

Senate Standing Committee on Education and Employment

**QUESTIONS ON NOTICE
Supplementary Budget Estimates 2014-2015**

Agency – Fair Work Commission

Department of Employment Question No. EM1587_15

Senator O’Sullivan asked on 23 October 2014 on proof Hansard page 19

Question

FWC - Discharging obligation

Senator O’SULLIVAN: My questions now are for to take on notice. Could you provide us first with any written processes and provide copies of any of the documents that are involved in the due process of them discharging their obligation? Secondly, can you exhaust any data information that has been collated or needs to be collated that will set out information regarding declarations of conflicts or potential conflicts including, but not limited to, the date the declarations have been made; by who and to whom they have been made; and the details of the potential conflicts, sufficient for the committee to be able to make an assessment, in a general sense, of what the potential conflict was?

Ms O’Neill: I will take that on notice.

....

Senator O’SULLIVAN: In the course of this day, so as to allow colleagues to pursue this question further, is there any prospect that we could get a snappy call and a snapshot of what this very important governance process is, which you are not aware of? But you may be able to do due diligence with your people.

Ms O’Neill: I think it is unlikely, because I would want to speak to the president about it. I am not sure of her availability this morning. I am happy to take it on notice and answer promptly.

Senator O’SULLIVAN: Let me tell you, Ms O’Neill, there are any number of other people who could help you because these part-time industry members will know automatically, surely, what the process is. If they feel conflicted they ought to be able to tell you, 'We go and fill a registrar. We put the details down and we write.' It is not a question you can answer. Because you are unable to help us with due process, I am probably not in a position to pursue my line of questioning much further until that information is made available.

Ms O’Neill: How about I do my best during the break, and if I am able to I will. But I would want to speak to the president.

Senator O’SULLIVAN: At this end of the table, that is all we expect. I really appreciate the offer.

CHAIR: Thank you very much. Senator Cameron.

Senator CAMERON: Can I make a clarification on this? I am not sure what is being asked here other than that Ms O’Neill may have to stay around all day to get access to a document, and then she may come back. Is it possible that she can take that on notice and we just move on, as we normally do?

Senator Abetz: I think the landing we came to is that we are about to have morning tea and certain best endeavours will be engaged in. When we return a report will be given of the outcome of those best endeavours.

Senator CAMERON: Okay, so the witness does not have to stay.

Senator O’SULLIVAN: That was not my intention.

CHAIR: Senators still have questions. So we will suspend and come back in 15 minutes.

...

Senator Abetz: I request that Senator O'Sullivan be advised that we have some information for him. Best endeavours did prove to be fruitful during the morning tea adjournment.

CHAIR: Thank you, and thank you very much to the officers for getting that together for Senator O'Sullivan. We will advise him that there is some information that has come back from the officers.

Answer

The *Road Safety Remuneration Act 2012* (RSR Act) makes provision with respect to potential conflicts of interest. Sections 99 and 102 of the RSR Act are relevant and provide as follows:

“Section 99 Outside employment of industry members

An industry member must not engage in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties”, and

“Section 102 Disclosure of interests

- (1) This section applies if:
 - (a) a [member of the Tribunal](#) (other than the [President](#)) is dealing with, or will deal with, a matter; and
 - (b) the member has or acquires any interest (the *potential conflict*), pecuniary or otherwise, that conflicts or could conflict with the proper performance of the member's functions in relation to the matter.
- (2) The member must disclose the potential conflict to the [President](#).
- (3) If the member does so, the member may only deal, or continue to deal, with the matter with the [President](#)'s approval.
- (4) The [President](#) must direct a [member of the Tribunal](#) not to deal, or to no longer deal, with a matter if:
 - (a) the [President](#) becomes aware that the member has a potential conflict in relation to the matter (whether or not because of a disclosure referred to in subsection (2)); and
 - (b) the [President](#) considers that the member should not deal, or should no longer deal, with the matter.
- (5) To avoid doubt, subsection (4) applies to a member even if the [President](#) has previously given approval to the member under subsection (3).”

The legislation does not require a register of potential conflicts of interest to be maintained. Industry members of the Tribunal keep the President informed of their

activities in a range of ways. Information about members of the Tribunal is provided in its annual report.

The President takes information about the activities of members of the Tribunal into account in making decisions about the matters to be allocated to various members.

The President has advised that no cause for the application of the provisions set out in section 102 has arisen. In addition, no application has been made in any proceeding that a member of the Tribunal recuse themselves on the basis of actual or apprehended bias or otherwise.