

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
SUPPLEMENTARY BUDGET ESTIMATES 2013-2014

Finance Portfolio

Department/Agency: Department of Finance
Outcome/Program: General
Topic: Commission of Audit – Signed Protocols

Senator: Wong

Question reference number: F7

Type of question: Hansard F&PA Page 31, 19 November 2013

Date set by the committee for the return of answer: Friday, 17 January 2014

Number of pages: 8

Question:

Senator WONG: There is a direct correlation between how defensive you are and how many words you have to use! Going back to the questions. You said that the commission members have signed protocols in relation to confidentiality?

Mr Tune: Yes.

Senator WONG: Can they be tabled? You can take that on notice.

Mr Tune: I think they can, but I had better check.

Senator WONG: Have they had to sign any other documentation?

Mr Tune: There is stuff around conflict of interest and so forth, and a declaration of interests. The normal stuff that is done.

Senator WONG: Could we have a copy of all of those.

Mr Tune: I will take that on notice, as well.

Answer:

Commission members were required to sign the attached forms, which encompass potential conflicts of interest. Further declarations of interest are not required where they do not present a conflict.



OFFICIAL SECRETS ACKNOWLEDGMENT

This acknowledgment is to be completed by all persons performing work for the Department of Finance **including** those on a temporary or consultancy basis, **who will have access to, or association with**, material, documents, software, data (stored by any means), information or goods and equipment of an official, commercial-in-confidence and/or classified nature ("official information").

I, **[Name]**

of **[Address]**

understand that all official information that will be or has been acquired by me in the course of my work with the Commonwealth of Australia is the property of the Commonwealth and any such official information is not to be published or communicated to any unauthorised person in any form either during or after my work with the Commonwealth.

I understand and acknowledge that by performing services for or on behalf of the Commonwealth, I will be a Commonwealth officer for the purposes of the *Crimes Act 1914*, and that I am therefore subject to section 70 of the Crimes Act, relating to the disclosure of facts and documents by Commonwealth officers, and to the applicable penalty.

I also acknowledge that I am subject to the *Criminal Code Act 1995*, including, but not limited to, those provisions set out in the attachment.

I have read and understood the attachment to this Acknowledgment.

Dated this day of October 2013

Signature

Witnessed by

(Signature)

.....
(Name in BLOCK LETTERS of Witness)

Under subsection 3[1] of the *Crimes Act (1914)*, a "Commonwealth Officer" **includes**:

- (a) a person appointed or engaged under the *Public Service Act 1999*; and
- (b) for the purpose of section 70, a person who, although not holding office under, or employed by, the Commonwealth, a Territory or a public authority under the Commonwealth, performs services for or on behalf of the Commonwealth, a Territory or public authority under the authority of the Commonwealth.

The following is a summary of some relevant *Crimes Act 1914* offences and penalties:

Section 70 of the Crimes Act 1914	The unauthorised disclosure of information	Penalty – imprisonment for 2 years
Section 79 of the Crimes Act 1914	The unauthorised communication of official secrets	Penalty - imprisonment for 7 years

The following is a summary of some relevant offences and penalties under the Criminal Code [see the *Criminal Code Act 1995*]:

Section 90.1 of the Criminal Code	Espionage and similar activities	Penalty – imprisonment for 25 years
Section 131.1 of the Criminal Code	Theft	Penalty – imprisonment for 10 years
Section 132.1 of the Criminal Code	Receiving stolen property	Penalty – imprisonment for 10 years
Section 132.6 of the Criminal Code	Making off without payment	Penalty – imprisonment for 2 years
Section 132.7 of the Criminal Code	Going equipped for theft or a property offence	Penalty – imprisonment for 3 years
Section 134.1 of the Criminal Code	Obtaining property or a financial advantage by deception	Penalty – imprisonment for 10 years
Section 134.2	Obtaining a financial advantage by	Penalty – imprisonment for

of the Criminal Code	deception	10 years
Section 134.1 of the Criminal Code	Obtaining property or a financial advantage by deception	Penalty – imprisonment for 10 years
Section 135.1 of the Criminal Code	General dishonesty, obtaining a gain, causing a loss or influencing a Commonwealth public official	Penalty – imprisonment for 5 years
Section 135.2 of the Criminal Code	Obtaining a financial advantage	Penalty – imprisonment for 12 months
Section 145.4 of the Criminal Code	Falsification of documents	Penalty – imprisonment for 7 years
Section 145.5 of the Criminal Code	Giving information derived from false or misleading documents	Penalty – imprisonment for 7 years

DEED POLL OF CONFIDENTIALITY AND CONFLICT OF INTEREST

THIS DEED POLL is made theday of2013

By [NAME] of [Address]

(the Confidant) in favour of the Commonwealth of Australia (the Commonwealth) as represented by the Department of Finance.

RECITALS

1. The Commonwealth as represented by Finance has requested that the Confidant serve on the Commission of Audit as a Commissioner (Services).
2. The Commonwealth requires the Confidant to undertake to preserve and maintain the confidentiality of information to which the Confidant will have access by virtue of their performance of the Services.
3. The Commonwealth requires the Confidant to undertake certain actions in relation to any actual or potential conflict of interest.

IT IS AGREED AS FOLLOWS:

1. Interpretation

- 1.1 In this Deed unless the contrary intention appears:

'Approved Person' means a person who has been engaged by the Commonwealth on a temporary basis to perform work for the Commonwealth Government.

'Confidential Information' means any material made available to the Confidant by the Commonwealth and includes information that:

- (a) is by its nature confidential; or
- (b) is designated by the Commonwealth as confidential; or
- (c) the Confidant knows or ought to know is confidential;

but does not include any information which:

- (d) is in the public domain; or
- (e) becomes public knowledge other than by breach of this Deed; or
- (f) is required to be disclosed by statute or court order.

'Department' means the Department of Finance.

2. Undertaking

- 2.1 The Confidant agrees that he/she shall keep secret and confidential all Confidential Information and that he will not directly or indirectly disclose to any person, other than an Approved Person, any Confidential Information.
- 2.2 The Confidant agrees not to make any other use of information contained in the Confidential Information except as it relates to performance of the Services.
- 2.3 The Confidant understands and acknowledges that any unauthorised use or disclosure of Confidential Information may make him/her liable for prosecution under the laws of the Commonwealth.

3. Survival of Undertakings

3.1 The Confidant acknowledges that the undertakings given in relation to the Confidential Information shall continue in force after the expiration or termination of this Deed.

4. Return or Confidential Destruction of Materials

4.1 The Confidant agrees to return all Confidential Information, including any copies held in the Contractor's possession, to the Commonwealth following the provision of the Services as or as otherwise directed by the Commonwealth. If requested by the Commonwealth, the Confidant agrees to arrange for the confidential destruction of all Confidential Information in their possession and provide the Commonwealth with certification that this has been carried out.

5. Conflict of Interest

5.1 The Confidant warrants that at the date of this undertaking, and to the best of his/her knowledge and after making diligent inquiry, other than those matters listed below, no conflict of interest exists, or is likely to arise in the provision of the Services.

Insert details of any actual or perceived Conflict of Interest in relation to the Commission of Audit appointment:

5.2 I will take such steps as the Commonwealth reasonably requires to resolve or otherwise deal with the conflict.

5.3 If, during the period during which the Confidant is providing the Services, any further conflict of interest arises, or appears likely to arise, the Confidant undertakes to notify the Commonwealth immediately in writing and to take such steps as the Commonwealth may reasonably require to resolve or to otherwise deal with the conflict.

6. Governing Law

6.1 This Deed shall be governed by and construed according to the law of the Australian Capital Territory.

Executed as a Deed Poll

SIGNED SEALED AND DELIVERED by:

[Name]

.....

(Signature)

in the presence of:

.....

.....

Print name

(Signature)

.....

On **(insert date)**

National Commission of Audit

Protocol for Identifying and Addressing Potential Conflicts of Interest

Each Commissioner on the National Commission of Audit (NCOA) has signed a Confidentiality and Conflict Of Interest deed poll that requires, among other things, that the person:

- (a) Identify any potential conflicts of interest that exist or are likely to arise;
- (b) Take such steps as the Commonwealth reasonably requires to resolve or otherwise deal with the conflict;
- (c) Notify in writing and take such steps as the Commonwealth reasonably requires to resolve or otherwise deal with the conflict.

Potential conflicts of interest may arise from, but are not limited to:

- professional positions;
- membership of committees or organisations;
- consultancies;
- directorships;
- participation in advisory groups;
- family and personal relationships; or
- direct or indirect financial interests, including receiving recompense in the form of cash, services or equipment from outside bodies to support research activities.

Where a conflict has been identified, the NCOA will consider an appropriate course of action, including whether the affected Commissioner should:

- (a) Remain a participant in any discussion or
- (b) Absent himself/herself from the meeting for the duration of the matter under consideration.

Likewise, the NCOA will determine whether the affected Commissioner should or should not receive a copy of relevant NCOA papers.