



## Conflicts of Interest

### Briefing Note – July 2015

#### PURPOSE

1. The purpose of this briefing note is to seek the Board's endorsement on the proposed management of any potential or perceived conflict of interest by a Board member.
2. This briefing note draws on information that was previously provided to the Board via a Briefing Note which outlined the general duties of Board members, as officials, under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Reference is also drawn to relevant information already set out in the TPB's Governance Framework.

#### BACKGROUND

3. As noted above, Board members are 'officials' for the purposes of the PGPA Act. They have five general duties as officials<sup>1</sup>, one of which includes the duty to disclose interest.
4. Subsection 29(1) of the PGPA Act provides that an official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.
5. The Department of Finance's Resource Management Guide No. 203 notes that:  
*The overriding principle for a declaration of a material personal interest should be: if in doubt, declare the interest in accordance with the appropriate process. Taking this step should stand up to scrutiny if a query arises.*<sup>2</sup>
6. The PGPA Rules sets out how and when an interest must be disclosed and the consequences of disclosing an interest. Sections 16A and 16B of the PGPA Rule set out how and when the Board members, as officials, must disclose material personal interests that relate to the affairs of the entity and the consequences of having an interest.
7. To ensure consistency about how and when officials of Commonwealth entities who are appointed to bodies under a law disclose material personal interests, section 16A of the PGPA Rule specifically provides that the official must:

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<sup>1</sup> Section 25 to 29 of the PGPA Act.

<sup>2</sup> Paragraph 51

- (a) disclose that interest, orally or in writing, to each other appointed member of the body;
  - (b) disclose details of the nature and extent of the interest and how it relates to the affairs of the entity; and
  - (c) make the disclosure:
    - (i) at the meeting of the appointed members of the body; or
    - (ii) as soon as practicable after the official becomes aware of the interest; or
    - (iii) as soon as practicable after the official becomes aware of a change in the nature or extent of the interest that has been previously disclosed under section 16A of the PGPA Rule.
  - (d) ensure that the disclosure is recorded in the minutes of the meeting.
8. Subsection 16B(2) of the PGPA Rule provides that unless the other appointed members determine, the official must not participate at a meeting about the matter or vote on the matter.
9. Subsection 16B(3) of the PGPA Rule states that for the purposes of the other appointed members determining whether the official can be present during the consideration or vote on the matter, the official must not be present during that determination, or, take part in that determination.
10. Section 60-50 of the TASA specifically provides that a Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board has or acquires and that conflicts or could conflict with the proper performance of the Board's function.
11. Attachment 1 sets out some further guidance on conflicts of interest in the context of administrative decision-making.

#### **PROPOSED APPROACH**

12. Currently, and as per the TPB's Governance Framework, at each Board or Committee meeting, there is a call for any new or altered conflicts of interest to be declared by Board members. Any declarations must be appropriately minuted.<sup>3</sup> There is no intention to change this approach, but the following paragraphs provide some further detail as to how conflicts of interest should be managed, especially in the absence of a Board member declaring such interest.
13. The responsibility to declare the interest rests primarily with the relevant Board member. However, where it becomes apparent that a potential or perceived conflict may arise and the relevant Board member has not declared the conflict, it is open to the other Board members present at the meeting to raise the issue.
14. Similarly, in the absence of any Board member raising a potential conflict, the Secretary or a representative from the Legal Unit (usually the Minute taker at the Board Conduct

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<sup>3</sup> Section 16A(3) of Division 2, of Schedule 1 to the PGPA Rule

Committee or the Legal Unit Director) present at the meeting can also raise the issue of the potential conflict if they feel it is appropriate to do so in the circumstances.

15. Once a potential conflict has been identified, as per the PGPA Rules outlined above, the other members present will discuss the matter in private (without any TPB staff present) and determine whether the relevant Board member should be present during the consideration or vote on the matter. As per sub-section 16B(3) of the PGPA Rule, the relevant member must not be present during that determination, or, take part in that determination.
16. If a unanimous decision can't be reached by those members determining whether a conflict exists, the Chair of that meeting (or Committee) will have a casting vote.
17. If it is determined that a potential conflict of interest exists, the decision will be appropriately recorded in the Minutes.

Legal Unit  
July 2015

## ATTACHMENT 1

### Conflicts of Interest

The Australian National Audit Office (ANAO) have noted that “[d]ecisions made in administering regulation should be objective and made without undue bias and in the absence of conflicts of interest”<sup>4</sup> as “conflicts of interest can pose a significant risk for a regulator and can undermine stakeholders’ confidence in their integrity”<sup>5</sup>.

In the context of administrative decision-making, the Administrative Review Council (ARC) has stated that “[a] conflict of interest exists if a decision-maker has a personal interest in the outcome that might prevent them, or appear to prevent them, from performing their duty impartially”.<sup>6</sup>

The ANAO identified the following potential sources of conflicts of interest<sup>7</sup>:

- financial and economic interests, such as debt and assets;
- family or private businesses;
- secondary employment commitments;
- affiliations with for-profit or not-for-profit entities, political, trade union or professional organisations and other personal interests;
- obligations to professional, community, ethnic, family or religious groups in a personal or professional capacity;
- enmity towards or competition with another individual or group;
- significant family or other relationships with clients, contractors or other staff working in the same (or a related) entity;
- highly specialised skills in an area where demand for the skills frequently exceeds supply; and
- specific future employment prospects or plans.

The ARC notes that “[w]hat matters is not the nature of the interest but instead its actual or apparent influence on the person’s ability to decide impartially”.<sup>8</sup> The question is “would a member of the public who knew about this interest reasonably think that it might influence the decision? It is irrelevant that the decision maker is personally satisfied that the conflicting interest has been put out of mind in arriving at a decision”.

As the ARC further notes, “[t]he bias rule of natural justice ... requires that a decision be impartial and free of actual or apparent bias ... In most cases, apparent bias is enough to

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<sup>4</sup> *Administering Regulation: Achieving the Right Balance* (Better Practice Guide, June 2014), p 3.

<sup>5</sup> *Ibid*, p 22.

<sup>6</sup> *Decision Making: Natural Justice* (Best Practice Guide 2, August 2007), p 1.

<sup>7</sup> *Public Sector Governance: Strengthening Performance Through Good Governance* (Better Practice Guide, June 2014), p 50.

<sup>8</sup> See n 3.

*disqualify a person from making a decision ... it is about whether a fair-minded observer would reasonably suspect bias”.*<sup>9</sup>

In addition to their own Code of Conduct, the relevant Committee Charters and the TASA, Board members are subject to duties and obligations in respect of conflicts of interest under the common law, the APS Code of Conduct and the Public Service Act, and the PGPA Act and Rules.

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<sup>9</sup> Ibid, p 3.



Australian Government



TAX PRACTITIONERS BOARD

## Tax Practitioners Board Code of Conduct for Board members

### **1. Honesty and integrity**

A Board member must behave honestly and with integrity in connection with the performance of their Board responsibilities, including:

- acting honestly, truthfully, in good faith and for a proper purpose at all times in the performance of their Board responsibilities, including:
  - not making improper use of inside information or the Board member's duties, status, power or authority in order to gain, or seek to gain, a benefit or advantage for the Board member or for any other person; and
  - not providing false or misleading information in response to a request for information that is made for official purposes in connection with the performance of their role as a Board member;
- acting in a manner so that their actions do not give rise to bias (real or apparent);
- being open and accountable for decisions and actions taken as a Board member; and
- generally behaving, at all times, in a way that upholds:
  - the Australian Public Service (APS) Values (commitment to service, ethical, respectful, accountable, and impartial) and APS Employment Principles – as set out in the *Public Service Act 1999* – where applicable; and
  - the integrity and good reputation of the Board and the APS.

### **2. Care and diligence**

A Board member must act with care and diligence in connection with the performance of their Board responsibilities, including:

- being diligent and responsive in the performance of their Board responsibilities; and
- maintaining the knowledge, skills and personal qualities necessary in regard to the performance of their Board responsibilities.

### **3. Respect and courtesy**

When acting in connection with the performance of their Board responsibilities, a Board member must treat everyone with respect and courtesy, and without harassment. This includes that a Board member:

- should be patient, dignified and courteous to parties, witnesses, representatives, secretariat staff and officials and others with whom the member interacts; and
- should endeavour to understand and be sensitive to the needs of persons involved in proceedings before the Board, including ensuring that each agent whose conduct may be being considered by the Board is afforded due procedural fairness.



Australian Government



TAX PRACTITIONERS BOARD

#### **4. Compliance with applicable Australian laws**

When acting in connection with the performance of their Board responsibilities, a Board member must comply with all applicable Australian laws, including, among other things:

- obligations under tax laws; and
- any other relevant conduct obligations prescribed by the *Public Service Regulations 1999* – this includes:
  - not disclosing information obtained or generated in connection with the Board member's role if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government (including formulation or implementation of policies or programs); and
  - not disclosing information obtained or generated in connection with the Board member's role if it is communicated in confidence within the government, or was received in confidence by the government from a person or persons outside the government, regardless of whether or not such disclosure would cause an action for breach of confidence.

#### **5. Compliance with lawful and reasonable direction**

A Board member must comply with any lawful and reasonable direction given by the Board. This includes, among other things:

- no Board member placing themselves in a position whereby it could be the case (or perceived to be the case) that they have or represent a view that is divergent from that of the Board;
- meeting relevant directions in regard to TPB record keeping, confidentiality and declaration requirements, including in regard to document security and privacy (including observing any restrictions as determined by the Board); and
- generally complying with the applicable Board member Role statement as appropriate.

#### **6. Managing conflicts of interest**

Where possible, a Board member should avoid any conflict of interest (real or apparent) in connection with the proper performance of their Board responsibilities. This includes, among other things:

- having regard to the potential impact of activities, interests and associations in private life on the impartial and efficient performance of their Board responsibilities;
- taking reasonable steps to consider and disclose any likely conflict (real or apparent) to the Minister and/or Board Chair or Committee Chair; and
- being proactive and sufficiently comprehensive in disclosing (to all relevant interested parties) interests that could conflict (real or apparent) with their Board functions, including regularly reviewing and updating current declarations as appropriate.



**Australian Government**



**TAX PRACTITIONERS BOARD**

In the event of a conflict between an office holder's obligations under the APS Code of Conduct and their enabling legislation, the latter will prevail.

### ***7. Using resources in a proper manner***

A Board member must use Commonwealth resources in a proper manner. This includes, among other things:

- using Board resources efficiently, effectively, economically and ethically in accordance with relevant responsibilities under the *Public Governance, Performance and Accountability Act 2013*; and
- abiding by the Board's resolved approach in regard to gifts, hospitality and other benefits – in particular:
  - all Board members may accept insubstantial gifts (estimated value of \$200 or less) if the gift is received in the normal incident of an activity being conducted on behalf of the Board (and could not reasonably be perceived to compromise the impartiality of the member or the Board);
  - subject to the above (immediately preceding bullet point), all Board members must not accept gifts, hospitality or other benefits offered or received by virtue of their appointment as a Board member; and
  - all Board members must disclose any offer or receipt of a gift, hospitality or other benefit to the Secretary as soon as possible after the offer or acceptance of the offer (noting that the Secretary will maintain a register of gifts, hospitality and other benefits).



### ***Confidentiality and secrecy provisions***

The Board is subject to strict secrecy provisions that determine what information it can or can't disclose to others, including the ATO, the ASIC and Law enforcement bodies<sup>33</sup>. The secrecy provisions in the TASA apply in relation to official information as defined in the TASA<sup>34</sup>.

The TASA prohibits the recording or disclosure of Official information by the Board, and staff provided to the Board, which was obtained in the course of, or because of, their duties under the TASA, except in very limited circumstances<sup>35</sup>. A breach of the TASA secrecy provisions is a criminal offence, punishable by imprisonment and/or fine<sup>36</sup>.

Disclosures by a person may be made where the disclosure is made for a purpose that person holds under the TASA, where the information is in the public domain, or where that information is lawfully disclosed for the purposes of administering ATO, ASIC or criminal legislation.

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<sup>33</sup> The ATO-TPB MOU and information exchange processes underpin the lawful exchanges of information between the Board, via TPB staff, and the Commissioner, via ATO staff.

<sup>34</sup> Section 90-1 of the TASA

<sup>35</sup> Section 70-40 of the TASA provides that a disclosure of official information may be made for the purposes of the TASA, TASR, administering a taxation law, or to investigate a serious offence, law enforcement or the possible making of a proceeds of crime order.

<sup>36</sup> Section 70-35 of the TASA. Under section 4J of the *Crimes Act 1914* This may be for a period of at minimum 12 months, and maximum two years and/or a fine not exceeding 60 penalty units.

### *Disclosure of interests under the TASA*

A Board member's personal and professional interests and roles must be considered within an ethical framework requiring them to act with integrity and impartiality, as well as in good faith and in the best interests of the TPB.

One test for identifying a conflict of interest is whether a reasonably impartial person would think that a Board member's personal, financial or other interests could conceivably conflict, appear to conflict or potentially conflict with their official duties.

The TASA has a number of provisions relating to conflicts and disclosure of interests:

- a full-time Board member must not engage in paid employment outside the duties of their office without the Minister's approval<sup>48</sup>.
- part time Board members must not engage in paid employment that conflicts or may conflict with the proper performance of their duties.
- the TASA requires that:

“a Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and conflict or could conflict with the proper performance of the Board's functions.”<sup>49</sup>

For all Board members, a minute must be sent to the relevant Minister to disclose any actual or perceived conflicts of interest. It is usual practice that Board members also provide the Chair with a copy of any actual or perceived conflicts of interest declarations sent to the Minister.

The Chair must be informed at Board meetings or committee meetings of any new or changed interests, and a further minute may be sent to the Minister or when a new Minister or Board member is appointed (subject to Ministerial office requirements).

The Office of the Chair in the TPB usually arranges for the provision of a consolidated document and covering Minute to the Minister to disclose conflict of interest declarations for Board members. A separate letter to the Minister is also provided by the Chair<sup>50</sup>.

### *Disclosure of interests under the PGPA Act, PGPA rules and guidance*

All Board members and TPB staff are 'Officials' for the purposes of the PGPA Act, PGPA Rules and Guidance.

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<sup>48</sup> Section 60-45 of the TASA

<sup>49</sup> Section 60-50 of the TASA

<sup>50</sup> Section 60 50 of the TASA

In addition to the requirements of the TASA, the PGPA Act places an additional obligation on Board members by virtue of them being Officials of a listed entity (the ATO). Officials have a duty to:

- exercise care and diligence (reasonable person test)
- act in good faith and for proper purpose
- to not misuse their position or information
- disclose material personal interests (regardless of whether those interests are in conflict or not) that relate to the affairs of the entity, or a body of the entity (Board or a Committee of the Board)<sup>51</sup>.

Any disclosure of a material personal interest must:

- be made to each appointed member of the body either orally or in writing
- include details of the nature and extent of the interest
- include details of how the interest relates to the affairs of the entity<sup>52</sup>

The Official must make this disclosure:

- as soon as practicable after the Official becomes aware of the interest
- if there is a change in the nature or extent of the interest after the Official has disclosed the interest and as soon as practicable after the Official becomes aware of that change.

The Official must ensure that the disclosure (including details of that disclosure) is recorded in the minutes of the meeting.

### ***Management of interests***

At each Board and/or Committee meeting, there is a call for any new or altered conflicts of interest to be declared by Board members. Any declarations must be appropriately minuted<sup>53</sup>.

The PGPA Rules provide that an Official must not be present during any consideration on a matter in which the official has an interest, or vote on the matter, unless the appointed members otherwise determine.<sup>54</sup>

For the purpose of making this determination, the Official must not be present or take part in any consideration by the appointed members<sup>55</sup>.

The Official must also ensure that a determination on whether they may be present or vote on a matter is recorded in the meeting minutes.

Advice received by the Board prior to implementation of the PGPA Act and Rules, noted there could be situations where it may be practically impossible for the Board to be totally free of perceived conflicts whilst performing its statutory tasks. In these situations, it would be acceptable for the Board to adopt a 'doctrine of necessity' under which it would, having noted the particular conflicts, nevertheless resolve that the members with the conflict could and should participate in discussions and/or decision making of the Board.

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<sup>51</sup> Sections 13 to 16D of Division 2, of Schedule 1 to the PGPA Rules

<sup>52</sup> Section 16A of Division 2, of Schedule 1 to the PGPA Rules

<sup>53</sup> Section 16A(3) of Division 2, of Schedule 1 to the PGPA Rule

<sup>54</sup> Section 16B of Division 2, of Schedule 1 to the PGPA Rules

<sup>55</sup> Section 16B(3)(a) of Division 2, of Schedule 1 to the PGPA Rule

The question of the doctrine of necessity has been considered by the Victorian Government Solicitor who states:

“Before a decision-maker decides to hear a matter on the basis of the doctrine of necessity they should consider all possible options for having the matter heard by a person not affected by the apprehended bias, such as delegating the power to make a decision or appointing a substitute decision-maker for the purpose of that decision.”

More information on the Board’s approach to managing conflicts of interest is also noted in the Board member Code of Conduct.

## Confidentiality and secrecy provisions

30. The TASA prohibits the recording or disclosure of official information by the Board and TPB staff except in limited circumstances<sup>16</sup>. A breach of these secrecy provisions is a criminal offence, punishable by imprisonment and/or fine<sup>17</sup>.
31. There are exceptions to the general prohibition on the disclosure of official information. For example, disclosures may be made
- a) if it was in the performance of duties under the TASA or the TASR,
  - b) where the information is already publicly available, or
  - c) in certain circumstances to the Commissioner, ASIC, the Inspector-General of Taxation and/or law enforcement agencies.

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<sup>16</sup> Section 70-40 of the TASA provides that a disclosure of official information may be made for the purposes of the TASA, TASR, administering a taxation law, or to investigate a serious offence, law enforcement or the possible making of a proceeds of crime order.

<sup>17</sup> Section 70-35 of the TASA. Under section 4J of the *Crimes Act 1914* This may be for a period of at minimum 12 months, and maximum two years and/or a fine not exceeding 60 penalty units.

## Disclosure of interests under the TASA

46. A Board member's personal and professional interests and roles must be considered within an ethical framework requiring them to act with integrity and impartiality, as well as in good faith and in the best interests of the TPB.
47. One test for identifying a conflict of interest is whether a reasonably impartial person would think that a Board member's personal, financial or other interests could conceivably conflict, appear to conflict or potentially conflict with their official duties.
48. The TASA has a number of provisions relating to conflicts and disclosure of interests:
  - a) a full-time Board member must not engage in paid employment outside the duties of their office without the Minister's approval<sup>22</sup>.
  - b) part time Board members must not engage in paid employment that conflicts or may conflict with the proper performance of their duties.
  - c) a Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and conflict or could conflict with the proper performance of the Board's functions.<sup>23</sup>
49. For all Board members, a Minute must be sent to the relevant Minister to disclose any actual or perceived conflict of interest. It is usual practice that Board members also provide the Chair with a copy of any actual or perceived conflict of interest declarations sent to the Minister.
50. The Chair must be informed at Board meetings of any new or changed interests. A further Minute may be sent to the Minister or when a new Minister or Board member is appointed (subject to Ministerial office requirements).
51. The Office of the Chair in the TPB usually arranges for the provision of a consolidated document and covering Minute to the Minister to disclose conflict of interest declarations for Board members. A separate letter to the Minister is also provided by the Chair<sup>24</sup>.

## Disclosure of interests under the PGPA Act, PGPA rules and guidance

52. As 'Officials' of the ATO under the PGPA regime, Board members and TPB staff must:
  - a) exercise care and diligence;

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<sup>22</sup> Section 60-45 of the TASA

<sup>23</sup> Section 60-50 of the TASA

<sup>24</sup> Section 60 50 of the TASA

# TPB Governance Framework

- b) act in good faith and for proper purpose;
  - c) not misuse their position or information; and
  - d) disclose material personal interests relevant to the affairs of the entity (regardless of whether those interests are in conflict or not).<sup>25</sup>
53. Any disclosure of a material personal interest must:
- a) be made to each appointed member of the body either orally or in writing
  - b) include details of the nature and extent of the interest
  - c) include details of how the interest relates to the affairs of the entity
  - d) be made as soon as practicable after the Official becomes aware of the interest.<sup>26</sup>
54. The Official must ensure that the disclosure (including details of that disclosure) is recorded in the minutes of the meeting.

## Management of interests

55. At each Board and/or Committee meeting, there is a call for any new or altered conflict of interest to be declared by Board members. Any declarations must be appropriately minuted<sup>27</sup>.
56. The PGPA Rules provide that an Official must not be present during any consideration on a matter in which the official has an interest, or vote on the matter, unless the appointed members otherwise determine.<sup>28</sup>
57. For the purpose of making this determination, the Official must not be present or take part in any consideration by the appointed members<sup>29</sup>.
58. The Official must also ensure that a determination on whether they may be present or vote on a matter is recorded in the meeting minutes.
59. Advice received by the Board prior to implementation of the PGPA Act and Rules, noted there could be situations where it may be practically impossible for the Board to be totally free of perceived conflicts whilst performing its statutory tasks. In these situations, it would be acceptable for the Board to adopt a 'doctrine of necessity' under which it would, having noted the particular conflicts, nevertheless resolve that the members with the conflict could and should participate in discussions and/or decision making of the Board.
60. More information on the Board's approach to managing conflicts of interest is also noted in the Board member Code of Conduct.

<sup>25</sup> Sections 13 to 16D of Division 2, of Schedule 1 to the PGPA Rules

<sup>26</sup> Section 16A of Division 2, of Schedule 1 to the PGPA Rules

<sup>27</sup> Section 16A(3) of Division 2, of Schedule 1 to the PGPA Rule

<sup>28</sup> Section 16B of Division 2, of Schedule 1 to the PGPA Rules

<sup>29</sup> Section 16B(3)(a) of Division 2, of Schedule 1 to the PGPA Rule

## Confidentiality and secrecy provisions

79. The TASA prohibits the recording or disclosure of official information by the Board and TPB staff except in limited circumstances<sup>17</sup>. A breach of these secrecy provisions is a criminal offence, punishable by imprisonment and/or fine<sup>18</sup>.
80. There are exceptions to the general prohibition on the disclosure of official information. For example, disclosures may be made
- a) if it was in the performance of duties under the TASA or the TASR,
  - b) where the information is already publicly available, or
  - c) in certain circumstances to the Commissioner, ASIC, the Inspector-General of Taxation and/or law enforcement agencies.

## Disclosure of interests under the TASA

81. A Board member's personal and professional interests and roles must be considered within an ethical framework requiring them to act with integrity and impartiality, as well as in good faith and in the best interests of the TPB.
82. One test for identifying a conflict of interest is whether a reasonably impartial person would think that a Board member's personal, financial or other interests could conceivably conflict, appear to conflict or potentially conflict with their official duties.
83. The TASA has a number of provisions relating to conflicts and disclosure of interests:
- a) A full-time Board member must not engage in paid employment outside the duties of their office without the Minister's approval<sup>19</sup>.
  - b) Part time Board members must not engage in paid employment that conflicts or may conflict with the proper performance of their duties.

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<sup>17</sup> Section 70-40 of the TASA provides that a disclosure of official information may be made for the purposes of the TASA, TASR, administering a taxation law, or to investigate a serious offence, law enforcement or the possible making of a proceeds of crime order.

<sup>18</sup> Section 70-35 of the TASA. Under section 4J of the *Crimes Act 1914* This may be for a period of at minimum 12 months, and maximum two years and/or a fine not exceeding 60 penalty units.

<sup>19</sup> Section 60-45 of the TASA



- c) a Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and conflict or could conflict with the proper performance of the Board's functions.<sup>20</sup>
- 84. For all Board members, a Minute must be sent to the relevant Minister to disclose any actual or perceived conflict of interest. It is usual practice that Board members also provide the Chair with a copy of any actual or perceived conflict of interest declarations sent to the Minister.
- 85. The Chair must be informed at Board meetings of any new or changed interests. A further Minute may be sent to the Minister or when a new Minister or Board member is appointed (subject to Ministerial office requirements).
- 86. The Office of the Chair in the TPB usually arranges for the provision of a consolidated document and covering Minute to the Minister to disclose conflict of interest declarations for Board members. A separate letter to the Minister is also provided by the Chair<sup>21</sup>.

### Disclosure of interests under the PGPA Act, PGPA rules and guidance

- 87. As 'Officials' of the ATO under the PGPA regime, Board members and TPB staff must:
  - a) exercise care and diligence;
  - b) act in good faith and for proper purpose;
  - c) not misuse their position or information; and
  - d) disclose material personal interests relevant to the affairs of the entity (regardless of whether those interests are in conflict or not).<sup>22</sup>
- 88. Any disclosure of a material personal interest must:
  - a) be made to each appointed member of the body either orally or in writing
  - b) include details of the nature and extent of the interest
  - c) include details of how the interest relates to the affairs of the entity
  - d) be made as soon as practicable after the Official becomes aware of the interest.<sup>23</sup>
- 89. The Official must ensure that the disclosure (including details of that disclosure) is recorded in the minutes of the meeting.

### Management of interests

- 90. At each Board and/or Committee meeting, there is a call for any new or altered conflict of interest to be declared by Board members. Any declarations must be appropriately minuted<sup>24</sup>.
- 91. The PGPA Rules provide that an Official must not be present during any consideration on a matter in which the official has an interest, or vote on the matter, unless the appointed members otherwise determine.<sup>25</sup>

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<sup>20</sup> Section 60-50 of the TASA

<sup>21</sup> Section 60 50 of the TASA

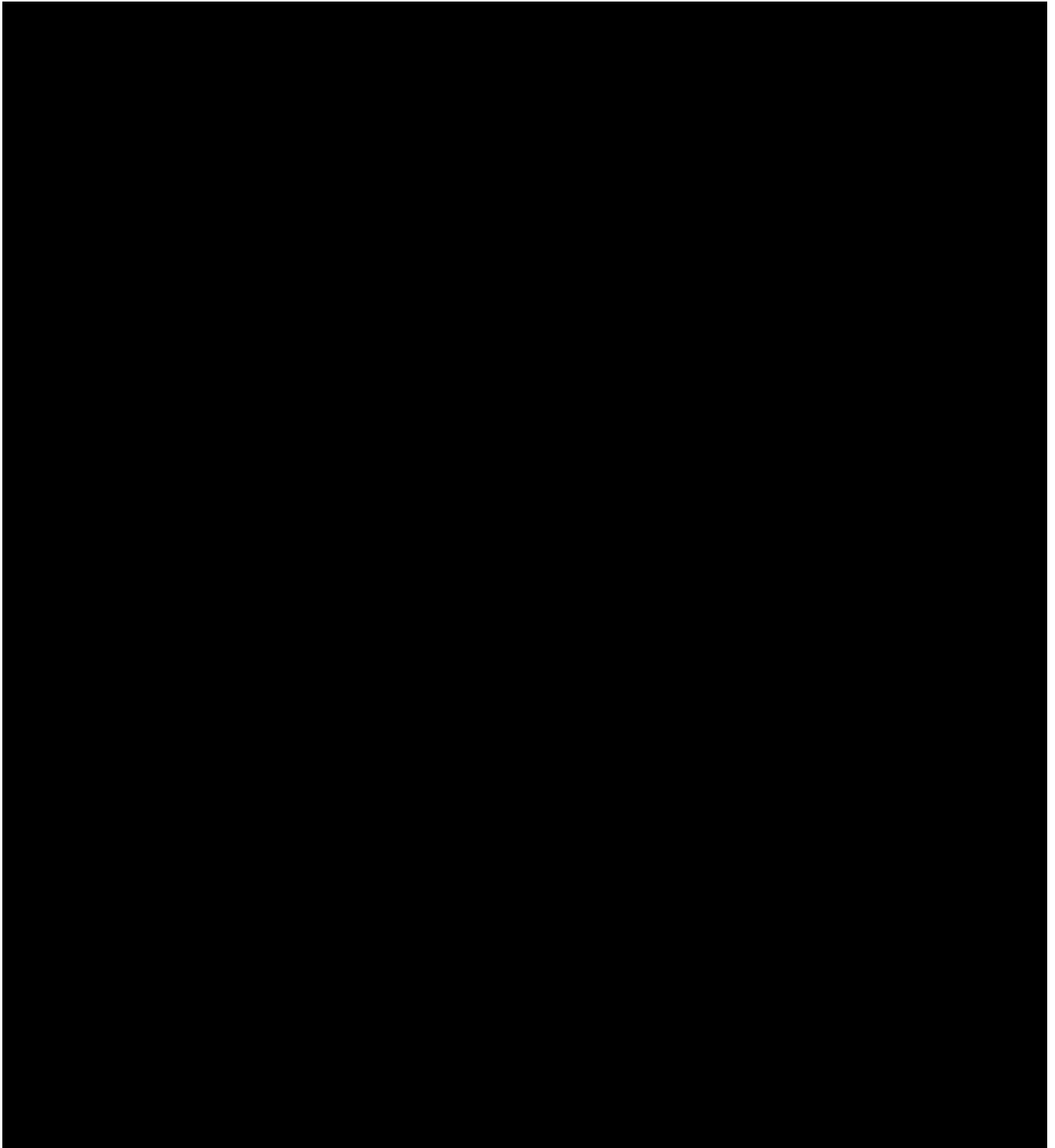
<sup>22</sup> Sections 13 to 16D of Division 2, of Schedule 1 to the PGPA Rules

<sup>23</sup> Section 16A of Division 2, of Schedule 1 to the PGPA Rules

<sup>24</sup> Section 16A(3) of Division 2, of Schedule 1 to the PGPA Rule

<sup>25</sup> Section 16B of Division 2, of Schedule 1 to the PGPA Rules

92. The Official with the conflict of interest must not be present or take part in any consideration by the appointed members during their consideration<sup>26</sup>.
93. The Official must also ensure that a determination on whether they may be present or vote on a matter is recorded in the meeting minutes.
94. Advice received by the Board prior to implementation of the PGPA Act and Rules, noted there could be situations where it may be practically impossible for the Board to be totally free of perceived conflicts whilst performing its statutory tasks. In these situations, it would be acceptable for the Board to adopt a 'doctrine of necessity' under which it would, having noted the conflicts, nevertheless resolve that the members with the conflict could and should participate in discussions and/or decision making of the Board.
95. More information on the Board's approach to managing conflicts of interest is also noted in the Board member Code of Conduct.





## Management of Conflicts of Interest

36. The Chair will call for conflicts of interest at the commencement of each Board meeting and these will be considered in accordance with the required process under the PGPA Act and Rule as outlined above.<sup>23</sup> In addition to the conflict of interest disclosure general duty under the PGPA Act, the TASA specifically requires that a Board member must give written notice to the Minister of any direct or indirect pecuniary interest that the Board member has or acquires and that conflicts or could conflict with the proper performance of the Board's functions. The TPB's approach to managing conflicts of interest in accordance with the PGPA Act and TASA is also incorporated into each of its respective Committee charters.
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