

DEPARTMENT OF THE PRIME MINISTER AND CABINET

Senator the Hon John Faulkner
Special Minister of State and Secretary to Cabinet



Minister

Administration of the *Commonwealth Electoral Act 1918* (the Electoral Act)

At your request I have examined the question of whether a conflict of interests arises from your responsibility for the administration of the Electoral Act and your Presidency of the Australian Labor Party (the Party). Two factors lead me to the conclusion that no conflict exists or could reasonably be perceived to exist.

Firstly, all ministers and particularly those who have been elected following nomination by a political party, share interests in the provisions of the Electoral Act.

A Special Minister of State who is the president of a political party faces no greater risk of a conflict of interests than a Minister who is simply a member of a political party.

Secondly, the Electoral Act contains no ministerial directions power over the Australian Electoral Commission. For completeness only, I am attaching a list of powers and functions to be exercised by the Minister, as identified by PM&C.

I can confirm that there is nothing in the proposed Standards of Ministerial Ethics that would create difficulty for you in relation to the Electoral Act and your Presidency.

Comment

The only situation I have identified as having the potential to give rise to concern would be if you were required to perform specific duties under the Electoral Act as an office-holder of the Party.

As long as you are not the designated secretary or agent of the Party, however, that situation does not arise.

There might be a question raised as to the nature of any powers the Special Minister of State can exercise personally under the Electoral Act. You might comment, if required, that the Minister cannot unilaterally appoint members of the AEC; they are appointed by the Governor-General after consideration by Cabinet.

I understand the Electoral Commissioner has provided you with advice separately. The Department of Finance and Deregulation will provide policy advice on electoral matters as required.

A handwritten signature in black ink, appearing to read 'Peter Shergold'.

Dr Peter Shergold
Secretary

6 December 2007

Powers and Functions Exercised by the Minister responsible for Administration of the Commonwealth Electoral Act 1918.

- Reference of an electoral matter (a matter relating to Parliamentary elections, elections and ballots under the *Workplace Relations Act 1996* or referenda) to the AEC for consideration (section 7) – it is noted that the AEC may in any event consider and report on any electoral matter as it thinks fit.
- Determination that an AEC member may participate in deliberations or decisions of the Commission regarding a matter in which the member has a direct or indirect pecuniary interest, notwithstanding that interest (section 11).
- Receipt of various reports from the AEC, which the Minister must cause to be laid before the Parliament, including annual reports (section 17), reports on elections (section 17), determinations of redistributions of electoral boundaries (section 75), and certificates setting out the number of State and Territory members of the House of Representatives to be chosen in a general election (section 49).
- Limited powers with respect to the operation of elections:
 - the Minister may decide in writing that an electronically assisted voting trial is not to proceed (section 202AF); and
 - the Minister may authorise that an office of a Divisional Returning Officer be located outside the Division (section 38).

