



**SENATOR THE HON SCOTT RYAN**  
Special Minister of State  
Minister Assisting the Cabinet Secretary

9:42 pm  
6/11/16  
SR

Senator the Hon Stephen Parry  
President of the Senate  
Parliament House  
Canberra ACT 2600

Dear Senator Parry,

As you are aware, on behalf of the Government, I intend to move a motion in the Senate tomorrow regarding the position of former Senator Day pursuant to section 376 of the Commonwealth Electoral Act ('the Act').

I am mindful of your obligation under section 377 of the Act to *"transmit to the Court of Disputed Returns a statement of the question upon which the determination of the Court is desired, together with any proceedings, papers, reports, or documents relating to the question in the possession of the House in which the question arises."*

For that purpose the government has assembled a statement of facts and all of those documents which appear to be relevant to the Court's consideration of the issue, as attached.

Yours sincerely,

SCOTT RYAN

6 November 2016

## Statement of Facts - Senator Day matter

1. Senator Bob Day was elected to the Senate in September 2013, with his term beginning on 1 July 2014.
2. Prior to his Senate term commencing, Mr Day advised the Department of Finance and the then Special Minister of State, Michael Ronaldson, that he did not wish to occupy the electorate office of his predecessor, Senator Don Farrell, at 19 Gillies Street, Adelaide. Mr Day advised that he instead wished to establish his electorate office at his business premises, 77 Fullarton Road, Kent Town. These premises were then owned by B&B Day Pty Ltd<sup>1</sup> (B & B Day) as trustee for the Day Family Trust<sup>2</sup>.
3. Senator Day advised the then Special Minister of State in March 2014 that he had disposed of his interest in the Fullarton Road property<sup>3</sup>, advising Finance on 5 May 2014 that the new owner was Fullarton Investments Pty Ltd<sup>4</sup>, as trustee for Fullarton Road Trust<sup>5</sup>.
4. Senator Day was advised by the then Special Minister of State on 9 October 2014 that he would be permitted to establish his electorate office at 77 Fullarton Road, Kent Town, subject to a number of conditions, including that there was no net cost to the Commonwealth, that Senator Day was responsible for fit out costs and that rental payments would not be made until 14 August 2016 or such time as the office of former Senator Don Farrell was sub leased.<sup>6</sup>
5. Sale documents reveal the sale of 77 Fullarton Road was executed on 4 September 2014, with the purchase price being \$2.1 million<sup>7</sup>. No money was paid from Fullarton Investments Pty Ltd at the time to the vendor. A vendor finance agreement from December 2014 reveals that Fullarton Investments Pty Ltd<sup>8</sup> owed B & B Day \$2.1 million for the sale of the building.<sup>9</sup>
6. In October 2014, the previous mortgage held by B & B Day was discharged by the National Australia Bank and a new mortgage was registered over the 77 Fullarton Road property.<sup>10</sup> Under the terms of the Facility Agreement, B & B Day still remained liable with an agreement or understanding in place that amounts payable were to be arranged or approved by B & B Day.<sup>11</sup>
7. Senator Day moved into his electorate office in April 2015, however, no rental payments were made as the office at 19 Gillies Street had not been sub-let.

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<sup>1</sup> An ASIC company search of B & B Day Pty Ltd is attached – Document 14

<sup>2</sup> The Day Family Trust Deed is attached - Document 1

<sup>3</sup> Copies of correspondence between Senator Day and the then Minister, Michael Ronaldson, from 2014 are attached – Document 3

<sup>4</sup> An ASIC company search of Fullarton Road Investments Pty Ltd is attached – Document 15

<sup>5</sup> The Fullarton Road Trust Deed is attached – Document 2

<sup>6</sup> A Heads of Agreement signed in February 2015 is attached – Document 7

<sup>7</sup> The sale agreement is attached – Document 4

<sup>8</sup> A management report for Fullarton Investments Pty Ltd for 2014/15 is attached – Document 8

<sup>9</sup> The vendor finance agreement is attached – Document 6

<sup>10</sup> Documents outlining the transfer details are attached – Document 5

<sup>11</sup> Mortgage documents are attached – Document 10

8. A lease for the electorate office between the Commonwealth and Fullarton Investments Pty Ltd was signed on 1 December 2015<sup>12</sup>, however, no payments were due by the Commonwealth to Fullarton Investments Pty Ltd as the office at 19 Gillies Street, Adelaide had still not been sub-let.
9. On 29 December 2015, Senator Day requested that he be paid back rent from 1 July 2015, arguing that the Gillies Street office should have been sub-let by this time.
10. Senator Cormann requested on 7 January 2016 that Senator Day provide copies of evidence that he had made rental payments to Fullarton Investments Pty Ltd.
11. Despite numerous requests from the Department of Finance, Senator Day never provided any evidence that he had made rental payments on 77 Fullarton Road.<sup>13</sup> No rental payments have thus been made from the Commonwealth.
12. An election for twelve senate positions for South Australia was held on 2 July 2016. Senator Day was declared re-elected on 2 August 2016.
13. Senator Day approached the new Special Minister of State, Senator the Hon. Scott Ryan, on 4 August 2016, advising that rent had not been paid.<sup>14</sup>
14. The effect of the instruments which are outlined in this statement is:
  - a. Senator Day does not appear to have a proprietary interest in the lease, as the lease is with Fullarton Investments Pty Ltd.
  - b. The only source of income from Fullarton Investments appears to be rental payable by the Commonwealth under the lease.
  - c. Fullarton Investments Pty Ltd is dependent on the Commonwealth rental payments under the lease to enable it to pay the amounts falling due from time to time to NAB pursuant to mortgage to NAB, and pursuant to its arrangement with B & B Day.
  - d. Senator Day is a beneficiary under the Day Family Trust, the trustee of which (B & B Day) is also liable to NAB for those obligations.
  - e. Senator Day has given a guarantee and indemnity to NAB for the performance by B & B Day of its obligations under the Facility Agreement. If, as has happened, the Commonwealth does not pay the rent to Fullarton Investments effectively he has to pay.

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<sup>12</sup> A copy of the lease is attached – Document 9

<sup>13</sup> A copy of an invoice sent by Fullarton Investments Pty Ltd to the Department of Finance is attached – Document 12. The Bank account mentioned in the invoice was attributed to the name “Fullarton Nominees”. A title search from March 2016 indicates that this account is owned by Senator Day. The title search is attached – Document 11.

<sup>14</sup> Correspondence between Senator Day and Minister Ryan from August 2016 is attached – Document 13

**Documents attached:**

1. Day Family Trust Deed, 19 August 1986.
2. Fullarton Road Trust Deed, 16 December 2013.
3. Correspondence between Senator Day and the Department of Finance/Minister Ronaldson, March-October 2014.
4. Sale Agreement between B & B Day Pty Ltd and Fullarton Investments Pty Ltd, 24 April 2014.
5. Memorandum of Transfer for 77 Fullarton Road, Kent Town. 4 September 2014.
6. Vendor Finance Agreement between B & B Day Pty Ltd and Fullarton Investments Pty Ltd, 1 December 2014.
7. Heads of Agreement between Finance and Fullarton Investments, 18 February 2015.
8. Fullarton Investments Management Report, financial year end 30 June 2015.
9. Lease Agreement between the Commonwealth and Fullarton Investments for 77 Fullarton Road, Kent Town. 1 December 2015.
10. NAB Loan Documents, 25 January 2016.
11. Fullarton Nominees details, 7 March 2016.
12. Invoices from Fullarton Investments Pty Ltd, 22 March 2016.
13. Correspondence between Senator Day and Minister Ryan, 4-29 August 2016.
14. ASIC search for B & B Day Pty Ltd, 28 September 2016
15. ASIC search for Fullarton Investments Pty Ltd, 28 September 2016.