consider my view as to the legal position should the Alliance's view of the facts be accepted as correct in all material respects.

RELEVANT STATUTORY PROVISIONS:

4. The key statutory provision is s 55(1)(f) of the Act, which provides:
"The seat of any Member of Parliament shall become vacant - . . .
. . . (f) If he or she resigns his or her seat by writing under his or her hand addressed and delivered to the Speaker of the House, or to the Governor-General if there is no Speaker or the Speaker is absent from New Zealand, or if the resigning Member is the Speaker."

5. The following provisions have also been identified as relevant:

5.1 Section 127, which provides for registered political parties to forward lists of candidates for election to the seats reserved for List MPs.

5.2 Section 134, which provides that where a Member's seat becomes vacant, the Speaker is to direct the Chief Electoral Officer ("the CEO") to supply the vacancy. Section 134 specifies a number of differing methods by which the Speaker is to determine that a vacancy exists as follows:

(a) If Parliament is in session (as was the case in this instance) the Speaker acts on the order of the House (s 134(3)). No method is specified by which the House is to satisfy itself that the vacancy exists. In the present case, for the reasons indicated above, the House exercised its power to refer the matter to the Privileges Committee.

(b) If Parliament is not in session, or the House has adjourned and is not due to meet again for more than 14 days, then the Speaker, if it appears to him or her that a list seat has become vacant, must cause a notice of the vacancy to be published in the Gazette (s 134(1)). If the vacancy arises through death or resignation the Speaker then directs the CEO to supply the vacancy. If, however, the vacancy arises through some other means specified in s 55 the Speaker shall, as soon as is convenient after the expiration of 10 days from publication in the Gazette, establish to his or her satisfaction whether or not the vacancy exists. The Speaker then directs the CEO to supply the vacancy (s 134(2)).

5.3 Section 137 provides that, on receipt of such a direction, the CEO shall proceed to fill the vacancy, if possible, with the highest unelected candidate on the same party list as the member whose seat has been declared vacant who is alive, is still a member of that political party, and is willing to be an MP.

THE ALLIANCE ARGUMENTS:

6. The legal arguments put forward by the Alliance appear in Mr Anderton's letter to the Speaker dated 21 July 1997, in the submissions attached to Mr Anderton's letter to the Chairperson dated 29 July 1997, and finally, in the submissions of counsel for Mr Anderton, received on 15 August 1997 and presented to the Committee on 19 August 1997 and today. The essential elements of the Alliance argument can be summarised as follows:

6.1 Section 55(1)(f) is to be interpreted in light of the purposes of the Act and in particular, the Act's key principle of proportionality, that is, that numbers in the House are to be proportional to votes cast in the election.

6.2 Interpreted in light of this principle, Mrs Kopu's letter of resignation from the Alliance, combined with her earlier written undertakings to resign from Parliament, constitute a resignation in writing under her hand within the terms of s 55(1)(f).

6.3 That resignation was "delivered to the Speaker" by Mr Anderton in his letter dated 21 July 1997. That delivery also met the requirements of the Act. There is no requirement in s 55(1)(f) that the matter be transmitted to the Speaker by Mrs Kopu.

6.4 Any contrary representations made by Mrs Kopu to the Speaker should be ignored. The Alliance had relied on Mrs Kopu's contractual undertakings. She is therefore contractually bound to resign or estopped from subsequently asserting her right to remain an MP.

6.5 Judicial observations in Peters v Collinge [1993] 2 NZLR 554 that certain party electoral pledges and commitments might not be enforceable in the Courts as a matter of public policy were not applicable under the 1993 Act, as the overriding public policy in the Act is the principle of proportionality.

MRS KOPU'S ARGUMENTS:

7. Submissions were received and evidence presented on behalf of Mrs Kopu on 6 and 13 August 1997. A supplementary written submission was received on 19 August 1997 and presented today. Mrs Kopu disputes a number of the factual contentions put forward by the Alliance. The essential elements of Mrs Kopu's legal submissions can be summarised as follows:

7.1 As a matter of legal construction, the Pledge did not govern Mrs Kopu's actions in her capacity as a List MP. Further, the nature of the agreement is such that it manifests no intention to create legal relations.

7.2 Both the Pledge and contract dated 11 & 12 July 1997 are, at any rate, legally void on grounds of public policy.

7.3 Mrs Kopu's letter to the Speaker made it clear that she did not intend to resign from Parliament. Further, there is no law preventing Mrs Kopu from resigning from the Alliance and setting up as an independent MP. If Parliament had intended that result it would have amended the section accordingly.

SUMMARY OF ADVICE:

8. Assuming that the facts are those put to the Committee by the Alliance, in my opinion, Mrs Kopu's seat has not become vacant in terms of s 55(1)(f). Mrs Kopu has not performed the positive act of resignation required by that section.

9. The contract and estoppel arguments put forward by the Alliance amount to an argument that Mrs Kopu is under a contractual obligation to resign her seat. This issue is not raised by the Speaker's referral to the Committee and further, may well fall outside the ambit of Parliamentary privilege. In any event, in my view the contractual undertakings on which the Alliance's estoppel argument is predicated are without legal effect on grounds of public policy.

10. The reasons for my advice are set out below.

REASONS FOR ADVICE:

Relevant Principles of Statutory Interpretation

11. The meaning of s 55(1)(f) is to be derived by considering the words used, read in their statutory context.

12. The relevance of wider considerations of Parliamentary policy is twofold. First, the statutory policy considerations form part of the statutory context within which the meaning of the words is to be considered. The statutory context may help to resolve any ambiguity in the statutory language. Second, if there are unintended gaps in the legislation, statements of general principle or purpose may be used to fill that gap in order to make the Act work as Parliament intended [see Northland Milk Vendors v Northern Milk [1988] 1 NZLR 530, at pp 537-538].

13. However, statements of purpose or principle, even if made in the Act itself, cannot be used to displace the plain meaning of the words used, when read in their statutory context.

The Statutory Language

14. By virtue of s 55(1)(f) a seat becomes vacant if a Member:

14.1 resigns his or her seat;

14.2 by writing

14.3 under his or her hand;

14.4 addressed and delivered to the Speaker of the House.

15. Putting to one side the express requirements of s 55 of the Act, it may be possible in certain circumstances to have a "constructive" resignation. The question of whether a particular sequence of events amounts to a resignation might then require an assessment of both the words used to convey a purported resignation, and the surrounding circumstances. The words used in s 55(1)(f) avoid these difficulties by prescribing necessary elements of a clear, unqualified and overt act of resignation. The resignation must be in writing; it must be signed by the resigning Member; and it must be addressed and delivered to the Speaker of the House.

16. The Alliance argument is that one or more of the four documents to which Mrs Kopu has put her signature (the Alliance Candidate Pledge of 29 May 1995, the further public pledge signed prior to the election, the agreement of 12 July 1997, and her letter of resignation from the Alliance dated 16 July 1997), read together, constitute a resignation in writing under her hand. It is said that these documents manifest "a clear and binding intention to vacate her parliamentary seat", which became effective on the occurrence of a stipulated future event, that is, Mrs Kopu's resignation from the Alliance. This resignation was delivered to the Speaker by Mr Anderton on 21 July 1997.

17. In my opinion none of these documents, even if read together, amount to the act of resignation in the form prescribed by the words of the Act. Furthermore, none of the three documents from which the

supposed resignation is said to be constructed are addressed to the Speaker as required by s 55(1)(f). The only document addressed by Mrs Kopu to the Speaker specifically expresses her intention to continue in Parliament.

18. The three documents described as contractual undertakings given by Mrs Kopu express an intention to resign at some future date if certain conditions are fulfilled. While they accordingly contemplate and may express a commitment to a future act of resignation, they cannot, in my view, be read themselves as such an act. "Resigns" contemplates a definite rather than a contingent action. No separate act of resignation has taken place. On the Alliance view of the facts, Mrs Kopu may have broken her promise. The legal consequences of that are discussed below. But even if that were to be accepted by the Committee, she has not fulfilled the requirements of resignation in s 55(1)(f).

19. My approach to the meaning of the words of the Act as to the circumstances in which a seat becomes vacant is supported by the Court of Appeal's approach in In re "the Awarua Seat Inquiry Act, 1897" (1897) 16 NZLR 353 and in the approach taken by the Kings Bench Division in R v Chitty 5 AD & E 608, a case relied on by the Court of Appeal. Like In re Awarua, Chitty involved the circumstances in which a bankrupt was disqualified from being elected and holding office as a borough councillor. The relevant statute provided that if a person holding the office of councillor be declared bankrupt he thereupon became disqualified. The Court was invited to find that the intention of the Legislature was to prevent uncertified bankrupts from being councillors at all. The Court disagreed and Lord Denman CJ said:
"I think that the Court would clearly not be justified in raising any inference of an intention to disqualify, where such an intention is not expressed. We are bound by what is said. The Act has said what shall be a qualification and what a disqualification."

20. In the present case, the words used in the Act point to the necessity for certain prescribed elements to be present in order to constitute an effective resignation by a Member. The ordinary meaning of the words used, for the reasons indicated above, therefore does not support the Alliance argument.
Australian Parliamentary Practice

21. Further support in Parliamentary practice for a close observance of the words of s 55(1)(f) can be derived from the approach taken in Australia to the similarly expressed corresponding provision. Section 37 of the Commonwealth of Australia Constitution Act provides:
"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."

22. The following excerpt from the Australian House of Representatives Practice illustrates the strict approach taken by the House:
"To be effective a resignation must be in writing, signed by the Member who wishes to resign, and received by the Speaker.
The receipt by the Speaker of a vocadexed facsimile of a Member's letter of resignation, the Speaker having been satisfied as to the authenticity of the facsimile, has been held to comply with these requirements. A resignation by telegram is not effective.
A resignation that is in writing signed by another person at the direction of the Member, where the Member is physically unable to sign the resignation personally but is mentally capable of understanding the nature of the resignation and of authorising that other person to sign it on his or her behalf, would meet the constitutional requirements regarding resignation, provided these facts are able to be established satisfactorily. However, strict signature should be insisted upon whenever possible in view of the importance of the question and legal advice should be sought in specific cases if the matter arises in practice."

Statutory Context

23. The Alliance also argues that the words of s 55(1)(f) are to be interpreted in the context of the key legislative purpose of proportionality.

24. Certainly, a core purpose of the Act was to introduce a proportional system of

representation to the New Zealand Parliament and this is part of the statutory context in which the words of s 55(1)(f) are to be interpreted. Furthermore, the new system of proportionality clearly alters pre-existing constitutional relationships between the electorate, political parties and individual Members.

25. However, the extent to which those constitutional relationships have been altered does not turn on the principle of proportionality in isolation and is to be established by examining the provisions of the Act itself. This indicates that the principle of proportionality is clearly subject to exceptions, partly because under the mixed member system, overall proportionality must sometimes accommodate the needs of local constituency representation. Examples are:

25.1 If a party wins more constituency seats than its allotted proportion there will be a disproportionality until the next election.

25.2 If the seat of a constituency MP becomes vacant and there is a by-election, the results of that by-election may lead to a change in the proportion of the House.

26. Consideration must also be given to whether the Act also gives expression to a countervailing constitutional principle, the Burkean notion of the independence of an MP. This principle is that MPs should be free to act independently in the House and should not be legally constrained by obligations to either their party or to the electorate. Burke's views as to the relationship of a Constituency MP to his or her constituency were quoted in the judgment of Farwell LJ in Amalgamated Society of Railway Servants v Osborne [1909] 1 Ch 163, at p 197 (Court of Appeal) as follows:
"To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience; these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution. Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You chose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of parliament."

27. The Burkean notion of independence has been one of the core constitutional principles of the Westminster Parliamentary system. There is and has long been a tension between this notion of the role of an MP and the modern role of political parties. This is especially so under a proportional representation system. It does not follow, however, that the Burkean principle is displaced by the 1993 Act. While the Act is silent on the right of an MP to cross the floor, it would be difficult to argue that, in the absence of specific statutory language, this fundamental legal right has been displaced. Indeed the argument for the Alliance acknowledges the importance of the values of free speech and of Members being able to conduct the business of the House free of legal hindrance.

28. The balance that, in my view, has been struck between these two principles under the current statutory regime is that while the principle of proportionality dominates the process by which Members are appointed to Parliament, the statutory scheme supports their freedom and independence once elected. Thus in law an Alliance MP retains the freedom to cross the floor and vote with the opposing political forces notwithstanding the fact that this would be in breach of both the Alliance nomination pledge and the principle of proportionality.

29. In my view, the ability of a List MP to resign from his or her party and remain an MP is simply a situation in which, by s 55(1)(f), the Burkean principle of independence is preferred to strict adherence to the principle of proportionality. Defection from a political party has not been made a disqualifying event under s 55. There may be legitimate questions of whether this is a desirable legislative policy. If so, that question needs to be resolved by Parliament. It cannot, however, presently be said that there is a general statutory policy whereby the principle of proportionality has displaced the principle of independence of

Members of Parliament in the Act. Nothing in the statutory context favours a departure from the plain meaning of the words used in s 55 as discussed above. Nor does the context indicate an unintended gap in the legislation coupled with a clear intent from Parliament as to how it should be filled.

Contract and Estoppel - Public Policy Issues

30. The Committee has been asked to consider whether Mrs Kopu has resigned her seat in Parliament. For the reasons expressed above, in my opinion she has not. But the Alliance advances by way of further argument that Mrs Kopu is under a contractual obligation to the Alliance to resign. This is because she contractually undertook, in the event that she resigned from the Alliance, to resign also from Parliament and the Alliance relied on that representation to its detriment.

31. In my view, the contractual and estoppel arguments raised by the Alliance are separate from, and should not be confused with, the issue of whether, in terms of s 55 of the Act, Mrs Kopu has resigned from Parliament. To do so is to confuse a private law issue of enforcement of an agreement or undertaking with the public law question of whether a vacancy in parliamentary office has occurred.

32. In addition, there is a serious question as to whether or not the contractual significance of Mrs Kopu's undertakings is a matter which falls within the ambit of Parliamentary privilege. The enforceability of contractual undertakings, even those that impact on the public law duties of members of the House, is a matter that is justiciable by the Courts [see, for example, Peters v Collinge [1993] 2 NZLR 554; and Amalgamated Society Railway Servants v Osborne [1909] 1 Ch 163 (CA), [1910] AC 87 (HL)]. In deference to Parliament, the Courts may stop short of ordering specific performance of the contract, but they are nevertheless entitled to examine its legal significance.

33. As I stated in my advice to the Chairperson dated 30 July 1997 in respect of this matter, the relationship between Parliament and the Courts is dictated by the principle of mutual restraint, that is, that Parliament and the Courts do not intrude into each other's constitutional spheres. The corollary of the proposition that the issue of contractual enforceability is justiciable by the Courts is, therefore, that it is a matter in respect of which the House should refrain from interfering.

34. Nevertheless, for the reassurance of the Committee, and in case my view as to the justiciability of this issue is not accepted by the Committee, I offer my views on the issue of contractual enforceability, treating the arguments on contract and estoppel as raising separate questions as to Mrs Kopu's legal obligations.

35. I understand the argument for the Alliance to be that Mrs Kopu is bound by contract to resign as a Member of Parliament. Assuming that there is an agreement in the form of a contract, with conditions expressed to that effect, the issue then becomes whether on public policy considerations that contract is unenforceable. The alternative argument is that in view of her undertakings, the law should estop Mrs Kopu from contending she has not resigned. This argument likewise turns on whether it would be contrary to public policy.

36. Without even considering the factual basis for the Alliance's contentions of contract or promissory estoppel, the High Court authority of Peters v Collinge [1993] 2 NZLR 554 is a formidable obstacle to this line of argument. In Peters v Collinge, Fisher J considered the effect of a contract which purported to preclude a person from exercising electoral rights and concluded that it was contrary to public policy and unenforceable. Fisher J found that a person cannot, in advance, contract out of his or her right to stand for Parliament. It is a short step to the conclusion that a person cannot, in law, contract in advance to resign membership of the House.

37. The case of Amalgamated Society Railway Servants v Osborne [1909] 1 Ch 163 (CA), [1910] AC 87 (HL) is also on point. This case concerned a trade union rule which provided for members to be levied for contributions towards the payment of salaries and maintenance allowances of MPs, who pledged to observe and fulfill the conditions imposed by the constitution of the Labour Party. One of the issues considered by the Court of Appeal was whether the MPs had entered into an agreement which involved such a sacrifice of their independence and liberty of thought and action that it was illegal and void as

against public policy. Two of the three judges thought that they had. Fletcher Moulton LJ explained his reasons as follows:

"Suppose that A. contracts with B. that he will pay the election expenses of B. and support him while in Parliament provided that B. will engaged to vote as A. directs. To my mind it is clear beyond contest that such an agreement would be void as against public policy, and this none the less though A's motives were perfectly pure and his intention was solely to use the power he thus obtained for the public good. The reason why such an agreement would be contrary to public policy is that the position of a representative is that of a man who has accepted a trust towards the public, and that any contract, whether for valuable consideration or otherwise, which binds him to exercise that trust in any other way than as on each occasion he conscientiously feels to be best in the public interest is illegal and void . . .

. . . And it is no answer to say that before or at the election he openly avowed his intention to be thus contractually fettered. The majority who elected him may be willing to permit it, but they cannot waive the rights in this respect of the minority. By our Constitution a representative is chosen by the vote of the majority, and however little the political views of the elected member coincide with those of the minority, they cannot complain. But that election is the election of a representative, and, whoever be chosen, their right remains that he shall be a representative, and not one who has contractually fettered himself in discharge of the duty of representative which he has accepted as regards the public, and not only as regards his own supporters." (CA pp 186-187)

38. On appeal to the House of Lords, four of the Lords were content to decide the case on other grounds. However the fifth, Lord Shaw, examined the constitutional issue and agreed with the two Court of Appeal judges that a contract which required an MP to place his vote and actions into subjection not to his own convictions but to the will of a Parliamentary party was fundamentally illegal and in violation of sound public policy (HL pp 114-115). Understandably, Lord Shaw's speech in this case has been strongly and persuasively relied on by Mr James Johnston and Mr Basil Keane, counsel for Mrs Kopu.

39. In 1913 the British Parliament passed the Trade Union Act 1913. This Act overturned the reasoning of the majority of the House of Lords in Osborne. They had found that a registered trade union was not entitled to apply their funds for political purposes. The Trade Union Act did not, however, effect the constitutional principle explored by Lord Shaw and the Court of Appeal, discussed above.

40. The principle in its modern form is further evidenced by the judgment of the Court of Appeal in Te Runanga o Wharekauri Rekohu v Attorney-General [1993] 2 NZLR 301, 308. In that case, the Court was concerned with a deed of settlement in relation to fishing claims between the Government and Maori negotiators By the deed the Crown agreed to introduce certain legislation. The Court held that the deed was not of legal effect. It was "a compact of a political kind, and its subject matter so linked with contemplated Parliamentary activity as to be inappropriate for contractual rights". On this formulation, the principle is one whereby the Courts refrain from interfering in Parliament's proceedings. The scope of the principle in my opinion applies to an attempt to use the law to enforce compacts of a political kind when enforcement would impact on the right or ability of a Member to continue to hold office.

41. Against this, the Alliance argue that the overriding public policy consideration is now the principle of proportionality. There is, on this approach, now no impediment to the enforcement of Mrs Kopu's contractual undertaking to resign from Parliament.

42. As indicated above, this argument overstates the place of the principle of proportionality in the Act. The extent to which the public policy considerations relied on in Osborne, relating to the freedom of individual MPs, have been displaced by the principle of proportionality can only be established by an examination of the terms of Act itself. As counsel for the Alliance concede in their written submissions, the principle of proportionality is subject to a number of exceptions in favour of the freedom of individual MPs, of which the freedom to resign from a political party and remain an MP is a prime example.

43. In my view, the same policy considerations which applied in Osborne still apply under the present law. The Act manifests an intention that MPs should be free to act independently, notwithstanding the fact that they are elected as List MPs by virtue of their place on the party's list. This independence includes the legal right to leave their party and remain a sitting Member, should conscience so dictate. An agreement

which attempts to circumvent this legal right must be seen as a political compact which is legally unenforceable on grounds of public policy. If the policy is to change, legislation is required.

44. A contract or promise which is unenforceable at law on grounds of public policy cannot be used to ground a claim in estoppel. Public policy remains a bar. This conclusion provides a further answer to the argument that Mrs Kopu is estopped from contending she has not resigned her seat.

CONCLUSION:

45. For the reasons discussed above, in my opinion, Mrs Kopu has not vacated her seat in terms of s 55(1)(f). This conclusion is consistent with the clear statutory language of s 55(1)(f) read in its statutory context, which does not invariably adhere to the principle of proportionality.

46. To the extent that the Committee is being asked to enforce a contract, it is my view that this is a matter which falls outside the ambit of Parliamentary privilege and that the House should not attempt to resolve. For the reassurance of the House, I nevertheless record my view that the various documents should rather be seen as political compacts which, as a matter of public policy, the law will not enforce in so far as they impact on a Member's right to continue to hold office.

47. If the Committee accepts my advice that the Alliance's legal argument fails, even on the most favourable view of its factual assertions, the Committee may take the view it is not necessary to decide the correct position as to whether the Alliance's factual assertions are correct.
J J McGrath
Solicitor-General

APPENDIX A

STATEMENT OF FACTS ASSUMED BY THE ALLIANCE

48. The facts alleged by Mr Anderton on behalf of The Alliance Party ("the Alliance") are as follows:

48.1 Mrs Manu Alamein Kopu stood for the Alliance at the 1996 General Election as a Constituency candidate for the Te Tai Rawhiti electorate and as a List candidate at number 12 on the Alliance List.

48.2 On 29 May 1995, prior to her nomination as an Alliance candidate and her placement on the party list, Mrs Kopu signed a document entitled the Alliance Candidate Pledge ("the Pledge"). In the Pledge Mrs Kopu undertook that should she vote against or obstruct any of the policies contained in the Alliance Election Manifesto, or leave the Alliance, she would resign from Parliament and seek a new mandate from the electorate.

48.3 The Pledge was an integral part of the Alliance's selection process for both Constituency and List candidates. Mrs Kopu's nomination as either was predicated upon her acceptance of the obligations contained within it. At the time of signing the Pledge, both Mrs Kopu and senior members of the Alliance intended that the Pledge would create legally binding relations and further, intended that the obligations contained in the Pledge were to govern them in relation to Mrs Kopu's actions as either a Constituency or List MP.

48.4 Having been selected as an Alliance Constituency and List candidate, Mrs Kopu signed a second and more public pledge in which she again undertook to resign from Parliament should she leave the Alliance. Both Mrs Kopu and senior members of the Alliance again intended this further pledge to create legally binding relations and to cover Mrs Kopu in her capacity as both Constituency and List MP.

48.5 Mrs Kopu was returned to Parliament in November 1996 as an Alliance List MP. By July 1997 it had become apparent that Mrs Kopu was having problems with her Parliamentary role. In addition, rumours had surfaced that Mrs Kopu intended to leave the Alliance.

48.6 On 12 July 1997 Mr Grant Gillon, the Alliance Parliamentary Coordinator, met with Mrs Kopu at her home in Opotiki. The object of this meeting was to offer Mrs Kopu support and to ensure that Mrs Kopu did not resign from either the Alliance or Parliament. Mr Gillon and Mrs Kopu had about six hours of discussion in the presence of her family, neighbours and Henare Heremia, a local member of Mana Motuhake. The tenor of these discussions was amicable and there was no element of oppressiveness.

48.7 Mr Gillon took with him to the meeting a type written agreement between Jim Anderton, Sandra Lee, and Mrs Kopu. In this agreement, the Alliance undertook to assist Mrs Kopu further in her transition to becoming an MP. In return, Mrs Kopu acknowledged that she would uphold her commitments to the Alliance and specifically, her commitment to resign from Parliament should she cease to be a member of the Alliance. Mr Anderton, and Ms Lee had presigned the agreement on 11 July 1997 as a gesture of goodwill and a mark of their commitment to the obligations contained within it. Mr Gillon had full authority to authorise and countersign any amendments to the agreement and to seek Mrs Kopu's signature, however the core obligations contained in paragraphs 3 and 4 of the agreement were to be non-negotiable.

48.8 At the insistence of Mrs Kopu, a number of hand written changes were made to the agreement. The second paragraph of the agreement was deleted and replaced with the words: "Represent the Maori voice in Parliament." The fourth paragraph, in which Mrs Kopu undertook to resign from Parliament should she leave the Alliance, was prefaced with the words: "On the basis of this agreement." The amended agreement was signed by Mrs Kopu and Mr Gillon and witnessed by Henare Heremia.

48.9 Mr Gillon had full authority to authorise the changes that were made to the agreement and to sign it on behalf of Mr Anderton and Ms Lee. Further, neither Mr Anderton nor Ms Lee in any way later withdrew or qualified the commitments made by the Alliance in the agreement. A meeting scheduled for Wednesday 16 July 1997 between Mr Anderton and Mrs Kopu was to welcome Mrs Kopu back to Parliament and to discuss the support and resources that would be made available to her. While some of the detail needed to be worked through, there was no question that the obligations contained in the agreement had been accepted by all the parties and that all parties to the agreement intended that the agreement would create binding and legally enforceable obligations.

48.10 On 16 July 1997 Mrs Kopu resigned from the Alliance party. The same day, she wrote to the Speaker of the House of Representatives. The key passage reads:
"I am writing to inform you that I have formally notified the leadership of the Alliance Party that I intend to continue to serve the Maori people as an Independent Maori Member of Parliament."

48.11 By relying on the obligations undertaken by Mrs Kopu in the two pledges and the agreement, in particular her undertaking to resign from Parliament should she leave the party, the Alliance has potentially lost substantial resources as well as an extra vote in Parliament.