

Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
Public Hearing of 15 June 2010
Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Nature of Question	Senator	Hansard Reference
Commissioner of Patents requested to table email to USPTO requesting information about the US District Court decision on the Myriad breast cancer antigen (BRCA) case	Heffernan	CA11

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Department of Innovation, Industry, Science and Research

Question

Agency: IP Australia

Topic: Senate Inquiry into gene patents

Reference: Hansard Page: CA11 on 15 June 2010

Senator HEFFERNAN—Could you table to the committee the letter that you sent them in email form?

Answer:

.



Hi XXXXXXXXX

Thank you for your prompt response to xxxxxx email inquiry. We appreciate your limitations on commenting while the matter is under adjudication but as we have limited understanding of the US judicial system we would very much appreciate your assistance in that regard. As you may appreciate this is a hot topic at our end as we have a Senate Inquiry into Gene Patenting which is about to hand down its report.

I would very much appreciate your assistance in understanding the section of the decision under the heading "E. The Constitutional Claims Against the USPTO are Dismissed" starting on page 149 and finishing 151. We take this to mean that a decision from a district court is not binding on the USPTO policy and that for a change in policy to occur the legal precedent needs to come out of a decision by a Federal court or the supreme court. Or are you in fact bound by the decision and therefore must make the necessary changes to your policy and hence practice?

Hope you can provide clarification.

cheers

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Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
Public Hearing of 15 June 2010
Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Nature of Question	Senator	Hansard Reference
Nature of amendments to Australia's patent law to comply with section 27.1 of TRIPS	Heffernan and Siewert	CA16

Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
Public Hearing of 15 June 2010
Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Question

Agency: IP Australia

Topic: Senate Inquiry into gene patents

Reference: Hansard Page: CA16 on 15 June 2010

Senator HEFFERNAN—Neither the US patent law nor Australian patent law was specifically amended to conform with 27.1 of TRIPS- is that right?

CHAIR—Could I put a further question on notice. Presumably that meant that you checked against TRIPS- that there was actually a review of our law to ensure that, if there were not changes made, it was compliant?

Answer:

The *Patents Act 1990* (the Act) was amended by the *Patents (World Trade Organization Amendments) Bill 1994* to enable Australia to ratify the Final Act embodying the results of the Uruguay Round of multilateral trade negotiations. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an integral part of the Final Act.

A number of amendments were made to the Act to ensure that it was compliant with Australia's obligations under TRIPS.

No amendments were made regarding Article 27.1 *Patentable Subject Matter* of TRIPS.

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Nature of Question	Senator	Hansard Reference
Process for appointments to the Advisory Council on Intellectual Property	Siewert	CA35

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ANSWERS TO QUESTIONS ON NOTICE
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Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Question

Agency: IP Australia

Topic: Senate Inquiry into gene patents

Reference: Hansard Page: CA35 on 15 June 2010

CHAIR—Do you provide advice to the Minister on these appointments?

Answer:

The process for appointments to the Advisory Council on Intellectual Property (ACIP) is that set out in the Department of Innovation, Industry, Science and Research's (DIISR) guidelines (copy attached) for appointments to portfolio bodies. In summary the process is as follows:

- Advertisements are placed in major State and National newspapers for expressions of interest.
- The ACIP secretariat develops a list from those who respond to the advertisements plus any further candidates identified from sources such as:
 - those set out in the DIISR guidelines,
 - the AppointWomen register maintained by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), and
 - responses to previous advertisements.

A short-list is developed, taking into account the ACIP terms of reference and the DIISR guidelines, which is forwarded to the Minister for decision.

APPOINTMENTS - PROCESS AND GUIDELINES

INTRODUCTION

These guidelines are provided to help staff in organising appointments to portfolio bodies.

Explanatory information on these guidelines is attached. The referenced documents provide advice on how appointments may be resolved. Sample documents, which can be accessed and copied, demonstrate how Executive Council papers should be completed and will facilitate the correct preparation of documents.

These guidelines contain information on:

- key elements of the appointment process
- Cabinet and Executive Council appointments; and
- the Government Boards Reporting System (*GovBoards*) which lists members of all portfolio committees and boards.

It should be noted that action to fill vacancies needs to be commenced well in advance of the actual vacancy occurring, to allow enough time for the process of selection and appointment, including full consideration by the Minister, to be completed. A sequence of submissions may be required to complete the appointment process. A checklist is provided at Attachment XI, page 42 to assist relevant areas with the major steps in the process.

To assist relevant areas, each month the GovBoards Liaison Officer (email: gov.boards@innovation.gov.au, located within the Ministerial Liaison Office (MLO) will provide Executive Officers and secretariats to the various portfolio committees with a Excel spreadsheet report, based on the information held in the *GovBoards* database requesting an update of current board members, advice on new members and notification of current vacancies.

PORTFOLIO BODIES

Portfolio bodies are defined as statutory, non-statutory, national, regional, permanent and temporary bodies, and Committees of Review whether appointed by the portfolio, Ministers, Cabinet, the Governor-General in Council or any other Commonwealth process.

This requirement covers all portfolio bodies such as boards, councils and advisory groups. The only exclusions are inter-departmental committees, Commonwealth/State Councils of Ministers, internal consultative or organisational committees (such as Equal Employment Opportunity committees and internal staff committees), a non-appointed project steering committee or a regional or State-based ad hoc advisory group with no formal membership.

APPOINTWOMEN

The Australian Government Office for Women within the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) administers the AppointWomen database which is a register that gives women an opportunity to be considered for appointment to a variety of Australian Government boards and other decision making bodies. Further information can be found on the AppointWomen website: www.appointwomen.gov.au.

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STAGE 1 - PRELIMINARY CONSIDERATIONS

ESTABLISHING A COMMITTEE

There are no formal requirements for setting up a new body, but the following considerations are relevant:

- clearly defining the purpose of the body up front has many benefits, as the purpose will influence all decisions about the body's composition, size etc. Defining the purpose up front will help you "get it right the first time", will allow everyone involved in setting up the body to have a common aim, and will help the body's accountability. You might also like to ask "is a body the best way of achieving this purpose?"
- level of approval/appointment: will depend on the purpose, but would be at least Program Manager level. If the body is to be established by legislation, there may be requirements as to appointments - the Attorney-General's Department can advise on this (see next heading below);
- have a set life for the body, after which it will be reviewed, and a decision made on whether to disband it or to continue it, possibly with changes;
- have a set term for appointments to allow membership to change;
- define requirements for membership carefully, so as not to unintentionally exclude people who could contribute; and
- carefully consider the need for ex officio appointments, as they restrict the freedom of choice for selecting members and reducing turnover.

DETERMINE WHO APPROVES APPOINTMENT

Ministerial Appointments

The senior Portfolio Minister has prime responsibility for appointments to portfolio bodies and is assisted where appropriate by other Portfolio Ministers and Parliamentary Secretaries. However, in accordance with the Prime Minister's directives of 4 September 2008 (see below) a large proportion of portfolio appointments must now be submitted to the Prime Minister for approval.

For all appointments made by the Prime Minister, Cabinet or Executive, the senior Minister's approval must first be sought.

If there is any doubt regarding the level of approval, check with GovBoards Liaison Officer located within the MLO.

Departmental or Portfolio Appointments

For appointments by Departmental or portfolio delegates, the process explained in these guidelines should be followed so that the delegate has relevant information about possible appointees, the role of the committee and the criteria for selection on which to make a decision.

Appointments to be submitted to the Prime Minister

Precise procedures are laid down by the Department of the Prime Minister and Cabinet for the process of making appointments to bodies that require Cabinet and/or Executive Council approval. Appointments must be prepared using the appropriate forms and letterhead paper and strict deadlines exist for each stage of the procedure. Where appointments are for clearance by Cabinet, they must be sent to the Prime Minister, who will himself approve, or decide to send them to Cabinet. Appointments for approval by the Governor-General must first be cleared by the Prime Minister or Cabinet.

Following a Cabinet decision of 4 September 2008, the following categories of appointments **must** be submitted to the Prime Minister in writing:

- significant full-time or part-time appointments to boards, commissions or statutory offices;
- full-time Chief Executive Officer (CEO) positions in such agencies (where the board of the agency selects the CEO, the Government should be consulted);
- first-time acting appointments in the above categories where the acting appointment is for three months or more; and
- appointments to significant non-statutory tribunals, advisory bodies and inquiries.

Appointments to be submitted to Cabinet

The Prime Minister has also requested that appointments previously considered by Cabinet should now be referred to him. He will either approve the appointment or raise it in Cabinet. Appointments should be prepared “as if” they were to go to Cabinet, and all proposals must be accompanied by the *Appointment Details* pro forma (see Attachment V, page 30). The pro forma must be completed with careful attention to detail.

The Prime Minister’s response may provide guidance for future appointments, so if there have been any appointments to the body since November 2007, check the previous responses.

Proposals must reach the Prime Minister's office at least 15 working days before the proposed Cabinet meeting at which the minister would like the appointment considered.

The Prime Minister has also requested that Ministers are also encouraged to ensure that appointments are considered well in advance of any expected board vacancies to avoid unnecessary delays in appointing relevant nominees and/or situations which would result in the expiry of an appointment in the intervening period before Cabinet’s consideration.

Contact the Cabinet Liaison Officer (6213 6326) in MLO for Cabinet meeting dates.

How to determine if an Appointment needs to be considered by the Prime Minister or Cabinet

As a general rule, if appointments to an organisation have received Prime Minister and/or Cabinet approval in the past, they would be required to follow the same procedures, unless the Prime Minister decides otherwise.

Whether an appointment to an organisation is considered significant enough to require the Prime Minister’s, or at his discretion, Cabinet approval is generally based on the following information:

1. the amount of funding involved;
2. the amount of remuneration involved;
3. If the organisation has a high profile in the media;
4. If the creation of the organisation was part of an election commitment/promise; or
5. whether there are any controversial nominees being proposed for appointment (ie: an ex Member of Commonwealth/State Parliament).

However, just because the new organisation might fit into one or more of the above categories, it does not necessarily determine whether it is significant enough to require Prime Minister and/or Cabinet approval.

For new organisations, the Minister should write to the Prime Minister and provide information about what the organisation would be responsible for, what funding is involved, the nominees that are being proposed for appointment and any other relevant details. On receipt of this letter, consultation would take place between the Prime Minister's Office, Senator the Hon Joe Ludwig's Office, the relevant Division within PM&C and the Cabinet Secretariat. A decision would be made on whether approval for the appointments would require Cabinet approval or whether approval could be handled by correspondence from Senator Ludwig, on the Prime Minister's behalf.

Appointments to be submitted to Executive Council

Where legislation requires appointments to be made by the Governor-General, the appointments will be made by the Governor-General in Council (ExCo). ExCo appointments must first have the Prime Minister's or Cabinet's approval.

CHECK FOR PARTICULAR REQUIREMENTS, SENSITIVITIES AND IDENTIFY CRITICAL DATES

Before commencing work to identify candidates to fill a vacancy, you will need to determine the following:

- ***What documents establish the body?***

Identify relevant legislation, Cabinet decision, Ministerial decision or Departmental policy and then check what rules govern appointments to the body (eg. CSIRO's Act requires the Minister to consult the CSIRO Board before a Chief Executive is appointed);

- ***What is the purpose of the body?***

This will help you to determine what skills are required in the members (and what range of skills should be represented on the body).

- ***What is the term of appointment and who needs to be consulted on appointments?***

For example, particular industry groups may need to be involved.

- ***What are critical dates for this appointment?***

For example, the expiry of the previous occupant's term. If relevant, ascertain dates of Cabinet and Executive Council meetings, and the availability of the Minister to sign documents. Note that the process for Executive Council appointments can extend up to six months.

- ***Are there any particular sensitivities or other issues which need to be considered?***

For example, there may be a need for a particular interest group to be represented on the body. Note there are particular procedures for appointments to Government Business Enterprises (GBE's). In proposing appointments to a GBE board, Ministers are to follow the procedures set out in the Department of Finance and Deregulation guidelines: *Governance Arrangements for Commonwealth Government Business Enterprises - June 1997*.

- ***What, if any, entitlements are appropriate?*** (see *Remuneration* at Attachment II, page 18)

This needs to be determined in order to be clearly documented for appointees.

DEVELOP INITIAL ADVICE TO MINISTER ON THE VACANCY AND POSSIBLE APPOINTEES

This submission should outline the role and task of the committee, identify general qualities required of the appointee and suggest possible criteria for selection. Include a timeframe for completion of the appointment process.

In preparing a list of possible candidates, it is important to keep in mind the need for diversity and balance in the body's membership. While qualifications and experience are of course important, so is diversity. Ideally, membership should reflect a broad cross section of Australian society.

In selecting potential appointees, areas are encouraged to consider, together with skills and expertise, the balance of:

- Gender;

- Aboriginal and Torres Strait Islander candidates;
- candidates from ethnic backgrounds;
- geographic distribution of candidates (while not always possible to have members from all States and Territories it could be expected that members would be drawn from as many as practical);
- interest groups; and
- established identities and the need to provide development experience for new/younger people.

Consideration should be given to each individual's -

- capacity to contribute to the work of the body;
- ability to comply with financial and taxation assurances; and
- 'reasonable' lack of conflict of interest.

While staff and the Chair will have names of potential candidates from various networks, there is a need to take care that the body does not become a 'closed shop' of people known to the Chair or the person who approves the appointment.

APPOINTWOMEN

The Australian Government Office for Women within the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) administers the AppointWomen database which is a register that gives women an opportunity to be considered for appointment to a variety of Australian Government boards and other decision making bodies. Further information can be found on the AppointWomen website: www.appointwomen.gov.au. This provides a source of women candidates who are keen to make a difference in government decision making processes.

The Government is committed to improving the gender balance of representation on boards and decision making bodies and AppointWomen should be accessed when considering appointment when vacancies arise.

STAGE 2 - IDENTIFYING APPOINTEES

ESTABLISH SELECTION CRITERIA AND A LIST OF POSSIBLE APPOINTEES

To assist the approval process, it is important to establish selection criteria, suitable to the work of the committee, to allow for the assessment of the relative merits of potential appointees. Discussions should be held with the Minister's office to establish selection criteria for the vacancy and to develop a list of possible appointees.

The Minister normally requires a number of nominations of comparable quality from which to choose. The Prime Minister has stressed the desirability of replacing office-holders by new appointees when they reach the end of their term. A decision to reappoint particular members would therefore need to be carefully considered. Providing incomplete information to the Minister could cause considerable delays to the process.

OBTAIN ANY NECESSARY CLEARANCES

It may be necessary to obtain clearances for an appointment from other organisations. Clearances may be required from:

- the portfolio Minister, depending on the particular appointment;
- other relevant Ministers - when proposing to appoint officers employed in another portfolio;
- the Public Service Commissioner - on higher level full time statutory appointments;
- the Minister for Families, Housing, Community Services and Indigenous Affairs - on all appointments with implications for the Aboriginal and Torres Strait Islander communities;
- the appropriate State Minister - when the proposed candidate is employed by a State Government department or authority
 - especially where the proposed appointment does not require the candidate to resign from their State government position; and
- Department or Agency Head
 - If it is proposed to appoint a person employed in another Department or agency, clearance from the relevant Departmental or Agency Head must be obtained before finalising the appointment. This applies to both Federal and State/Territory employees.

The candidate should not be approached before the clearance. Letters seeking clearances from the relevant authority should note this.

OBTAIN WRITTEN AGREEMENT FROM THE MINISTER'S OFFICE TO APPROACH POSSIBLE APPOINTEES

It is usual to seek the candidate's permission to be nominated for the position. Approaches may also be required to obtain additional curriculum vitae information and to ascertain willingness to serve. Caution should be exercised when approaching possible candidates, ensuring they are not misled into believing they have already been chosen for the appointment.

In the case of appointments requiring the Minister's approval or endorsement, written authorisation to approach prospective appointees (or re-appointees) is to be obtained from the Minister's office **before** any contact is made.

OBTAIN PERSONAL ASSURANCES – *PRIVATE INTEREST DECLARATION*

Prior to any appointment being finalised, the probable appointee must provide assurances as to their personal financial affairs and that there is no potential conflict of interest. The candidate should sign a *Private Interests Declaration* (see Attachment IV, page 29).

The *Private Interests Declaration* seeks to emphasise the expectation that candidates for significant government appointments should not have any real or perceived conflicts between their private interests and proposed public responsibilities. A short questionnaire, together with the established 'no conflict of interest' assurance, will help inform the Prime Minister, and Cabinet Ministers where appropriate, when candidates are being considered for appointment.

The document package for any significant appointment or reappointment now comprises:

- a letter from the Minister or Parliamentary Secretary outlining the proposal;
- for each proposed appointee:
 - a *Private Interests Declaration*;
 - a completed Appointment Details form;
 - a current 1-2 page Curriculum Vitae; and
- an up-to-date membership list, including the proposed appointee(s).

PLEASE NOTE:

1. The introduction of the new *Private Interests Declaration* in no way reduces the existing obligation to carry out standard background checks before candidates are nominated to the Prime Minister, nor does it preclude any additional information being sought by the nominating minister on a case-by-case basis.
2. Special arrangements continue to apply in relation to judicial and quasi-judicial appointments. A nominee for such an appointment must also be provided with a *Private Interests Declaration*. Because of the constitutional separation of executive and judicial power it would, however, be inappropriate to seek undertakings in relation to future situations (thus, it would not be expected that Question 9 or the second paragraph of the assurance at the bottom of the questionnaire would be completed in these cases).

The candidate should be provided with a copy of relevant legislation, terms of reference, guidelines, plans, background reports and workload information (if available) together with remuneration details, if appropriate, so that the candidate has a clear idea of the roles, responsibilities and work of the body.

The *Bowen Committee Report Code of Conduct* (Attachment III, page 27) should be provided to new appointees. While this has no legal status, it was accepted by the Government in 1979, and has been generally accepted by successive governments. It would be helpful for appointees who are not familiar with government, as it would clarify the ethical standards expected of them.

LOBBYIST ACTIVITIES

The Lobbying Code of Conduct and the Register of Lobbyists came into force on 1 July 2008. The Code and Register are intended to promote trust in the integrity of government processes and ensure

that contacts between lobbyists and government representatives are conducted in accordance with public expectations of transparency, integrity and honesty.

Although appointments being considered by the Cabinet (significant appointments) are required to fill out a private interests declaration form (see page 29), there is currently no private interests declaration form for non-Cabinet appointments.

To ensure that the Portfolio maintains public confidence and expectations of transparency, integrity and honesty, all contact between lobbyists and government representatives must be conducted in accordance with those expectations. Lobbyists and government representatives are expected to comply with the requirements of the Lobbying Code of Conduct in accordance with their spirit, intention and purpose.

Accordingly, to ensure that any conflicts of interest (real or apparent) with Portfolio Government Board appointees are identified and properly managed, we as a Portfolio need to ensure that any conflicts of interest that might arise in relation to the office that they hold and their third party lobbying activities are appropriately managed.

As such all Portfolio Government Boards appointees should complete a private interests declaration form that incorporates the below question on lobbyist activities (which is copied directly from the Cabinet appointments form).

Are you a lobbyist registered on the Australian Government’s Lobbyists Register or the register of a state or territory?	Yes/No
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Further information on the Lobbying Code of Conduct can be found at the following link:
<http://lobbyists.pmc.gov.au/lobbyistsregister/index.cfm?event=contactWithLobbyistsCode>

STAGE 3 - FINAL APPROVAL

The senior Portfolio Minister has prime responsibility for appointments to portfolio bodies and is assisted where appropriate by other Portfolio Ministers and Parliamentary Secretaries. For all appointments made by the Prime Minister, Cabinet or Executive Council, the senior Minister's approval must be sought before forwarding any documentation to the Prime Minister.

APPOINTMENTS BY MINISTERS

Submissions to the Minister recommending an appointment to a committee should:

- provide relevant background information on the role and history of the body;
- identify the preferred appointee, include CV;
- set out the selection criteria used to assess possible appointees;
- set out the reasons for the proposed appointment against the criteria/qualities needed for the position;
- contain an instrument of appointment;
- contain a draft *letter to appointee*; and
- contain a *press release* (if appropriate).

APPOINTMENTS BY PRIME MINISTER/CABINET

For appointments by the Prime Minister and Cabinet, the Minister is required to write to the Prime Minister with details of the selection process. A submission to the Minister should be prepared which recommends endorsement of the appointment and contains a draft letter to the Prime Minister about the appointment. Appointments made by the Minister for Small Business and Tourism will have to be cleared by the Portfolio Minister. Appropriate briefing should be prepared for the Portfolio Minister.

The letter to the Prime Minister should commence - "I am writing to ask you to approve, or to raise for consideration in Cabinet the appointment of" and should include the following information:

- outline the position to be filled and the role and tasks of the committee/board;
- the qualities/criteria needed of the appointee - draw on the need to balance appointee's skill and experience against existing members' expertise;
- details of the preferred appointee including comment on particular aspects of the proposed appointment - for example, qualifications for the job, age of nominee, urgency of making the appointment, or sensitivity, including likely public reactions;
- the reasons for the proposed appointment against the criteria/qualities;

Note: If the Minister recommends re-appointment, particular justification for doing so should be included.

- the date and term of the proposed appointment - where the term is shorter than the maximum prescribed by legislation, the reason for this should be stated;
- the name of current office holder not being reappointed, if applicable, and the reasons;

- whether the position has been advertised and if not, the reason for that decision; and
- results of consultation with interested ministerial and other colleagues, if applicable, and results of consultation with the States, if the appointee is a State Government employee.

The letter to the Prime Minister is to also include, as attachments:

- a *Private Interests Declaration* (see Attachment IV, page 29);
- the completed *Appointment Details* pro forma, (see Attachment V, page 30);
- a current 1-2 page CV of proposed appointee (see sample at page 34); and
- an up-to-date membership list, including the proposed appointee(s) (see sample at Attachment XII, page 44).

This letter must be received by the Prime Minister at least ten working days before the Cabinet meeting. The letter is to be marked Cabinet-in-Confidence.

For further information on appointments by the Prime Minister/Cabinet, please contact Bill Burdorf in the Cabinet Secretariat within the Department of the Prime Minister and Cabinet on telephone 6271 5318.

EXECUTIVE COUNCIL APPOINTMENTS

Prior to the submission of papers to Executive Council, approval for an appointment must be obtained from the Prime Minister or Cabinet. The process to be followed should be the same as set out above in the section on APPOINTMENTS BY PRIME MINISTER/CABINET.

Whilst awaiting Prime Minister's approval, the opportunity exists to develop and clear draft Executive Council papers with the Executive Council Secretariat which is located within the Department of the Prime Minister and Cabinet (telephone 6271 5778). The Executive Council Handbook and Meeting dates are available on the Innovation Intranet (search under EXCO). Check availability of Minister to sign final papers.

Following Prime Minister's approval and clearance of draft ExCo papers through the ExCo Secretariat, submit the required ExCo papers to the Minister for approval. These papers include:

- ExCo minute (Minister to sign);
- Instrument of appointment (Minister to sign);
- Explanatory memorandum (Minister to initial each page, including any attachments); and
- CV of proposed appointee (Minister to initial each page).

Documents are then sent to the Minister for signature. Minister signs Executive Council Minute, Instrument of Appointment, and initials Explanatory Memorandum (plus attachments) and Curriculum Vitae. Documents should be flagged for signing and initialling in the appropriate places.

The Executive Council Minute is prepared using a template supplied by the Department of the Prime Minister and Cabinet. There is a template for each Minister. A sample of the ExCo document is at Attachment VI, page 31.

When approved and signed by the Minister, the documents are returned to the Department and the original and five copies are forwarded to the ExCo Secretariat. Please note that ExCo documents should be clipped not stapled.

With rare exceptions, the Executive Council Secretariat will not accept late appointment documents. Deadlines must be adhered to if appointments are to get through the necessary procedures in time. ExCo also has very strict criteria for the format of CVs.

ExCo appointments cannot be made retrospective. The appointments take effect from the date of signature by the Governor-General and should not be announced before that date. The Governor-General considers it a grave discourtesy to anticipate his approval.

For assistance with Executive Council appointments, refer enquiries to the ExCo Secretariat within the Department of the Prime Minister and Cabinet on 6271 5778.

STAGE 4 - NOTIFICATION OF APPOINTMENT

ADVISE APPOINTEE AND ANNOUNCE APPOINTMENT

Once approval by the Prime Minister, Cabinet or ExCo is received (if appointment is Prime Minister/Cabinet level), prepare a brief to the Minister with the following attachments:

- instrument of appointment (if appropriate);
- draft letter from Minister to appointee advising of the appointment;
 - detailing conditions of the appointment, including its term and remuneration (if any); and
 - including the *GovBoards Person Details form (Form C)* (Attachment X, page 43 for the appointee to complete and return.
- draft press release (if appropriate consult the Marketing and Communications Section) attaching the following:
 - high resolution photographs of the appointees, preferably in a range of settings. This should be a well-posed portrait as a minimum, but include where possible, the appointee pictured in the context of the role to which they have been appointed. A head and shoulders picture should be avoided.
 - a short biography that outlines the appointee's background relevant to the appointment.
 - an indication of whether the appointee is comfortable contacting and working with the media.

Appointees should be aware that the information provided will be given to the media by the Minister's office and that they may be contacted by the media.

Where a number of appointments are to be made, the media release should be accompanied by brief biographical details of candidates, generally restricted to a paragraph about their current role or the relevance of their appointment.

If you have any queries on the above arrangement contact the Corporate Media and Communications team on (02) 6213 7157. You can also refer to the Communication guidelines available on the intranet through the following link:

<http://innovationcentral/Support/Communications/Media/Pages/MediaReleases.aspx>

Public announcements about any appointment should not be made until after confirmation of the decision by the Minister, Prime Minister, Cabinet or Executive Council has been sighted and announcement approved.

Should there be any problems in the timing of announcements or accessing written confirmation of the approval, the matter should be raised with the appropriate Deputy Chief Executive Officer.

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ATTACHMENT I

SOURCES OF POTENTIAL APPOINTEES

In addition to people known to the Department, the Minister, Minister's office and the Chairperson, sources of names of potential appointees include:

- The Office of Women, Department of Families, Housing, Community Services and Indigenous Affairs manages an online database that gives women an opportunity to be considered for appointment (www.appointwomen.gov.au);
- the Australian Vice-Chancellors' Committee's 'Register of Senior University Women' (available at: <http://www.universitiesaustralia.edu.au/database/report.asp?a=snrwmn>);
- reference material in the Departmental Library, such as *Who's Who*. Also, *Australian Men and Women of Science, Engineering and Technology* (R 509.2294 AUS) lists some 3500 potentially suitable persons;
- the *Australian Businesswomen's Network Directory*, which lists over 400 women in all fields from all over Australia (and beyond):
 - members: <http://www.abn.org.au/site/memberDirectory>, and
 - speakers and experts: <http://www.abn.org.au/site/events-training-speakers>.
- *Chief Executive Women* which lists biographies of more than 160 women leaders in the Australian business community (available at: <http://www.cew.org.au/>); and
- The Equal Opportunity for Women in the Workplace Agency (EOWA) is a statutory authority located within the FaHCSIA portfolio. EOWA's role is to administer the *Equal Opportunity for Women in the Workplace Act 1999 (Commonwealth)* and through education, assist organisations to achieve equal opportunity for women (available at: <http://www.eowa.gov.au/>).

ATTACHMENT II**REMUNERATION FOR COMMITTEE MEMBERS**

The role of the Remuneration Tribunal is to report on or determine the remuneration, including allowances and entitlements, of members of Federal Parliament, Ministers, Judges, Secretaries of departments and most full-time and part-time holders of public office. The Tribunal was established by the *Remuneration Tribunal Act 1973*.

When to approach the Remuneration Tribunal

If an office is established under statute, determination of any remuneration falls automatically within the jurisdiction of the Remuneration Tribunal.

In general, appointments made by the Governor-General or a Minister other than under Commonwealth legislation should be referred to the Remuneration Tribunal for consideration. The need to approach the Remuneration Tribunal should be assessed on a case-by-case basis in consultation with the Minister's office.

Should there be a need to clarify the remuneration of an office holder, enquiries should be directed to the Remuneration Tribunal Secretariat within the Department of Education, Employment and Workplace on (02) 6218 3284.

How to approach the Remuneration Tribunal

To obtain a determination from the Remuneration Tribunal, the Portfolio Minister writes to the Minister for Finance and Deregulation requesting consideration of the matter. The Portfolio Minister may approach the Tribunal directly if time is short (- with a courtesy copy to the Minister for Finance and Deregulation).

The letter to the Minister for Finance and Deregulation should have attached a submission from the Portfolio Minister to the Remuneration Tribunal.

The Submission should cover some or all of the following:

- the authority for creation for the office (eg. section of relevant Act, Cabinet decision)
- if applicable, a copy of:
 - the relevant statute;
 - explanatory memorandum; and
 - second reading speech;
- the terms of reference or functions of the body;
- the way the body is expected to operate;
- the duties and responsibilities of the office (or each office);
- budget;
- staffing (gross figure plus top level structure);
- name of appointee(s) (may be on a confidential basis);
- any particular expertise required of appointees, peculiarities of the market, or other recruitment issues;
- recommended remuneration, travelling allowance and date of effect;

- relevant comparisons (particularly within the Portfolio) to support the recommended level of remuneration;
- work load (eg full time or if part time then the number of days per week or month, whether work load is made up of discrete meetings or ad hoc representation); and
- name and phone number of contact officer.

When the Minister invites members to join a board or committee, the invitation should clearly set out all conditions regarding remuneration. The Remuneration Tribunal should be contacted about the correct rates for remuneration such as sitting fees.

Appointments that do not qualify for remuneration under the Remuneration Tribunal

For appointments that fall outside the categories defined by the *Remuneration Tribunal Act 1973*, Secretariats will need to consult with the relevant Divisional Administration/Support Unit regarding expenses that may be reimbursed such as travel costs. The General Manager, or in some instances, the Manager may decide either to reimburse costs or to allow a rate of travel allowance.

Remuneration – Former Members of Federal/State Parliaments

A proposal for the appointment of a former member of a state parliament can put forward only if the prospective appointee agrees to arrangements to reduce any state parliamentary pension that he or she receives by an amount equivalent to the reduction in pension that would be made to a Commonwealth parliamentary pension if the appointment was of a former member of the Commonwealth Parliament.

The *Parliamentary Contributory Superannuation Act 1948* provides that former Commonwealth parliamentarians who are in receipt of a Commonwealth parliamentary pension and appointed to a Commonwealth ‘office of profit’ shall have their parliamentary pensions reduced to take account of the remuneration received from the office of profit (section 21B of the Act):

- a 50 cents in the dollar reduction in pension takes effect once earnings exceed a threshold of 20% of a current Member of Parliament’s salary, and ceases if the pension is halved;
 - however, this arrangement does not apply to former parliamentarians who retired before 31 March 1984; and
 - not all Commonwealth appointments are covered by the ‘office of profit’ provisions – see the relevant extracts from the *Parliamentary Contributory Superannuation Act 1948* and the *Remuneration Tribunal Act 1973* at Appendix A.

The Government seeks an analogous arrangement in respect of former state parliamentarians who are in receipt of state parliamentary pensions. Any former state parliamentarian in receipt of a state parliamentary pension who is nominated for appointment to a Commonwealth ‘office of profit’, as defined in the *Parliamentary Contributory Superannuation Act 1948*, would therefore be expected to agree to arrangements to reduce any state parliamentary pension that he or she receives by an amount equivalent to the reduction that would apply had the parliamentary pension been paid under the *Parliamentary Contributory Superannuation Act 1948*.

Where such arrangements are not possible under a state parliamentary superannuation scheme, there is precedent for agreement by the proposed appointee to reduce the level of Commonwealth remuneration by an equivalent amount, or to make other equivalent arrangements.

Accordingly, all proposals for the appointment or reappointment of a former member of a state parliament who is in receipt of a state parliamentary pension to a Commonwealth 'office of profit' are to be put forward for consideration by the Prime Minister or by Cabinet only if the prospective appointee has agreed to an arrangement to effect a reduction in remuneration similar to that which would apply to a former member of the Commonwealth Parliament in the same circumstances.

The checklist at Appendix B is designed to provide a step-by-step guide for progressing proposed appointments involving former state parliamentarians.

The Department of Finance and Deregulation has supplied the following additional advice on the operation of the office of profit provisions in respect of former Senators or Members of the Commonwealth Parliament. We hope this will assist officials who are involved in calculating whether remuneration adjustments may be required for potential appointees who are former members of state parliaments. (some of the below advice is a repeat of the above – but we have copied the Department of Finance and Deregulation advice as received into these guidelines)

Effect of the office of profit provisions

Section 21B of the *Parliamentary Contributory Superannuation Act 1948* provides that the recipient of a pension or annuity must have the pension or annuity reduced where the recipient receives remuneration from holding an office of profit under the Crown (eg an ambassadorship or appointment to a government board or office). The reduction applies to an annuity paid to the spouse of a former Senator or Member who receives a parliamentary annuity as well as to pension paid to a former Senator or Member.

The pension or annuity is reduced where the remuneration received for the office of profit exceeds a threshold of 20% of the base parliamentary salary. At the current base salary of \$118,950 per annum, the 20% threshold is \$23,800.86 per annum, or \$912.49 per fortnight. The reduction is at the rate of 50 cents for each dollar of remuneration above the threshold, with a maximum reduction of one-half of the pension payable, or that would have been payable before any commutation of pension to a lump sum (some recipients of a parliamentary pension are able to commute part of their pension to a lump sum, but the reduction in pension under the office of profit provisions is not affected by any commutation.)

If the salary payable for a government appointment is tax-free (for example in the case of the Administrator of Norfolk Island), it should be grossed up to a pre-tax equivalent for the purpose of calculating the reduction in pension or annuity under the office of profit provisions.

There is no reduction to a parliamentary pension or annuity for any *pension* payments subsequently derived from the holding of an office of profit; that is, the office of profit provisions only have effect while the recipient of a pension or annuity holds a government appointment.

EXAMPLE – A former Senator or Member receiving a parliamentary pension of \$70,000 per annum (\$2,684.93 per fortnight calculated by the formula: annual pension÷365x14) before commutation. The following table shows the steps in calculating a pension reduction if the person is appointed to an Office of Profit (OOP).

A	B = A÷313x12	C	D = (B-C)x50¢	E	F = E-D
OOP Salary (annual)	OOP Salary (f/n)	20% of \$118,950 (f/n)	Parl Pension Reduction (f/n)	Parl Pension of \$70,000 (f/n)	Reduced Parl Pension (f/n)
\$ 23,800.86*	\$ 912.49	\$ 912.49	\$ 0.00	\$ 2,684.93	\$ 2,684.93
\$ 40,000.00	\$ 1,533.55	\$ 912.49	\$ 310.53	\$ 2,684.93	\$ 2,374.40
\$ 60,000.00	\$ 2,300.32	\$ 912.49	\$ 693.91	\$ 2,684.93	\$ 1,991.02
\$ 80,000.00	\$ 3,067.09	\$ 912.49	\$ 1,077.30	\$ 2,684.93	\$ 1,607.63
\$ 93,832.83**	\$ 3,597.42	\$ 912.49	\$ 1,342.47	\$ 2,684.93	\$ 1,342.47

*In all cases, the pension reduction is triggered at an OOP salary of more than \$23,800.86 because that is more than 20% of the current base parliamentary salary of \$118,950.

**In this particular case, the pension reduction stops increasing at an OOP salary of more than \$93,832.83, because above that point the pension would be reduced by more than one half.

Any queries regarding the revised appointments procedures may be directed to Bill Burdorf (02 6271 5318) in the Cabinet Secretariat within the Department of the Prime Minister and Cabinet.

Appendix A

Parliamentary Contributory Superannuation Act 1948

21B Effect of the holding of offices of profit—reduction of certain retiring allowances and annuities

(1) In this section, unless the contrary intention appears:

.....

holder of an office of profit under the Commonwealth means:

- (a) the Governor-General;
- (b) a Justice or Judge of a federal court (other than the Federal Magistrates Court);
- (ba) a Federal Magistrate;
- (c) a person who, by virtue of an Act, has the same status as a Justice or Judge of a federal court or of the Supreme Court of a Territory;
- (d) the holder of an office of Secretary within the meaning of the *Public Service Act 1999*; or
- (e) a head of mission within the meaning of the Vienna Convention on Diplomatic Relations, a copy of the English text of which is set out in the Schedule to the *Diplomatic Privileges and Immunities Act 1967*, or a head of consular post within the meaning of the Vienna Convention on Consular Relations, a copy of the English text of which is set out in the Schedule to the *Consular Privileges and Immunities Act 1972*, being a mission sent, or consular post established, by Australia; or
- (f) the holder of a public office within the meaning of Part II of the *Remuneration Tribunals Act 1973*.

.....

Remuneration Tribunal Act 1973

Part II—Remuneration etc. for certain offices and appointments

Division 1—Preliminary

3 Interpretation

(1) In this Part, unless the contrary intention appears:

.....

public office has the meaning given by subsection (4).

.....

(4) In this Part, a reference to a public office is a reference to:

- (a) an office established by, or an appointment made under, a law of the Commonwealth (other than this Act);
 - (b) an office established by, or an appointment made under, a law of a Territory, being an office or appointment, or an office or appointment included in a class of offices or appointments, specified by the Minister, by a notice in writing given to the President, to be an office or appointment or a class of offices or appointments to which this Part is to apply;
 - (c) an appointment made by the Governor-General or a Minister of State otherwise than under a law of the Commonwealth or a law of a Territory, being an appointment, or an appointment included in a class of appointments, specified by the Minister, by a notice in writing given to the President, to be an appointment or a class of appointments to which this Part is to apply;
 - (d) an office or appointment in the service or employment of a public statutory corporation, being an office or appointment that is specified by the Minister, by a notice in writing given to the President, to be a senior office or senior appointment, as the case may be, in the service or employment of the corporation to which this Part is to apply;
 - (da) an appointment as a director of an incorporated company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by the Commonwealth, being an appointment that is specified by the Minister, by a notice in writing given to the President, to be an appointment to which this Part is to apply;
 - (e) an appointment as a director of an incorporated company all the stock or shares in the capital of which is or are beneficially owned by the Commonwealth;
 - (f) an office or appointment in the service or employment of an incorporated company referred to in paragraph (da) or (e), being an office or appointment that is specified by the Minister, by a notice in writing given to the President, to be a senior office or senior appointment, as the case may be, in the service or employment of the company to which this Part is to apply;
 - (fa) an office of member of the Aboriginal Corporation of the National Aboriginal Conference;
 - (g) an office or appointment, or an office or appointment included in a class of offices or appointments, prescribed by the regulations for the purposes of this paragraph;
- but does not include a reference to any of the following offices or appointments:
- (ga) an office of:
 - (i) Chair of the Australian Fair Pay Commission; or
 - (ii) member of the Australian Fair Pay Commission;
 - (j) an office of member of the Australian Industrial Relations Commission;

- (ja) an office of member of the Legislative Assembly, of member of the Council, or of Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*;
- (jaa) an office of member of the Legislative Assembly, of member of the Executive Council, or of executive member, within the meaning of the *Norfolk Island Act 1979*;
- (k) an office or appointment in the Australian Public Service or the Commonwealth Teaching Service;
- (l) an office or appointment the terms and conditions of which are fixed under the *Trade Representatives Act 1933*;
- (m) an office or appointment (other than the office of Director-General of Security) in the Australian Security Intelligence Organisation;
- (p) persons who are employed under section 42 of the *Naval Defence Act 1910*;
- (q) an office or appointment in the service or employment of a higher education institution;
- (r) an office or appointment in the Defence Force other than an appointment as:
 - (i) Chief of the Defence Force; or
 - (ii) Vice Chief of the Defence Force; or
 - (iii) Chief of Navy; or
 - (iv) Chief of Army; or
 - (v) Chief of Air Force;
- (ra) a principal executive office;
- (s) an office or appointment in the Australian Federal Police other than an office or appointment that is specified by the Minister, by a notice in writing given to the President, to be a senior office or senior appointment, as the case may be, in the Australian Federal Police to which this Part is to apply;
- (t) except as provided by paragraph (d) or (f), an office or appointment in the service or employment of a public statutory corporation or of an incorporated company;
- (u) an office or appointment the remuneration in respect of which is required by law to be fixed by or in consultation with, or in accordance with arrangements made with, the Government of a State or of a country other than Australia;
- (v) an office or appointment, or an office or appointment included in a class of offices or appointments, prescribed by the regulations for the purposes of this paragraph.

REMUNERATION – PROPOSED APPOINTMENT OF A FORMER MEMBER OF STATE PARLIAMENT

Did the person retire from a state parliament on or after 31 March 1984?

Yes



No



Ignore parliamentary benefits

Is he/she in receipt of a state parliamentary pension?

Yes



No



Ignore parliamentary benefits

Will he/she be appointed to a Commonwealth ‘office of profit’, as defined in s21B of the *Parliamentary Contributory Superannuation Act 1948*?

Yes



No



Ignore parliamentary benefits

Will the total remuneration for Commonwealth offices of profit held by him/her exceed the threshold of 20% of the annual base salary paid to a Commonwealth member of parliament? (Currently – as at May 2006 – the annual allowance for senators and members is \$111,150, 20% of which is \$22,230). **See the calculations below.**

Yes



No



Ignore parliamentary benefits

There are 3 options available. Before the proposed appointment is considered, the proposed appointee must agree to either reduce any state parliamentary pension that he or she receives by the amount calculated above; reduce the level of Commonwealth remuneration by an equivalent amount; or make other equivalent arrangements. **See further advice on these options below.**

A. Does the total remuneration from Commonwealth offices of profit exceed the threshold?

[Note that 'remuneration' does not include amounts paid for the reimbursement of expenses, e.g. travelling allowances]

The annual base salary paid to Commonwealth members of parliament is currently \$111,150 (as at May 2006), with the resulting 20% threshold at \$22,230. As this allowance is updated annually, you will need to check on the current rate to determine the applicable threshold. Up to date rates are available on the Remuneration Tribunal's website, www.remtribunal.gov.au

Where the proposed appointee has no other current appointments to Commonwealth offices of profit (as defined by the *Parliamentary Contributory Superannuation Act 1948*), the following examples might serve as guides:

- if the proposed remuneration is \$20,000 per annum, which is below the 20% threshold, no reduction would be triggered*;
- if the proposed remuneration is \$120,000 per annum, which is above the 20% threshold, a reduction would be triggered and calculated as: 50% of (\$120,000 – [20% of 111,150]). This would result in a reduction of \$48,885 per annum*;
- if the proposed remuneration is \$200,000 per annum, the nominal reduction of \$88,885 (50% of (\$200,00 – [20% of 111,150])) would exceed the limit of 50% of the annual allowance (\$55,575) and would be capped at \$55,575;
- if the proposed remuneration is on a per diem basis, calculations should be based on an assumed typical fortnightly period – see section 21B of the *Parliamentary Contributory Superannuation Act 1948*.*

***NOTE:** Where the proposed appointee would be the holder of more than one Commonwealth office of profit, the calculation would need to aggregate the remuneration amounts from each of the offices for the calculation of any reduction.

B. What are the options for dealing with a calculated reduction?

1. The state superannuation scheme agrees to reduce the pension payable to the proposed appointee; or
2. The Commonwealth agrees to reduce the remuneration payable to the proposed appointee; or
3. The proposed appointee arranges, with the agreement of the recommending minister, to otherwise account for the expected reduction. The Superannuation Branch of the Department of Finance and Deregulation is able to provide advice on possible arrangements.

ATTACHMENT III**BOWEN COMMITTEE REPORT CODE OF CONDUCT**

Under the system of government which operates in Australia the main legislative and executive functions of government are carried out by Ministers, Members of Parliament, public servants and statutory office holders. Each category of office holder has a duty to discharge responsibilities entrusted by the Constitution and the laws made under the Constitution according to the highest standards of conduct. The public is entitled to have confidence in the integrity of its government. Office holders may be required by the nature of public office to accept restrictions on certain areas of their private conduct beyond those imposed on ordinary citizens.

The following Code of Conduct embodies principles which should be observed by all four categories of office holders.

1. An office holder should perform the duties of his/her office impartially, uninfluenced by fear or favour.
2. An office holder should be frank and honest in official dealings with colleagues.
3. An office holder should avoid situations in which his/her private interest, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his/her public duty.
4. When an office holder possesses, directly or indirectly, an interest which conflicts or might reasonably be thought to conflict with his/her public duty, or improperly to influence his/her conduct in the discharge of his/her responsibilities in respect of some matter with which he/she is concerned, he/she should disclose that interest according to the prescribed procedures. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the office holder should disclose the further information.
5. When the interests of members of his/her immediate family are involved, the office holder should disclose those interests to the extent that they are known to him/her. Members of the immediate family will ordinarily comprise only the office holder's spouse and dependent children, but may include other members of his/her household or family when their interests are closely connected with his/her.
6. When an office holder (other than a Member of Parliament) possesses an interest which conflicts or might reasonably be thought to conflict with the duties of his/her office and such interest is not prescribed as a qualification for that office, he/she should forthwith divest himself/herself of that interest, secure his/her removal from the duties in question, or obtain the authorisation of his/her superior or colleagues to continue to discharge the duties. Transfer to a trustee or to a member of the office holder's family is not a sufficient divestment for the purpose. If immediate divestment would work significant hardship on the office holder, possession of the interest should be disclosed to colleagues or superiors and authorisation obtained for temporary retention pending divestment.
7. An office holder should not use information obtained in the course of official duties to gain directly or indirectly a pecuniary advantage for himself/herself or for any other person. In particular an office holder should scrupulously avoid investments or other transactions about which he/she has, or might reasonably be thought to have, early or confidential information which might confer on him/her an unfair or improper advantage over other persons.

8. An office holder should not:
 - (a) solicit or accept from any person any remuneration or benefit for the discharge of the duties of his/her office over and above the official remuneration;
 - (b) solicit or accept any benefit, advantage or promise of future advantage whether for himself/herself, his/her immediate family or any business concern or trust with which he/she is associated from persons who are in, or seek to be in, any contractual or special relationship with government;
 - (c) except as may be permitted under the rules applicable to his/her office, accept any gift, hospitality or concessional travel offered in connection with the discharge of the duties of his/her office. The impression should be avoided that any person can improperly influence the office holder or unduly enjoy his/her favour.
9. An office holder should be scrupulous in his/her use of public property and services, and should not permit their misuse by other persons.
10. An office holder should not allow the pursuit of his/her private interest to interfere with the proper discharge of his/her public duties.

ATTACHMENT IV

APPOINTMENTS - IN - CONFIDENCE
PRIVATE INTERESTS DECLARATION

POSITION & ORGANISATION	
--	--

Please answer the following questions by circling the reply that applies to your personal circumstances. If you answer "yes" to any question, please provide details in an attachment to this form. Please note that answering "yes" to any question does not necessarily preclude you from being appointed. Your response will be treated as confidential and will only be used for purposes connected with this proposed appointment.

1. Do you have any disclosable criminal convictions, i.e. convictions as an adult that form part of your criminal history other than those protected by the Spent Convictions Scheme (see Part VIIC of the <i>Crimes Act 1914</i>)?	Yes/No
2. Are you, or have you been, the respondent or defendant in any civil or criminal court action (including as a company director or other office holder)?	Yes/No
3. (a) Have you ever been declared bankrupt, entered into a debt agreement under Part IX of the <i>Bankruptcy Act 1996</i> (the Bankruptcy Act) or entered into a personal insolvency agreement under Part X of the Bankruptcy Act? (b) If you are in a partnership, have any of your partners ever been declared bankrupt, entered into a debt agreement under Part IX of the Bankruptcy Act or entered into a personal insolvency agreement under Part X of the Bankruptcy Act?	Yes/No Yes/No or N/A
4. Has any business or commercial enterprise for which you, or if applicable your partner(s), have had responsibility ever gone into receivership or a similar scheme or arrangement?	Yes/No
5. During the last 10 years have you, or if applicable your partner(s), been the subject of a court order in connection with monies owing to another party?	Yes/No
6. Have you ever been summonsed or charged concerning non-payment of tax or outstanding tax debts, investigated for tax evasion or defaults, or negotiated with the Australian Taxation Office over outstanding tax debts?	Yes/No
7. Have you ever been the subject of a complaint to a professional body which has been substantiated, or is currently under investigation?	Yes/No
8. Have you ever been dismissed from employment because of a discipline or misconduct issue?	Yes/No
9. Do you or your immediate family have any financial interest in any company or business, or are you or your immediate family employed or engaged by any company or business, which might have dealings with, or an interest in the decisions of, the office to which you may be appointed?	Yes/No
10. Are you a lobbyist registered on the Australian Government's Lobbyists Register or the register of a state or territory?	Yes/No
11. Is there any other information which could be relevant to your suitability for the proposed appointment?	Yes/No

ASSURANCE

I advise that to the best of my knowledge my private, business and financial interests, including taxation affairs, would not conflict with my public duties or otherwise cause embarrassment to myself or to the Government during my term of appointment.

I also undertake to advise the responsible minister should a situation arise in the future which might cause a conflict of interest with my responsibilities under this appointment.

.....
Name	Signature	Date

APPOINTMENTS - IN - CONFIDENCE

APPOINTMENT DETAILS

Proposing Minister/s (name and portfolio)	
---	--

Organisation (body to which appointment is to be made)	
Position (eg Chairman, Member, Director, Commissioner; add 'Acting' if position is being filled on acting basis)	
Is this a New Appointment or a Reappointment?	

Proposed Appointee (title, full name and post-nominals)						
Nominee's Current Position and/or Relevant Credentials						
DOB		Gender		State of Residence		Other EEO Category *

Proposed Term (specify the prospective dates, eg. for 3 years; OR from 1 December 2008 for 3 years, OR from 1 December 2008 to 30 November 2011 – (NB: retrospective dates will not be accepted)		Full time (FT) or Part Time (PT)
Remuneration Specify base salary, and total package where applicable (including any performance bonus) or per diem amount [amounts are \$p.a. or \$p.d.]		Set by (specify)

Have the 2008 selection processes for Agency Heads and Statutory Offices been followed? (if not, attach statement explaining why)		Is the Private Interests Declaration attached?	
		Is a current CV attached? (1-2 pages only)	
For all other vacancies, has the Minister addressed appointment options? (ie was the position advertised, reasons for reappointment)		Is the current Membership list of the body attached? (name, gender, position, FT/PT, state of residence, start and end dates for all current & proposed members, plus state and gender balances)	

What is the legislative authority? (Title and relevant provisions of the Act)	
Who appoints? (Governor-General, Minister or other appointing authority)	

Departmental Contact Officer		Phone	
-------------------------------------	--	--------------	--

All details must be supplied. Contact the Cabinet Secretariat on 6271 5318 if further assistance is required.

APPOINTMENTS - IN - CONFIDENCE

*Denote other EEO Categories, where known, for example as: Aboriginal (A) or Torres Strait Islander (TSI); Non-English speaking background - first or second generation (NESB 1/2); or a person with a disability (PWD))

ATTACHMENT VI

DOCUMENTATION FOR EXECUTIVE COUNCIL (ExCo)

Example of an Appointment Minute



MINISTER FOR EXPORT DEVELOPMENT

Departmental No.

Minute Paper for the Executive Council

Executive Council Meeting No.

Subject

Export Development Act 1982

Appointment of a Part-time Member of the Export Development Commission

Approved in Council

Recommended for the approval of Her Excellency the Governor-General in Council that, by instrument in the attached form and under subsection 6(2) of the Export Development Act 1982, she appoint Jane Elizabeth Doe to be a part-time member of the Export Development Commission for a period of three years.

Quentin Bryce
Governor-General

John Smith
Minister for Export Development

Filed in the Records
of the Council

Secretary to the Executive Council

Format For An Instrument Of Appointment

COMMONWEALTH OF AUSTRALIA

Export Development Act 1982

Appointment of a Part-time Member of the
Export Development Commission

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under subsection 6(2) of the *Export Development Act 1982*, appoint [name] to be a part-time member of the Export Development Commission for a period of three years.

Dated

2006

Governor-General

By Her Excellency's Command

Kim Carr
Minister for Innovation, Industry, Science and Research

Format: Explanatory Memorandum For Appointments

EXPLANATORY MEMORANDUM

Minute No. of 2006 - Minister for ABC

Subject - *XYZ Act 1997*
 Appointment of a Member to the Ferry Authority

Section 2 of the *XYZ Act 1997* (the Act) provides that Members shall be appointed to the Ferry Authority by the Governor-General. The Ferry Authority is an authority that operates ferries in the ACT.

Section 2 of the Act also provides that the maximum age for appointment of a Member is 65 and a person shall not be appointed as a Member if he or she has attained that age.

Subsection 6(2) of the Act provides that the number of members of the Authority shall not exceed five in total.

Section 7 of the Act provides that a person shall not be appointed as a member unless, by reason of experience and personality, the person is a suitable person to deal with matters relating to ferries. The Minute proposes the appointment of Mr John Smith as a Member of the Ferry Authority for a period of three years from 14 April 2005.

The proposed appointment of Mr Smith would fill a vacancy in the Woden Valley created by the retirement of Joe Bloggs.

Mr Smith has been the skipper of a ferry for 14 years. Prior to that he was a boat builder. He is aged 42 and is qualified for appointment in terms of sections 2 and 7 of the Act.¹ His proposed appointment would not exceed the prescribed number of Members allowed under subsection 6(2) of the Act.

Mr Smith's curriculum vitae is attached.

The Minute recommends that the appointment be made in the form proposed.

- | |
|---|
| <p>1. Mr Smith is qualified for appointment under section 7 of the Act by reason of his personality and experience.</p> |
|---|

.....
Minister for ABC

Authority: Section 2 of the *XYZ Act 1997*
[Minister's initials]

CV Requirements

CURRICULUM VITAE

Name: Dr Julia Ann Person
Address: 14 Any Street
COOGEE NSW 2034
Date of birth: 3 December 1958
Present position: Executive Director, xxxxxxxx

Educational and professional qualifications:

xxxxxxxxxx

Relevant experience: 2002-2004: xxxxxxxxxxxxxx
2000-2002: xxxxxxxxxxxxxx
1998-2000: xxxxxxxxxxxxxx
1995-98: xxxxxxxxxxxxxx
1990-95: xxxxxxxxxxxxxx
1983-90: xxxxxxxxxxxxxx
1970-83: xxxxxxxxxxxxxx

EEO categories:
(if available)

ATTACHMENT VII

EXPLANATORY INFORMATION ON GOVERNMENT BOARDS

One of the government's major social justice objectives is to increase the appointment rate to Commonwealth bodies of all Equal Opportunity (EO) categories. The EO categories include women, people with disabilities, Aboriginal and Torres Strait Islander peoples, and people from culturally and linguistically diverse backgrounds.

The Government Board Reporting System (*GovBoards*) provides Departments and the Government with a way of measuring progress in the appointment of all EO categories to Commonwealth bodies such as statutory and non-statutory bodies, government companies, councils and committees.

Annual reporting guidelines require Commonwealth Departments to publish statistical data relating to EO appointments. *GovBoards* is currently the only mechanism for monitoring this information across all portfolios.

As per Senate Standing Order 13 (http://202.14.81.230/Senate/pubs/standing_orders/d05.htm#13) information on new members and current vacancies on Government Boards is also required to be tabled prior to each Senate Estimates Hearing.

What is the Government Board Reporting System (*GovBoards*)?

The Government Boards Reporting System is a web-based data entry system managed by the Australian Government Office for Women. It is used to develop the Australian Government Boards report which is a statistical analysis of Australian Government boards and bodies undertaken annually.

The Government Boards Reporting System monitors terms of appointments, appointment positions, the method by which people are appointed and level of Commonwealth influence in the appointment, remuneration details and personal information of appointees on Australian Government boards and bodies.

The centralised repository sits within the IT infrastructure of FaHCSIA, and is administered by the Office for Women.

Primary purpose of GovBoards

The Whole of Government data-reports run from *GovBoards* are used to develop the Women on Australian Government Boards Report which is a statistical analysis of the representation on Australian Government boards and bodies.

GovBoards enables FaHCSIA to report to Government on several indicators by Department and across government including:

- percentage of women to men on all bodies of influence as at June 30 each year;
- percentage of women to men newly appointed during the financial year;
- percentage of women holding chair and deputy chair positions (overall and newly appointed);
- degree of government influence over new appointments of women (total/partial/none/ex-officio); and
- by whom the appointment was made (eg Minister, Cabinet etc).

In addition: Departments are able to use the system for their own needs. The system allows users to monitor terms of appointments, appointment positions, the method by which people are appointed and level of Commonwealth influence in the appointment, remuneration details and record personal information of appointees on Australian Government boards and bodies. Departments can also run a range of their own reports from *GovBoards* to assist in various reporting contexts.

To satisfy privacy considerations, Departments should be sure to notify all appointees at time of appointment that their information will be entered into *GovBoards* for cross government reporting purposes.

Data for the Government Board Reporting System (*GovBoards*)

To monitor progress in implementing the Government's policies on appointments, we need statistical information about the appointment of particular groups of people to Government bodies.

Once a new member is appointed, the forms at Attachment VIII (Form A) and IX (Form B) need to be forwarded to the GovBoards Liaison Officer in MLO or email gov.boards@innovation.gov.au. Attachment X (Form C) will need to be completed by the appointee and returned to MLO via the secretariat of the Body of which they have been appointed. Answers will be used only for the purpose of monitoring appointments. In accordance with the Privacy Act, personal details on this form will not be disclosed by the collecting department to any other department, person or organisation. Monitoring agencies will have access to statistical data only.

OVERVIEW AND GLOSSARY OF TERMS USED FOR THE GOVERNMENT BOARDS REPORTING SYSTEM (GOVBOARDS)

1. OVERVIEW

Which Bodies are reported on in GovBoards?

- **Bodies covered by the *Commonwealth Authorities and Companies Act 1997 (CAC Act)*;**
- **Ministerial Advisory Committees;**
- **Review committees where appointments are made by Cabinet; and**
- **Statutory authorities not covered by the *Public Service Act* (includes most Tribunals).**

While it is understood that some portfolios have experienced difficulty in relating definitions to complex cases, we acknowledge that a level of discretion on the part of those recording the appointment will always be necessary in classifying appointments.

What appointments should be entered?

The primary criterion for reporting a particular appointment in *GovBoards* is **whether an appointment has actually been made**. Members of a group with no formal membership structure should not be included. (Such groups are of course unlikely to fall under the parameters above)

All actual appointments to the bodies listed above should be recorded on the GovBoards, whether or not those appointments are within Commonwealth control and whether or not they are ex-officio appointments (the Government Boards Reporting System provides for these aspects to be noted).

2. REPORTING ON METHOD OF APPOINTMENT: DEFINITIONS

Classification by *method of appointment* does not assume any Commonwealth control over a particular appointment: for example, some appointees considered by the Governor-General in Council might be nominees of external agencies with no Commonwealth control.

Classification by *method of appointment* and by *degree of Commonwealth control* are thus independent of each other and should be assessed separately.

Portfolios should base classification by *method of appointment* on the actual end-point of the appointment process that was followed for the particular appointment. For example, if the process ends with a decision by the Governor-General in Council, the appointment should be reported under this heading.

2.1 Governor-General

Requirements for appointments to be made by the Governor-General in Council may be provided for in legislation, regulation or the Constitution. Appointments may be referred to the Governor-General in Council directly by Ministers or may be referred through Cabinet.

For Government Boards reporting purposes, all appointments considered by the Governor-General in Council should be classified under this category.

2.2 Cabinet

Where a decision by Cabinet or the Prime Minister is the end-point of a particular appointment, it should be reported under this category.

Prime Ministerial and Cabinet consideration is confined to only the most significant appointments as determined by Ministers.

2.3 Ministerial

All appointments where Ministerial decision is the end-point of the appointment process should be reported under this category.

2.4 Portfolio

All appointments where the decision is taken at any level within Departments or agencies, without referral to Ministers, should be reported under this category.

2.5 Elected

Appointments resulting from *selection by vote* are reported under this category. Only those appointments resulting from actual election processes should be classified under this heading.

We would expect only a relatively small number of appointments in this category.

2.6 Ex-officio

If the appointment of a particular office holder to a particular body is required by legislation or regulation, the appointment is ex-officio and should be classified under *method of appointment* as ex-officio. For example, if a Secretary of a Department holds a position under legislation or regulation by virtue of their office.

If such an appointment has no basis in legislation or regulation but rather is based on past practice (for example, if the FAS of X Division has always been a member of Y body) then the appointment should *not* be classified as ex-officio. Such appointments should be classified in the usual way (according to whether they were considered by the Governor-General in Council, Cabinet, Ministers or Portfolio).

3. DEGREE OF COMMONWEALTH CONTROL

In general, portfolios should aim at consistent and accurate classification. It is understood that some portfolios have experienced difficulty in determining the degree of Commonwealth control for particular appointments.

As noted previously, assessment by degree of control is independent of the classification by method of appointment.

3.1 Total Commonwealth Control Category

For the purposes of reporting in GovBoards, appointments under *total Commonwealth control* are those made by portfolios, Ministers, Cabinet or the Governor-General in Council, where the Commonwealth is solely responsible for decisions in the selection and appointment processes.

If an appointment is made on the basis of

- recommendation of a selection panel who have limited Commonwealth ability to affect the outcome, or
- nomination by an external organisation or election;

it should not be reported under this category but should be classified as being under *partial or no Commonwealth control*.

3.2 Commonwealth Influence

Appointments under partial Commonwealth control are those where the Commonwealth does not *control* the appointments process but can *affect* its outcome.

Ministers and portfolios may be able to affect appointments outcomes by amending or rejecting recommendations by external organisations or selection panels, being able to suggest candidates for such panels to consider and/or appointing a Chair or members of a selection panel.

It may also be possible for Commonwealth Ministers or portfolios to negotiate with an external organisation about a particular appointment. All such appointments should be classified as being under *partial Commonwealth control*.

3.3 No Commonwealth Influence

All appointments where the Commonwealth (Ministers and portfolios) *have no ability to affect the outcome* should be categorised as being under *no Commonwealth control*.

This category includes appointments resulting from elections and appointments made through nominations by external organisations, where the Commonwealth has no ability to affect appointment outcomes (for example, some State-nominated appointments, depending on the legislation or agreements in place).

3.4 Unclassified/Ex-officio

Appointments which, under legislation or regulation, do not fit within other categories of *degree of Commonwealth control* because they are technically within Commonwealth control but without the ability for the Commonwealth to affect outcomes are to be reported as *ex-officio*.

4. GLOSSARY; THE FOLLOWING DEFINITIONS ARE PROVIDED BECAUSE THE TERMS APPEAR IN THE GOVBOARDS PAGES.

Body

Bodies are divided into the following four categories for reporting purposes:

- Statutory Body;
- Non Statutory Body;
- Government Business Enterprise; and
- Other

Chairperson

A person who presides over a committee, board, council or other body.

Department

A Department of State, excluding any part that is itself an Executive Agency or Statutory Authority.

Deputy Chairperson

A person who presides over a committee, board, council or other body when the Chairperson is unable to attend or when the Chairperson wishes to join the debate as an ordinary member.

Division

An organisational sub-group of public servants within a Government Department.

Ex-Officio

A person who is a member of a committee, board, council or other body by virtue of the office or official position they hold. They may hold any position within the body on an ex-officio basis.

Government Business Enterprise (GBE)

Covers three main types of bodies:

Associated Company

A company in which the Government has a substantial interest (ownership of between 20 and 50 per cent of voting shares).

Government Company

A company which the Government controls (ownership or the power to direct the votes of more than 50 per cent of the voting shares).

Incorporated Association

An association which the Government controls or in which the Government has a substantial interest.

In this definition 'control' means ownership (or the power to direct the votes) of more than 50 per cent of the voting shares. 'Substantial interest' means the power to nominate a member of the governing body or the provision of one-third or more of the recurrent income.

Member

A person who forms part of a committee, board, council or other body.

Non-Statutory Body

A non-statutory body consists of one or more members, serviced wholly or partly at Australian Government expense (either employing staff of their own or receiving regular secretariat support from staff of parent bodies).

It *excludes* the following types: inter-departmental committees; Royal Commissions; Commonwealth/State consultative bodies with high level ex-officio membership only.

Portfolio

The area of responsibility of a Government Minister.

Secretariat

The officers or an office where the records of a Commonwealth body are kept and where administrative duties relating to that body are carried out.

Statutory Body

A body or statutory office established on the basis of Commonwealth legislation. This includes bodies created on the same basis by the statutory body itself and/or sub-bodies of Statutory Authorities.

Target Groups

Target groups are the four categories of diversity being monitored by GovBoards:

1. Women;
2. People with disabilities;
3. Aboriginal and/or Torres Strait Islander people; and
4. People from Culturally and Linguistically Diverse backgrounds.

GOVBOARDS FORM A – BODY

To be completed by Division or Department Users

Government Boards Reporting System

Appointments to Australian Government Bodies

*(This form has been designed to meet both the minimum Government Boards Reporting System and reporting requirements for the Office for Women. Therefore the * fields are mandatory. Departments should use Form B - Add an Appointment to record the Appointment details and Form C - Person Details to record the Appointee's personal details.)*

* Denotes a mandatory field

ADD A BODY

* DEPARTMENT NAME:

* DIVISION NAME:

* BODY NAME:

* BODY ACRONYM:

* TYPE OF BODY:

- Statutory Body
- Government Business Enterprise
- Non-statutory Body
- Other

* BODY FORMATION DATE:

BODY DISSOLUTION DATE:

* NUMBER TO BE APPOINTED:

Minimum:

Maximum:

BODY SECRETARIAT CONTACT DETAILS

Title:

* First Name:

* Last Name:

* Address:

* Suburb:

* State:

* Postcode:

Work Phone:

Mobile:

Home Phone:

Fax:

E-mail:

GOVBOARDS FORM B - APPOINTMENTS

To be completed by Division or Department Users

Government Boards Reporting System

Appointments to Australian Government Bodies

*(This form has been designed to meet both the minimum Government Boards Reporting System and reporting requirements for the Office for Women. Therefore the * fields are mandatory. Departments should use Form A - Add a Body to record the Body details and Form C - Person Details to record the Appointee's personal details.)*

* Denotes a mandatory field

ADD AN APPOINTMENT

* **DEPARTMENT NAME:** Department of Innovation Industry Science and Research

* **DIVISION NAME:** _____

* **APPOINTEE'S NAME:** _____

* **BODY NAME:** _____

* **POSITION HELD:**

<input type="checkbox"/> Chairperson or equivalent	<input type="checkbox"/> Member or equivalent
<input type="checkbox"/> Deputy Chairperson or equivalent	<input type="checkbox"/> Ex-Officio

* **APPOINTMENT METHOD:**

<input type="checkbox"/> Governor-General in Council	<input type="checkbox"/> Portfolio
<input type="checkbox"/> Prime Minister	<input type="checkbox"/> Elected
<input type="checkbox"/> Cabinet	<input type="checkbox"/> Ex-Officio
<input type="checkbox"/> Ministerial	

* **DEGREE OF COMMONWEALTH CONTROL:**

<input type="checkbox"/> Total Commonwealth Control	<input type="checkbox"/> No Commonwealth Influence
<input type="checkbox"/> Commonwealth Influence	<input type="checkbox"/> Unclassified/Ex-Officio

* **FULL-TIME APPOINTMENT:**

Yes

No

* **REMUNERATED:**

<input type="checkbox"/> Yes	<input type="checkbox"/> Per day: <i>insert amount</i>	<input type="checkbox"/> GST Exclusive
<input type="checkbox"/> No	<input type="checkbox"/> Per annum: <i>insert amount</i>	<input type="checkbox"/> GST Inclusive

REMUNERATION NOTES:

* **Start Date:** _____ * **End Date:** _____

New Appointment **Re-appointment**

First Appointed Date: _____

GOVBOARDS FORM C – PERSON

To be completed by Appointee

Government Boards Reporting System

Appointments to Australian Government Bodies

(This form is to be completed by an Appointee.)

This form is used by Departments to record information in the Government Boards Reporting System. It should be used in conjunction with Government Boards Reporting Form B – Add an Appointment.)

* Denotes a mandatory field

PERSON DETAILS

* GIVEN NAMES: _____

* FAMILY NAME: _____

* TITLE: _____

DATE OF BIRTH: _____

ADDRESS: _____

* SUBURB: _____

* RESIDENTIAL STATE: _____

* POSTCODE: _____

CONTACT DETAILS:

Mobile: _____

Work: _____

Home: _____

Fax: _____

E-mail: _____

To answer the questions below, tick the box next to the category which applies to you. Please respond to all four questions.

* 1 Male

Female

* 2 **Ethnicity**

Aboriginal and Torres Strait Islander

Australian South Sea Islander

Not applicable

* 3 **Culturally and Linguistically Diverse:**

You were born overseas and your first language was not English

You were born in Australia; or you were born overseas, but arrived in Australia before age 5, and the first language of one of your parents is not English

Not applicable

* 4 Disability

No disability

Departmental Comments: _____

NOTE: The personal information contained in this form is confidential and is only used by the Department that is making the appointment.

ATTACHMENT XI

APPOINTMENTS CHECKLIST

- Initial advice to Minister on vacancy and possible appointees**
Submission No refers
- Establish selection criteria and determine a short list of possible appointees**
Date .../.../....
- Written authorisation from the Minister's office to approach possible appointees**
Date obtained .../.../....
- Submission to the Minister recommending appointment or referral to the Prime Minister**
Submission No refers
- ExCo documentation prepared and cleared by MLO and ExCo Secretariat**
Date .../.../...
- Notification of appointment -**
- **Confirmation of the decision by the Prime Minister/Cabinet/
Executive Council sighted**
Date .../.../....

ATTACHMENT XII

EXAMPLE OF APPOINTMENT DETAILS FORM

AUSTRALIAN HAPPINESS COMMISSION: - as at *day/month/year*

<u>NAME</u> <i>Include courtesy titles and post-nominals</i>	<u>GENDER</u>	<u>POSITION</u>	<u>FT/PT</u>	<u>STATE OF RESIDENCE</u>	<u>DATE APPOINTED</u> <i>(date of appointment eg by Minister or by Governor-General)</i> <i>(please include previous term/s in italics)</i>	<u>APPOINTMENT EXPIRY DATE</u> <i>(please include previous term/s in italics)</i>
<i>1. Current members:</i>						
Ms Jane Thomas, QC	F	Chairman <i>Director</i>	FT <i>PT</i>	NT	20.12.96 <i>15.07.95</i>	19.12.99 <i>19.12.96</i>
Sir James <u>Arthur</u> Benson	M	Deputy Chairman <i>Director</i>	PT <i>PT</i>	ACT	10.11.97 <i>10.11.96</i>	9.11.00 <i>9.11.97</i>
Professor James (Jim) Clarke, AM	M	Director <i>Director</i>	PT <i>PT</i>	NSW	1.09.98 <i>1.09.95</i>	31.08.01 <i>31.08.98</i>
Mrs Petra Gregory, AO	F	Director	PT	VIC	15.04.99	14.04.02
Dr Julie Person	F	Director	PT	QLD	1.07.96	30.06.99
---	---	<i>Director</i>	<i>PT</i>	---	<i>Vacant</i>	--
<i>2. Proposed Appointment/s:</i>						
Mr Silvio Dante Benetti	M	Director	PT	TAS	from date of appointment	Three years
Dr Julie Person	F	Director	PT	QLD	1.07.99	30.06.02

Gender balance – future composition.
Please include the person/s now being proposed.
Males: 3

Females: 3

Geographic balance – future composition. Please include the person/s now being proposed.	
NSW: 1	WA: 0
VIC: 1	QLD: 1
SA: 0	TAS: 1
NT: 1	ACT: 1

Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
Public Hearing of 15 June 2010
Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Nature of Question	Senator	Hansard Reference
Nature of restrictions placed on examiners with respect to dealing in inventions and utilising information provided in patent specifications during the term of a patent and after that term has expired.	Heffernan Adams	CA35 CA36

Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
Public Hearing of 15 June 2010
Senate Inquiry into gene patents
Department of Innovation, Industry, Science and Research

Question

Agency: IP Australia

Topic: Senate Inquiry into gene patents

Reference: Hansard Page: CA35 and CA36 on 15 June 2010

Senator HEFFERAN—Does IP Australia have in place a directive or policy that forbids employees and former employees from communicating, associating or dealing with individuals or organisations which have filed patent applications for IP Australia?

Senator ADAMS—As far as a patent goes, when it expires, what is the situation with your employees? Once the patent has expired, are they able to utilise that knowledge or does that carry right through?

Answer:

The *Patents Act 1990* sets out a number of restrictions and prohibitions, which coupled with the Public Service Values, prescribe how IP Australia employees must treat inventions and information relating to inventions.

Specifically, section 182(2) makes it an offence (penalty \$6,000) for an employee of IP Australia to buy, sell, acquire or traffic in the following:

- An invention or patent, whether granted in Australia or anywhere else; or
- A right to, or license under, a patent, whether granted in Australia of anywhere else.

The section does not however apply if the employee is the inventor of the invention or patent, or to an acquisition by bequest or devolution by law.

The section is understood not to extend to inventions where the patent or patent application has ceased, lapsed or expired, by which time the full patent specification will most usually have been published.

Section 183 prohibits an employee from disclosing unauthorised information about a patent application, or another matter dealt with under the Act. Similarly, section 184 prohibits disclosing information relating to nuclear technology and falling under the *Nuclear Non-Proliferation (Safeguards) Act 1987* under all but certain specified circumstances.

Breach of section 184 carries a penalty of imprisonment for 2 years, while breach of section 183 would be caught by section 13(4) of the Public Service Act 1999 (Code of Conduct), which requires compliance with all official laws. Breach of section 183 may also be caught by section 70 of the Crimes Act 1914

Senate Standing Committee on Community Affairs
ANSWERS TO QUESTIONS ON NOTICE
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Department of Innovation, Industry, Science and Research

(Disclosure of Information by Commonwealth Officers) which carries a penalty of imprisonment for 2 years.

Section 185 prohibits an employee from preparing, or helping to prepare a patent specification, or any other document relating to a patent specification, unless they are the inventor in respect of the specification. Also employees are prohibited from searching the records of the Patent Office otherwise than in their official capacity.

Employees must also comply with the APS code of conduct, which includes the requirement that an employee take reasonable steps to avoid a conflict of interest, and which also prohibits an employee making improper use of inside information. Deliberate breach of the code of conduct for gain may be caught by s 41 of the *Financial Management and Accountability Act 1997*, which carries a penalty of 7 years imprisonment.

Guidance for dealing with conflicts of interest and the other noted restrictions and prohibitions in the context of patent examination is provided in Chapter 2.26 of the Patent Manual of Practice and Procedure (which may be accessed on the IP Australia website at:

www.ipaustralia.gov.au/pdfs/patentsmanual/WebHelp/Patent_Examiners_Manual.htm).

These provisions are also the subject of the patent examiner training programs.