



RESEARCH NOTE

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Parliamentarians, Outside Employment and Outside Income

Introduction

This note discusses potential and actual conflicts of interest involving Senators and Members that may arise from their participation in outside employment or receiving outside income.¹

Constitutional Arrangements

The Constitution provides scant guidance for Senators and Members in their approach to the issues of outside employment or income. In fact, it only stipulates that parliamentarians should be prohibited from the following activities:

- holding offices of profit under the crown s.44(iv)
- acting as government contractors s.44(v)
- taking fees or honoraria for services rendered to the Commonwealth or in Parliament s.45(iii).

Conventions

Particular conventions have also evolved in the past 25 years regarding the conduct of *Ministers* and their capacity to engage in outside employment or receive outside income. These include:

- resigning directorships in public companies
- resigning directorships in private companies *if* they are akin to public companies
- Ministers have been instructed not to accept retainers or income from personal exertion other than that laid down as their remuneration as Ministers and Members of Parliament.

These conventions apply solely to Ministers, and not to Members of Parliament more generally, because of Ministers' degree of political influence, the additional responsibilities they hold and their greater access to privileged and confidential information.

In 1996 Prime Minister acted in accordance with these conventions

by tabling a guide outlining appropriate ministerial conduct, regarding employment issues. This reconfirms established conventions without adding anything new.²

The Broad Ethical Standards

There are a number of ethical standards, widely accepted in the Commonwealth Parliament, that are relevant to how Senators and Members deal with issues of outside employment and income. These were defined by the Bowen Inquiry (*Public Duty and Private Interest*) in 1979, which stated that an officeholder should:

- ... avoid situations in which his [sic] private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his [sic] public duty...
- ... not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself [sic] or for any other person...
- [avoid the impression] that any person can improperly influence the officeholder or unduly enjoy his [sic] favour.
- not allow the pursuit of his [sic] private interest to interfere with the proper discharge of his [sic] public duties.³

What Senators and Members Are Expected to Do...

None of the above provides specific advice to Senators and Members in their dealings with issues relating to outside employment and income. This is because the Commonwealth Parliament does not have a code of ethics that standardises such activities. Rather, Members of Parliament are expected to look to the broad ethical standards assumed by the Australian Parliament for guidance on how they ought to respond to specific instances in which outside employment and income are involved.

The Application of these Principles

In summary, Members of Parliament, when engaging in outside employment or receiving outside income should

- avoid conflicts between public duty and private interests
- ensure that confidential information is not used to benefit private interest
- not be influenced, or seen to be influenced, by outside interests
- not allow private interests to undermine the undertaking of public duties.

According to Atkinson and Mancuso, two Canadian based academics who specialise in political ethics, a conflict of interest involves 'a situation in which private interests interfere with the discharge of public responsibilities. The public official who experiences a conflict of interest cannot convincingly claim that he [sic] judges an issue entirely on its merits.'⁴

When a Senator or Member is employed or receives income from a source outside parliament, the potential for a conflict of interest is greatly enhanced.

These conflicts of interest include:

- the use a Senator or Member's time that would be otherwise employed in parliamentary duty
- the misuse of confidential information, made available to the Member of Parliament because of their public office
- the use by a Senator or Member of his/her position in parliament to benefit an outside employer or external source of income.

In addition it is worth noting that:

- a Minister's role provides far greater scope for a conflict of interest

And a *perceived* conflict of interest requires the Senator or Member to

- demonstrate that there is no conflict of interest,

or

- to surrender their private interest.

Mechanisms to Help Senators and Members to Deal with Conflicts of Interests

In the Lower House, Standing Order 196 prohibits Members' voting when they have a direct pecuniary interest in the question before the house, excluding those of public policy. Membership of Committees is restricted in both the Houses when Parliamentarians have a personal interest (House of Representatives Standing Order 326) or a conflict of interests (Senate Standing Order 21(5)) in the Committee's business. For instance, a parliamentarian with shares in an oil company would be restricted from participating in a Committee assessing a proposed oil drilling venture.

In 1984 new standing orders were adopted in the House of Representatives incorporating the Bowen Inquiry's recommendation for a Register of Members' Interests. This is found under the House of Representatives Standing Order "Registration of Members' Interest" new Standing Order 28A.

The Senate equivalent can be found in Senate Standing Order 17(1). Although a Register of Interest for the Senate entered into debate around the same time as its House of Representative's equivalent, Standing Order 17(1) did not come into effect until 1994 after a long series of delays and disputes about the effectiveness of such a Register.

The Register of Interests for both Senators and Members are kept with the Clerks of their respective houses and are available for public scrutiny.

At times party leaders may stipulate rules to guide parliamentarians from their own party in dealing with such issues. When this occurs, it is up to the leader to ensure that these guidelines are complied with.

The Significance of Remuneration

When the Constitution was written it was taken for granted that ordinary Members of Parliament would earn a living outside of parliament, thus s48 makes reference to their *allowance* rather than a salary. By the 1950s it was widely acknowledged that the role of a parliamentarian had evolved in such a way to make it difficult for them to engage in outside work and fulfil their parliamentary duties. For this reason the *Report of the Committee of Enquiry into the Salaries and Allowances of Members of the National Parliament* (1952) asserted that ordinary members should have a *salary* that was 'a sum sufficient to enable a man to live comfortably and honourably, but not luxuriously...'⁵ From around this time, the work of an ordinary parliamentarian was considered to be full time employment.

The work of a Minister has always been considered to a full time occupation. Thus the Constitution (s66) stipulates a *salary* for Government Ministers.

The notion that the role of a parliamentarian is a full time job highlights the potential conflict of interest that arises should s/he engage in outside employment. Of particular significance is the question of time and popular perceptions of a conflict of interest. Outside work will regularly raise questions of a conflict of interest because to the external observer it can always be interpreted

(accurately or otherwise) as time that ought to be spent on parliamentary activities. The inexhaustible nature of a parliamentarian's work means that it is virtually impossible for a Senator or Member to demonstrate that there is no conflict of interest.

Conclusion

Many Senators and Members are involved in either outside employment or have an external source of income. Issues to be taken into account when assessing this activity include:

- remaining consistent with the Constitution or subsequent conventions
- avoiding a conflict of interest or a perceived conflict of interest
- when questioned, to demonstrate that no conflict of interest exists or to surrender this interests.

Past debates have focused on pecuniary conflicts of interests. The principle that a parliamentarian's job is full time, or exclusive employment, suggests that there may need to be greater consideration given to conflicts of interest that arise over the use of a parliamentarian's time.

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Views expressed in this Research Note are those of the author and do not necessarily reflect those of the Parliamentary Research Service and are not to be attributed to the Department of the Parliamentary Library. Research Notes provide concise analytical briefings on issues of interest to Senators and Members. As such they may not canvass all of the key issues.

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¹ This research note does not consider income from investments such as shareholdings.

² Hon J. Howard A guide on Key Elements of Ministerial Responsibility Canberra April 1996.

³ N.Bowen 1979 *Public Duty and Private Interest* Report of the Committee of Inquiry established by the Prime Minister on 15 February 1978, Canberra, AGPS: 31-32.

⁴ M. Atkinson and M. Mancuso 1992 'Edicts and Etiquette' Regulating Conflict of Interest in Congress and the House of Commons' *Corruption and Reform* 7: 5

⁵ Commonwealth of Australia 1952 *Report of the Committee of Enquiry into the Salaries and Allowances of Members of the National Parliament*:10.