



Australian Government
The Treasury



Ministerial Submission

MS22-002845

FOR INFORMATION - Outcome of Tax Practitioners Board (TPB) investigation

TO: Assistant Treasurer and Minister for Financial Services - The Hon Stephen Jones MP

CC: Treasurer - The Hon Jim Chalmers MP

CC: Assistant Minister for Competition, Charities and Treasury – The Hon Dr Andrew Leigh MP

KEY POINTS

- The TPB recently concluded an investigation into the professional and ethical conduct of Mr Peter Collins, a former tax partner of PWC.
 - The underlying allegation is that Mr Collins inappropriately used information obtained through his involvement in confidential Treasury and Board of Taxation (BoT) consultations to design and market tax avoidance arrangements.
- The investigation outcome is unfavourable to Mr Collins who recently resigned from PWC.
- We understand the TPB will publish its findings on its register of tax agents on 23 December.
 - This is likely to simply state that Mr Collins's registration has been terminated and include an order for PWC to rectify its conflict of interest processes.
 - The TPB is also likely to formally update the register and issue a media release in January 2023 – describing the actions that led to the sanctions in more detail.
- If approached by the media on this matter you may wish to make the following points.
 - As an independent statutory body responsible for administering and investigating tax practitioners, the TPB plays an important integrity role for the community.
 - It is entirely within the TPB's remit to make disciplinary decisions and apply sanctions where appropriate.
 - The TPB's decisions in cases like this are reviewable by the Administrative Appeals Tribunal (pending the establishment of a successor body).

Clearance Officer

Susan Bultitude
Acting Assistant Secretary
Corporate & International Tax Division, Corporate Tax Branch
22 December 2022

Contact Officer

s 22 ,
Director
Ph: (02) s 22

CONSULTATION

PITCHD (TAU), TPB, Acting Secretary.

ADDITIONAL INFORMATION

In February and November 2021 Treasury provided information to the TPB in relation to the investigation, in response to a formal TPB notice issued under the *Tax Agent Services Act 2009*.

In May 2022, the BoT also provided information to the TPB in response to a similar formal notice in relation to Mr Collins's involvement in related BoT consultations.

- The information provided included confidentiality agreements, email exchanges, calendar invitations, meeting agendas, OECD documents and draft legislation.
- Treasury's General Counsel area was consulted throughout these processes. The Chair of the BoT was consulted and reviewed the BoT responses to the TPB.

Neither Treasury nor the BoT have a view on the veracity of the allegations made against Mr Collins.

In our view, Mr Collins's behaviour was beyond the reasonable control of Treasury and the BoT. Targeted and confidential consultations are commonly used to road-test policy and legislative proposals and relevant confidentiality agreements were obtained. There was no apparent indication at the time of Mr Collins's intentions to misuse the information he was privy to.

While proper information-handling processes were undertaken at the time, Treasury and the BoT are nevertheless reviewing the way in which they undertake targeted and confidential consultations in the future.

Background

Peter Collins was a member of the BEPS Tax Advisory Group: a targeted consultation group established by Treasury in late 2013 to discuss confidential policy and technical issues arising from the OECD/G20 Base Erosion and Profit Shifting (BEPS) initiative. It included Treasury and ATO officials, tax practitioners and industry and peak body representatives familiar with international tax issues. Around 12 to 15 non-government participants were involved. The Group first met in November 2013 and last met in June 2017.

The Group provided input that contributed to Australia's implementation of various BEPS measures designed to prevent multinational tax avoidance.

In addition, some of the members of the Group, including Mr Collins, were involved in separate targeted and confidential Treasury consultations on developing Australia's *Multinational Anti-avoidance Law* and *Diverted Profits Tax* legislation (two unilateral measures aimed at addressing multinational tax avoidance).

In respect of the BoT, Mr Collins participated in a number of consultation sessions regarding the BEPS initiatives.



THE HON JIM CHALMERS MP
TREASURER

THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MC23-000991

Wednesday, 25 January 2023

Dr Steven Kennedy PSM
Secretary
The Treasury
1 Langton Crescent
PARKES ACT 2600

Dear Dr Kennedy

The integrity of tax policy development is an essential protection for taxpayers. In light of the recent investigation by the Tax Practitioners Board, we are writing to seek your assurance that appropriate safeguards are in place to ensure that stakeholder consultation is undertaken in a way that does not provide inappropriate advantage to certain taxpayers.

The recent investigation of the Tax Practitioners Board found that a former tax agent failed to act with integrity in making unauthorised disclosures of confidential law reform information to third parties. The investigation by the Tax Practitioners Board highlights the need for strong processes to prevent this misconduct and the strong sanctions imposed emphasise their seriousness.

The Government has committed to implementing recommendations from the 2019 Independent Review of the Tax Practitioners Board and the *Tax Agent Services Act 2009*. These reforms will strengthen the independence and effectiveness of the Tax Practitioners Board. The October 2022-23 Budget included an additional \$30 million in funding to enable the Tax Practitioners Board to increase compliance investigations into high-risk tax practitioners and unregistered preparers.

We ask you to review your Department's internal processes on stakeholder consultations and provide us with assurance that appropriate systems are in place to manage conflicts of interest and protect the confidentiality of information shared with stakeholders. We also seek your views on whether further steps are needed beyond the implementation of the recommendations of the 2019 Independent Review to strengthen the ability of the Tax Practitioners Board to respond to these matters when they arise.

Yours sincerely

A blue ink signature of Jim Chalmers, consisting of a stylized 'J' followed by a cursive 'C' and a long horizontal line.

The Hon Jim Chalmers MP

A blue ink signature of Stephen Jones, featuring a cursive 'S' followed by 'JONES' in a stylized script.

The Hon Stephen Jones MP



THE HON JIM CHALMERS MP
TREASURER

Ref: MC23-000991

Wednesday, 25 January 2023

Ms Rosheen Garnon
Chair
Board of Taxation
1 Langton Crescent
PARKES ACT 2600

Dear Ms Garnon

The integrity of tax policy development is an essential protection for taxpayers. In light of the recent investigation by the Tax Practitioners Board, I am writing to seek your assurance that appropriate safeguards are in place to ensure that stakeholder consultation is undertaken in a way that does not provide inappropriate advantage to certain taxpayers.

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The Government has committed to implementing recommendations from the 2019 Independent Review of the Tax Practitioners Board and the *Tax Agent Services Act 2009*. These reforms will strengthen the independence and effectiveness of the Tax Practitioners Board. The October 2022-23 Budget included an additional \$30 million in funding to enable the Tax Practitioners Board to increase compliance investigations into high-risk tax practitioners and unregistered preparers.

I ask you to review the Board of Taxation's internal processes on stakeholder consultations and provide me with assurance that appropriate systems are in place to manage conflicts of interest and protect the confidentiality of information shared with stakeholders.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jim Chalmers', with a long horizontal line extending to the right.

The Hon Jim Chalmers MP



THE HON JIM CHALMERS MP
TREASURER

THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MC23-000991

Wednesday, 25 January 2023

Mr Chris Jordan AO
Commissioner of Taxation
Australian Taxation Office
PO Box 9977
CIVIC SQUARE ACT 2608

Dear Mr Jordan

The integrity of tax policy development is an essential protection for taxpayers. In light of the recent investigation by the Tax Practitioners Board, we are writing to seek your assurance that appropriate safeguards are in place to ensure that stakeholder consultation is undertaken in a way that does not provide inappropriate advantage to certain taxpayers.

The recent investigation of the Tax Practitioners Board found that a former tax agent failed to act with integrity in making unauthorised disclosures of confidential law reform information to third parties. The investigation by the Tax Practitioners Board highlights the need for strong processes to prevent this misconduct and the strong sanctions imposed emphasise their seriousness.

The Government has committed to implementing recommendations from the 2019 Independent Review of the Tax Practitioners Board and the *Tax Agent Services Act 2009*. These reforms will strengthen the independence and effectiveness of the Tax Practitioners Board. The October 2022-23 Budget included an additional \$30 million in funding to enable the Tax Practitioners Board to increase compliance investigations into high-risk tax practitioners and unregistered preparers.

We ask you to review the Australian Taxation Office's internal processes on stakeholder consultations and provide us with assurance that appropriate systems are in place to manage conflicts of interest and protect the confidentiality of information shared with stakeholders.

Yours sincerely

A blue ink signature of Jim Chalmers, consisting of a stylized 'J' followed by a long horizontal line.

The Hon Jim Chalmers MP

A blue ink signature of Stephen Jones, featuring a large, flowing 'S' and 'J'.

The Hon Stephen Jones MP



30 January 2023

The Hon Dr Jim Chalmers MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

BOARD OF TAXATION – MANAGING CONFLICTS OF INTEREST AND PROTECTING CONFIDENTIAL INFORMATION

I am writing to you in response to your letter dated 25 January 2023 asking for a review of the Board of Taxation's (the Board) internal processes on stakeholder consultations and for assurance that appropriate systems are in place to manage conflicts of interest and protect the confidentiality of information shared with stakeholders.

The Board plays an important role in providing real-time advice to the Australian Government on tax policy and tax system issues. The Board treats the confidentiality of information and managing conflicts of interest very seriously in order to protect the integrity of the Board's role in Australia's tax system and to maintain public confidence in the Board's work.

The Board regularly reviews the processes and procedures in place for Board members and the Board of Taxation Secretariat (the Secretariat) members to ensure that appropriate safeguards are in place to manage conflicts of interest and to protect the confidentiality of information.

The current safeguards that the Board and Secretariat have in place include the following:

- The Board has endorsed the "*Board of Taxation Policy Managing Conflicts of Interest*" Policy (the Policy) covering Board and Secretariat members (Refer Attachment A)
 - The Policy is reviewed and, if appropriate, updated by the Board every three years. The policy was last reviewed and endorsed at the Board meeting on 1 July 2022.
 - The Policy is available on the Board's website for transparency and to encourage public confidence in the Board's work
- Conflict of Interest Declarations by Board Members
 - The Board's practice is to require members who have a material personal interest in a matter before the Board to disclose the interest to the Board and to absent themselves from the Board's discussion of the matter, including the making of a decision, unless otherwise determined by the Chair (or if the Chair has the interest, the other members of the Board).
 - Board members are required to complete a Declaration of Personal Interest Form annually.

Board of Taxation – managing conflicts of interest and protecting confidential information

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- On appointment to the Board, Board members are required to execute Confidentiality Acknowledgements acknowledging that:
 - the information received by them in the course of performing work for and on behalf of the Board is received on a confidential basis, and that they will not disclose any such information to another person without the prior approval of the Commonwealth during or after their work with the Board; and
 - they will not use this information in the conduct of their own tax affairs or to advise other persons on their tax affairs.
- The Chair of Board is required to obtain an AGVSA security clearance.
- Protocols and guidelines are issued to private sector working group members that are involved in confidential Board consultations.
 - As part of the Board’s review, the Board will consult on a confidential basis with subject matter experts (the working group). Working group members participate in reviews on a pro-bono basis to assist the Board in meeting the terms of reference given by the Government for a review. Working group members are nominated to participate in a review by the Board and the Secretariat based on their experience in the review matter, quality of expertise and diversity of views.
 - The protocols and guidelines issued set out a member’s role in the review, their obligation to treat information confidentially and requirements to declare conflicts of interests. Working group members are also required to sign Confidentiality Acknowledgements.
 - The Confidentiality Acknowledgement used for these purposes is regularly reviewed and it was last reviewed in August 2022. This review was conducted in conjunction with the Treasury Legal Team (refer Attachment B).
- Secondees from the private sector to the Secretariat are required to sign a Secondment Agreement with Treasury. The Secondment Agreement includes provisions requiring a private sector secondee to:
 - abide with all of Treasury’s policies and guidelines, including acting in accordance with the requirements of the APS Code of Conduct (including the requirement to not use information improperly and avoid conflicts of interest).
 - maintain the confidentiality of Treasury information not in the public domain.
 - comply with processes to manage any conflicts of interest.

Secondees from the private sector are also required to obtain an AGVSA security clearance.

- The Board’s Advisory Panel was established in 2009. The Advisory Panel is a group of private sector tax professionals who have agreed to voluntarily contribute their knowledge and expertise in assisting the Board with its work, where requested by the Board and Secretariat.
 - Members of the Advisory Panel are appointed by the Board members based on their individual capabilities and expertise (and not as representatives of particular interests), their commitment to improving Australia’s tax system and their diversity of perspectives and views. Advisory Panel members are required to sign Confidentiality Acknowledgements when involved in

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Board of Taxation – managing conflicts of interest and protecting confidential information

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confidential consultations with the Board.

- Over the past year the Board has reviewed the role and composition of the Advisory Panel and is in the process of updating the Advisory Panel to ensure that the Board has access to a diverse range of expertise and representation from industry.

In addition to the above, we are in the process of implementing the following safeguards to improve and strengthen our systems including:

- Developing and maintaining a central conflict of interest register covering Board members, Secretariat members and working group members; and
- At the beginning of every future consultation meeting reminding private sector working group members of their obligations to declare any conflicts of interest and protect the confidentiality of information and recording that this has taken place in the minutes of the meeting.

* * * * *

I trust that these safeguards provide you with assurance that that appropriate systems are in place to manage conflicts of interests and protect the confidentiality of information shared with stakeholders.

If you have any questions or would like to discuss the above further, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rosheen Garnon'. The signature is fluid and cursive, with a large loop at the end.

Rosheen Garnon
Chair of the Board

Board of Taxation Policy

Managing Conflicts of Interest

Date adopted/last reviewed: 1 July 2022

1. Policy Objectives

- 1.1 The overarching objectives of this policy are to encourage and maintain a high level of functionality within the Board (and its working parties), and public confidence in the Board's work.
- 1.2 Specifically, this Policy aims to achieve the overarching objectives by achieving a balance between:
 - (a) Board members being encouraged to bring to Board discussions and deliberations the benefit of their individual backgrounds (in terms of their professional involvements, skills, experience and interests); and
 - (b) the careful, consistent and transparent management of the potential for the individual backgrounds of Board members to lead to damaging conflicts of interest, whether actual or perceived.
- 1.3 This Policy therefore aims to provide Board and Secretariat Members with a clear understanding of the principles applied in relation to the Board around the management of Conflicts of Interest.

2. Conflicts of Interest Policy and Principles

Policy Statement

- 2.1 All Board members, and members of working parties convened by the Board, are expected to:
 - (a) contribute fully and frankly to the discussions and work of the Board, drawing on their individual backgrounds, including their professional involvements, skills, experience and interests; and
 - (b) strive to avoid actual conflicts of interest and the perception, whether founded or not, of a conflict of interest which may arise as a result of some aspect of their individual background conflicting or being perceived to conflict with their work for or within the Board.

Principles

- 2.2 In order to give effect to the policy statement in paragraph 2.1, the principles to which Board members, and the members of working parties of the Board, are to adhere in relation to their participation in the work of the Board and of its working parties are as follows:
 - (a) *Paramount Responsibility to the Board* – the paramount responsibility of those working for or within the Board is to the Board and the fulfilment of its charter, and any potential conflict between this responsibility and other competing interests and duties of the individual must be managed and resolved in favour of the paramount responsibility to the Board, in order to avoid a conflict of interest;

- (b) *Conflict of Interest* – a conflict of interest should be considered to exist in circumstances where a competing interest and/or duty of an individual cannot be managed in a way that maintains the paramount responsibility to the Board;
- (c) *Transparency* – confidence in the Board’s work is greatly enhanced by ensuring clarity for readers of the Board’s publications, and for those participating in Board or working party discussions and deliberations, about the relevant individual backgrounds of those involved in the Board’s publications and its discussions and deliberations;
- (d) *Consistency* – the confidence of those involved in the work of the Board is greatly enhanced by ensuring a consistent approach to the way actual (and perceived) conflicts of interest are handled within the Board and its working parties;
- (e) *Fairness* – the confidence of those involved in the work of the Board is greatly enhanced by giving individuals the opportunity to consider carefully the extent and context of any particular conflict of interest (actual or perceived) affecting them in order to handle it in a fair and appropriate way in the circumstances;
- (f) *Individual responsibility* – Each member of the Board and of its working parties is responsible to protect both internal and public confidence in the Board and thus to ensure that they are aware of, and adhere to, the requirements of this policy;
- (g) *Shared responsibility* – Adherence to this policy is also the collective responsibility of the Board (including the Secretariat) and so ought to be a matter for open discussion within the Board and its working parties when there is any question as to the application of this policy to any particular situation;
- (h) *Public Interest* – given the nature of the Board and its work, the above principles should also be applied having regard to what members of the public might reasonably expect of the members of such a Board.

3. Protocol: Policy and Principles in Practice

Public disclosure of certain information

- 3.1 The Secretariat of the Board must ensure that the Board’s website includes publicly available information on the relevant individual backgrounds of the members of the Board.
- 3.2 The Board must ensure that all Discussion Papers, Reports and other similar publications of the Board:
 - (a) refer readers to the publicly available information on the relevant individual backgrounds of Board members; and
 - (b) include information on the relevant individual backgrounds of members of the relevant working party where it is not otherwise publicly available on the website.

At meetings

- 3.3 There is to be a standing item on the agenda of each meeting of the Board and of its working parties, prompting Board Members (and members of the Secretariat) to consider and declare conflicts of interest (including potential conflicts of interest) as they arise.

- 3.4 Board and working party members must, having regard to the policy and principles set out in Section 2, promptly declare all known potential or actual conflicts of interest at all Board or working party meetings at which any matter is discussed to which the conflict of interest relates, and the minutes of meetings must include all such declarations.
- 3.5 The Board or working party may, having regard to the policy and principles set out in Section 2, determine how best to manage a declared or identified potential or actual conflict of interest, depending on its nature and extent. This may include requiring that the person who declared, or is identified by the meeting as having, a potential or actual conflict of interest is to refrain from discussion, abstain from voting and/or leave the room for part or all of the discussion.
- 3.6 A person who declares or is identified by the meeting as having a conflict of interest (the **conflicted member**) must abide by the will of the meeting expressed, if necessary, by way of an ordinary resolution of the meeting (excluding the vote of the conflicted member) but may take their own independent advice in respect of the decision of the meeting.

Between meetings

- 3.7 If a member of the Board, or of a Board working party, or of the Board Secretariat, are concerned about the existence, or potential existence, of a conflict of interest in relation to a Board or working party member which has not been declared, the matter must be discussed in confidence with the Chair (or the Deputy Chair where it involves the Chair) and then, by the Chair or the Deputy Chair (as the case may be), with the relevant conflicted (or potentially conflicted) Board or working party member to determine how the matter should best be handled.

4. Board Members' Interests Register (applicable to the members of the Board only)

Members' Interests Register

- 4.1 The Board Secretariat must maintain a Members' Interests Register to record all relevant declared interests of Board Members, including any pecuniary interests which members of the Board are required by the Commonwealth to disclose.
- 4.2 Information contained in the Members' Interests Register will be available to the Board to the extent necessary to give effect to this Policy. Unless necessary to implement the Policy, your personal information will not be shared with other Board members or unless authorised by the Australian Privacy Principles in Schedule 1 to the *Privacy Act 1988*.
- 4.3 Each Board member must:
- (a) promptly after being appointed to the Board;
 - (b) at least annually thereafter; and
 - (c) at any time during their term of office that a new relevant material interest or relationship arises,
- complete a Declaration of Personal Interests, in the form provided by the Secretariat from time to time, notifying all relevant material interests and relationships which give rise to an actual conflict of interest or might reasonably be expected to give rise to a conflict of interest (i.e. a potential conflict of interest) (see paragraph 2.2(b) above for guidance as to what comprises a conflict of interest).

- 4.4 For avoidance of doubt, ex-officio members of the Board are not required to complete a Declaration of Personal Interests under this policy on the basis that they are Australian Public Service (APS) employees under the *Public Service Act 1999* (the **PSA**) and are required to declare conflicts of interest under the PSA.
- 4.4 Each Board member, with the exception of ex-officio members, has an ongoing obligation during their term of office to notify the Secretariat of relevant material interests or relationships, as they arise, where the Board member considers that they may reasonably be expected to result in a conflict of interest. The absence of consent by a third party to disclose their personal or business information that could impact or contribute to a member's conflict of interest will not be accepted as discharging the member's obligation of make a full and complete disclosure of any actual or potential conflict of interest under this clause.
- 4.5 The Secretariat is responsible to keep the Board, through the Chair, informed of all notifications made under this Policy.

5. Policy Review

- 5.1 This Policy must be reviewed and, if appropriate, updated by the Board every 3 years.

ATTACHMENT B

COMMONWEALTH OF AUSTRALIA

CONFIDENTIALITY ACKNOWLEDGMENT

I,
(Full name in BLOCK LETTERS)

of
(Organisation)

acknowledge that the information received by me in the course of assisting the Board of Taxation (the **Board**) in relation to the Review of the Tax Treatment of Digital Assets and Transactions in Australia (the **Review**) is received on a confidential basis. I will not disclose any such information received in relation to the Review to another person without the prior written approval of the CEO or Secretariat of the Board of Taxation during or after my work with the Board. I will not use this information in the conduct of my own tax affairs or to advise other persons on their tax affairs.

Dated this day of 2022

Signature

Witnessed by
(Signature)

.....
(Name in BLOCK LETTERS of Witness)

Notes:

The Criminal Code in the *Criminal Code Act 1995* (Cth) provides penalties for the unauthorised release of confidential Commonwealth information.

The confidentiality acknowledgement you sign is personal, not organisational. You may not disclose it to another person in your organisation.

The obligation of confidentiality may extend to your own submissions to the Board to the extent that the submission reveals the substance of information received by you in the course of your participation as a member of the expert panel.



MC23-001043

Secretary
Dr Steven Kennedy PSM

The Hon Jim Chalmers MP
Treasurer
Parliament House
CANBERRA ACT 2600

The Hon Stephen Jones MP
Assistant Treasurer and Minister for Financial Services
Parliament House
CANBERRA ACT 2600

Dear Ministers

Confidential Consultations

I am writing in response to your letter of 25 January 2023 concerning the integrity of tax policy development, in light of the recently announced outcome of the Tax Practitioners Board (TPB) investigation of a former tax partner of PwC, and the independence and effectiveness of the TPB.

Tax policy development – integrity and confidentiality

Treasury appreciates that it is crucial to have appropriate systems in place to ensure sensitive information is treated confidentially and real or perceived conflicts of interest are promptly identified and carefully managed.

Such systems support Treasury to undertake consultations that enable policy and implementation considerations to be more fully explored and so assist with effective policy and legislative outcomes. External subject matter experts provide valuable commercial and technical perspectives that assist with policy and law design and the avoidance of unintended consequences.

Treasury utilises a number of safeguards, as set out in the attachment to this letter, to protect the confidentiality of information shared with stakeholders. These safeguards are generally effective to protect the confidentiality of information. However, the recent decision of the TPB has highlighted that our processes could be made more robust.

Improvements to our processes will be considered as part of the current refresh of Treasury's existing Stakeholder Engagement Strategy. While the TPB investigation was focussed on taxation matters, it is important to have a whole-of-Department approach given Treasury consults with stakeholders on a broad range of policy issues. The refreshed Stakeholder Engagement Strategy will set out the principles for Treasury's approach to stakeholder engagement and include guidance for Treasury staff on protecting the confidentiality of information.

Further details of potential processes to further mature our approach to managing confidential consultation processes are set out in the attachment to this letter.

In addition, the Department has a Conflict of Interest policy, updated in January 2022, that sets out the responsibilities of staff, secondees, contractors and consultants for managing conflicts of interest.

Independence and effectiveness of the TPB

In light of the misconduct exposed by the TPB investigation, Treasury has engaged with the TPB on the best means to equip it to effectively monitor and discipline tax practitioners. At its 1 February 2023 board meeting, the TPB confirmed the importance of swift implementation of the Government Response to the 2019 TPB Review, which endorsed an ambitious reform agenda comprising 20 recommendations.

Legislation giving effect to the first tranche of TPB Review recommendations has been implemented, or is scheduled for introduction in the Autumn 2023 sittings. This legislation:

- enhances the TPB's financial independence;
- reduces red tape by streamlining the regulation of tax (financial) advisers, and converting the three-year registration cycle to an annual cycle;
- strengthens the disclosure requirements for deregistered tax agents; and
- empowers the Minister, by legislative instrument, to proactively create additional obligations to supplement the TPB's existing Code of Professional Conduct to address emerging behaviours and practices.

In 2023, following consultations with the tax profession and regulators, Treasury will provide policy advice to government on implementation of a second tranche of TPB Review recommendations, focussed on:

- boosting the TPB's regulatory powers, including removing limitations on investigations and expansion of sanctions available to address misconduct; and
- lifting qualification standards (education and experience) for tax professionals.

Treasury will use this consultation process to test with the sector whether the TPB Review recommendations formulated in 2019 remain fit for purpose in 2023 or require modification to address emerging behaviours and practices.

In addition, Treasury is working with the Australian Taxation Office to prepare advice for government on further options, beyond TPB sanctions, to penalise tax advisory firms which do not put in place appropriate government arrangements to curb misconduct. This could include the addition of new conditions to the Statement of Tax Record which entities must hold to tender for Commonwealth Government procurements valued at over \$4 million (including GST).

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The Department will keep you updated on the workstreams referenced in this letter as they are progressed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'SK', with a long, sweeping underline that extends downwards and to the right.

Steven Kennedy

14 February 2023

ATTACHMENT

In striking a balance between obtaining important constructive industry advice, protecting confidentiality and ensuring an even playing field for the broader taxpayer community, Treasury utilises a number of safeguards in its consultation on tax policy, including:

- deciding how and who to consult based on an assessment of the value of particular stakeholders' expertise;
- where necessary, requiring organisational and individual stakeholders to sign legally binding confidentiality deeds, prior to receiving any confidential information (including by email) or attending any meeting (or virtual meeting) where confidential information is discussed, and reminding participants of their non-disclosure obligations both in writing and orally; and
- requiring private sector secondees to Treasury to sign legally binding secondment agreements setting out, among other things, their obligations with regards to the confidentiality of Treasury information and conflicts of interest.

Treasury is currently considering how to further strengthen the existing safeguards, both as they relate to tax policy and across the Department more generally, to ensure they remain fit for purpose, including:

- bolstering the terms of Treasury's organisational and individual deed of confidentiality templates and secondment agreement templates;
- using deeds of confidentiality with organisations (as opposed to individuals) more frequently, thereby requiring organisations to have systems in place to protect the confidentiality of information provided to their partners or employees and strengthen our ability to prevent 'rogue' actors from misusing information;
- exploring the possibility of using 'personalised' identifying watermarks on confidential documents to improve stakeholder accountability and strengthen any future Commonwealth claims against breaches;
- considering a system to rate the relative sensitivity of information and better assess risks associated with particular information;
- improving the processes used to record and store confidentiality agreements;
- improving communication with stakeholders to ensure they understand their obligations and what is considered 'confidential' information;
- engaging with advisory firms on the robustness of their internal confidentiality and conflict of interest processes to ensure the firms fully understand the seriousness and potential consequences of not complying with, confidential consultation processes; and
- sharing the benefits of 'lessons learnt' with other Treasury portfolio agencies.



Commissioner of Taxation

FOI 3269
Document 7

The Hon. Dr Jim Chalmers, MP
Treasurer

The Hon. Stephen Jones, MP
Assistant Treasurer, Minister for Financial Services

Dear Treasurer and Assistant Treasurer

Managing conflicts of interest and protecting confidential information in ATO-led consultation

I am writing in response to your letter dated 25 January 2023 asking that the Australian Taxation Office (ATO) review its internal processes on stakeholder consultations and provide assurance that appropriate systems are in place to manage conflicts of interest and protect the confidentiality of information shared with stakeholders.

Consultation is an important part of the ATO's role to effectively manage and shape the tax, superannuation, and registry systems. It contributes to good decision making, can mitigate unintended results, and improves our services and advice to the community. Consultation also builds trust in our administration and can improve voluntary compliance with obligations. The ATO does not consult on the development of policy, and therefore the risks and opportunities for market advantage are more limited. Most of the consultation done by the ATO is not confidential and deals with administrative and implementation issues.

The ATO consults in several ways, including through formal groups, less formal arrangements such as meetings with subject-matter experts, and as part of our business-as-usual engagement with clients and their representatives.

The ATO has appropriate safeguards to ensure the integrity of our consultation processes, to manage conflicts of interests and to protect confidential information. We have reviewed these safeguards, with a focus on our nine stewardship groups, and are confident that our processes are effective. The key ones are:

- a publicly available consultation protocol to give clear guidance and expectations
- guidance for ATO staff that promotes consistent practices for consultation, including to assist staff determine if confidentiality agreements are needed
- standard reminders and statements of expectation for raising conflicts of interest during consultation
- internal policies for ATO staff on conflicts of interest and the classification of information
- periodically reviewing the membership of consultation groups to ensure appropriate and diverse representation.

Through this review the ATO identified some opportunities to further strengthen our consultation processes that we will make in early 2023:

- developing a central register of confidential consultations



- setting clearer expectations in formal and informal consultation about declaring conflicts of interest and keeping formal records
- continuing to engage with the 'Big 4' consulting firms to understand their guidelines in relation to confidentiality and managing conflict of interest
- continuing to work with representatives of professional associations to understand their guidelines in relation to confidentiality and managing conflicts of interest.

Further information is available in the attachment. I trust this information is useful and if you would like to discuss, please do not hesitate to contact me or Deputy Commissioner David Allen on s 47E(d) [REDACTED].

A handwritten signature in black ink, appearing to read "Chris Jordan".

Chris Jordan AO

Commissioner of Taxation

10 February 2023



ATTACHMENT

ATO consultation framework

The ATO consults with stakeholders, and we are committed to doing this in line with Australian Government best practice approaches for engagement.

Our [consultation protocol](#) has guided our consultation approaches since 2015 and we are currently refreshing our consultation framework, ensuring it remains fit for purpose. The framework will be finalised in early 2023 and will embed and promote more formally defined and consistent practices amongst ATO staff.

Our ATO Consultation Hub (internal) maintains consultation information on the ATO's website to help stakeholders find and share information on consultations. Our Hub also provides a central coordinating point for ATO staff involved in consultation and advises on good practices.

ATO Consultation

The ATO has formal consultation through nine stewardships groups:

- National Tax Liaison Group
- GST Stewardship Group
- Individuals Stewardship Group
- Large Business Stewardship Group
- Not-for-profit Stewardship Group
- Private Groups Stewardship Group
- Small Business Stewardship Group
- Superannuation Industry Stewardship Group
- Tax Practitioner Stewardship Group

The National Tax Liaison Group (NTLG) comprises representatives from the peak professional bodies. The NTLG's role includes evaluating the effectiveness of ATO consultation activities and identifying opportunities for improvement. We have engaged with the NTLG as part of refreshing our consultation framework and the principles that underpin our approaches (this includes confidential consultation).

There are a range of other groups and committees that undertake consultation on key topics or areas of specialisation. The stakeholders we consult with mostly do so in a pro-bono or volunteer capacity and are selected often based on their expertise and ability to provide a diversity of views. Our senior ATO officers have a good understanding of the key participants, particularly in the large market, and as such will tend to only consult with trusted operators (beyond the stewardship groups).

We also undertake consultation through advisory panels where independent and expert advice is beneficial.

What we consult on

Most of our consultation is on the administration of the existing law and the implementation of changes, for example, help and support products and services. The ATO does not consult on development of policy. Most consultation is not confidential, and we publish the details of open and closed consultations on our website to provide transparency.

Protecting confidentiality of information



There will be situations where it is not appropriate for the ATO to consult in an open and transparent way. When consultation (all or part) needs to be treated confidentially (usually prior to a broader public consultation process), the ATO has established protocols and guidelines, including for classifying documents. There are also instances where we determine if it is appropriate to seek signed confidentiality agreements.

We note that there is a code of ethics for Professional Accountants that reinforces expected behaviours, including in relation to confidentiality.

Managing conflicts of interest

The ATO takes conflicts of interest (real or perceived) seriously. In consultation, conflicts of interest are not uncommon, and in many cases, they are inevitable. This is because stakeholders in consultation are sometimes tax advisers and consultations deal with changes to the administration of tax law.

When we consult, we identify stakeholders based on their experience and expertise. We can approach stakeholders directly because of established relationships and seek nominations from professional associations.

Some ways we manage conflicts of interest are:

- advising stakeholders to self-assess and declare conflicts (real or perceived)
- instigating discussions with members of consultation groups at the start of their tenure (generally two years) and as part of regular (more informal) discussions to set expectations and provide clear avenues for declaring conflicts with senior ATO staff
- starting to use an integrity declaration process for members of some stewardship groups (including the Tax Practitioner Stewardship Group) for members to confirm they meet obligations in relation to their personal affairs and to affirm commitment to demonstrate expected behaviours,

Consultation with advisers (Big 4)

We consult with representatives from the 'Big 4' consulting firms across several consultation groups and forums (both formal and informal). For example, the 'Big 4' have one seat on the Large Business Stewardship Group, which they rotate each year. Some firms may also have a representative on specific industry-based groups such as the Energy and Resources Working Group.

More generally, we have worked closely with tax advisers of large business clients to improve engagement and transparency of their tax practices. This includes facilitating the development of the Large Market Advisor Principles and the Legal Professional Privilege Protocol.

The ATO has reviewed its processes relating to conflicts of interest and confidentiality with respect to the 'Big 4' and we have identified some opportunities to make them stronger. We will continue to engage with the Big 4 to understand their conflict management protocols, noting that PwC has already made improvements to their processes because of action by the Tax Practitioners Board.