

## CONFIDENTIALITY - PwC COLLINS MATTER

### Headline Statement

- The actions by PriceWaterhouseCoopers (PwC) Australia's former head of international tax, Mr Collins, were egregious and outrageous.
  - While engagement with the community enhances the development of policies and legislation, it is necessary for some consultation to occur on a confidential basis.
  - Those involved must respect that the consultation is occurring for the public benefit and that they must not abuse the confidence and trust placed in them to unfairly disadvantage other Australians or to advantage themselves.
- Given the seriousness of the misconduct, the Treasury has referred the matter to the Australian Federal Police to consider commencement of a criminal investigation.
  - Treasury is not able to comment further. It is matter for the Australian Federal Police.

### Key points

- On 23 December 2022, the TPB deregistered Mr Collins as a tax agent for two years. In addition, the TPB ordered PwC to take steps to ensure it manages conflicts of interest appropriately.
  - On 2 May 2023, certain PwC emails uncovered during the TPB investigation were tabled in Parliament by the TPB in response to Senate questions on notice.
- Treasury is giving further and careful consideration to the Commonwealth's position on this matter given the new material that the TPB tabled in Parliament which highlighted the significant extent to which the breaches occurred.

#### Contact Officer:

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Last updated: 19/05/2023

- Treasury will not comment on those considerations so as to not prejudice any potential options that might be available to the Commonwealth.
- Treasury is progressing implementation of the Government response to the 2019 Independent review of the TPB to better equip it to monitor and discipline tax practitioners who engage in misconduct.
  - The Government introduced legislation for the first tranche of reforms in February 2023 which, amongst other things, empowers the Minister, by legislative instrument, to supplement the TPB’s existing Code of Professional Conduct to address emerging behaviours and practices.
  - A second tranche of reforms focussed on broadening the Board’s investigation and sanctions powers and the qualifications for tax professionals, will be subject to public consultation later this year.
- Treasury has also enhanced its internal safeguards to protect the confidentiality of information and is asking tax advisory firms and industry bodies to set out governance and other internal processes to ensure confidentiality of information and appropriate management of conflict of interest.
  - There have been no confidential tax consultations with PwC since the TPB decision.
- Given PwC is a contractor to the Commonwealth, the Department of Finance has reviewed the Commonwealth Procurement Framework to examine Commonwealth protections from the poor behaviour of service providers and the ethical accountability of entities awarded Government contacts.
- The Commonwealth Procurement Framework is robust and enables officials to consider a range of information regarding tenderers past practices, including unethical behaviour, failure to abide by confidentiality provisions and deficiencies in past performance. To enhance the Framework, Finance has:
- updated the Commonwealth Contracting Suite and ClauseBank to include notification of significant events clauses in future Commonwealth contracts.
  - these clauses will enable the Commonwealth to terminate a contract for material breach of contract if an adverse event occurs, and the contract manager is dissatisfied with the supplier’s subsequent management of the event.

- through the publication of a procurement policy note on the Finance website, reminded officials that, when undertaking a procurement, they must consider the previous behaviour, including ethical conduct, of an organisation when undertaking value for money assessments.
- sent joint correspondence from the Secretaries of Finance and Treasury to the other Secretaries advising them of the updated clauses and the release of the procurement policy note.
- engaged with PwC to remove specific individuals from existing and future Management Advisory Services Panel contracts until the independent review of PwC's accountability, governance and culture is complete.
- commenced developing a Supplier Code of Conduct, which will outline the behavioural standards expected from suppliers during procurement processes and while under contract.

*When did Treasury become aware of the TPB investigations, its findings and the PwC emails?*

- Treasury first became aware that the TPB was conducting an investigation into Mr Collins's actions in November 2020.
  - Apart from providing information formally requested by the TPB during its investigation, Treasury was neither involved in nor privy to the investigation.
- In late 2020, the TPB made enquiries with Treasury regarding information relevant to TPB investigations. There were further discussions with the TPB in 2021 and 2022 and Treasury was made aware of the outcome of the TPB's investigation in relation to Mr Collins on 30 November 2022.
- Treasury facilitates the tabling of all Treasury portfolio responses to questions on notice with the Senate Economics Committee. As part of that process Treasury received the PwC emails on 2 May 2023.

### **Policy Commitments**

- The Government has committed to implementing recommendations from the 2019 independent TPB Review, which will strengthen the independence and effectiveness of the TPB.

- In the October 2022-23 Budget, the Government committed an extra \$30 million in funding for the TPB to increase compliance investigations of high-risk tax practitioners.
- Treasury is giving further and careful consideration to the Commonwealth's position on this matter given the new material that the TPB tabled in Parliament.
  - Treasury will not comment on those considerations so as to not prejudice any potential options that might be available to the Commonwealth.

## **Background**

### ***Referral to the Australian Federal Police***

- PwC Australia’s former head of international tax, Mr Peter Collins, improperly used confidential Commonwealth information.
- The emails that the Tax Practitioners Board tabled in Parliament on 2 May 2023 highlighted the significant extent of the unauthorised disclosure of confidential Commonwealth information and the wide range of individuals within PwC who were directly and indirectly privy to the confidential information.
- In light of these recent revelations and the seriousness of this misconduct, the Treasury referred the matter to the Australian Federal Police to consider commencement of a criminal investigation on 24 May 2023.
- The Secretary of the Treasury issued a public statement on 24 May 2023 about the referral of the matter to the Australian Federal Police.
- Treasury will not comment further on that referral or on any other options under consideration so as to not prejudice potential options that might be available to the Commonwealth.

### ***TPB’s investigation findings***

- An investigation conducted by the TPB found Mr Peter Collins – former head of international tax at PwC - had made unlawful disclosures of confidential information provided to him by Treasury to colleagues at PwC.
  - Mr Collins was part of confidential consultations undertaken by Treasury between 2013 and 2018 to develop tax laws relating to multinational tax avoidance.
  - The consultation group included Treasury and ATO officials, tax practitioners and industry and peak body representatives familiar with international tax issues.
- The group provided input that contributed to Australia’s implementation of measures designed to prevent multinational tax avoidance, arising from the G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations.
- In addition, some members of the group, including Mr Collins, were involved in separate 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).
- Mr Collins also participated in a number of Board of Taxation consultation sessions regarding the implementation of some BEPS initiatives.
- Mr Collins gave some “confidentiality acknowledgments” relating to the Treasury consultations.

- On 23 December 2022, the TPB deregistered Mr Collins as a tax agent for two years. In addition, the TPB ordered PwC to take steps to ensure it manages conflicts of interest appropriately.
- On 2 May 2023, certain PwC emails uncovered during the TPB investigation were tabled in Parliament by the TPB in response to Senate questions on notice, highlighting the significant extent to which breaches occurred.

### ***Private sector secondees to Treasury***

- Corporate and International Tax Division and the Board of Taxation Secretariat have recruited several secondees from the private sector in recent years.
  - Secondees inject commercial perspectives on tax policy issues and help to build understanding of public policy frameworks and processes when they return to their firms.
  - While a PwC employee was seconded to Treasury from 3 March 2014 to 20 February 2015 that secondment ended prior to the development of the Multinational Anti-avoidance Law.
- Secondees' behaviour and responsibilities whilst in Treasury are governed by legally-binding secondment agreements. They remain partners of their firms but must:
  - abide by Treasury policies and guidelines as if they were employees, including compliance with the APS Code of Conduct;
  - not sign-off on advice to Ministers;
  - perform work solely at the direction of Treasury;
  - keep all non-public information received by way of their duties in Treasury confidential during and after their secondment;
  - declare personal interests prior to their secondment and declare and manage any conflicts of interest that arise during their secondment.

### ***Whole-of-Government actions***

#### *Changes to Commonwealth Procurement*

- Given PwC is a contractor to the Commonwealth, the Department of Finance has reviewed the Commonwealth Procurement Framework to examine Commonwealth protections from the poor behaviour of service providers and the ethical accountability of entities awarded Government contracts.
- The Commonwealth Procurement Framework is robust and enables officials to consider a range of information regarding tenderers past practices, including unethical behaviour, failure to abide by confidentiality provisions and deficiencies in past performance. To enhance the Framework, Finance has:

- updated the Commonwealth Contracting Suite and ClauseBank to include notification of significant events clauses in future Commonwealth contracts.
- these clauses will enable the Commonwealth to terminate a contract for material breach of contract if an adverse event occurs, and the contract manager is dissatisfied with the supplier's subsequent management of the event.
- through the publication of a procurement policy note on the Finance website, reminded officials that, when undertaking a procurement, they must consider the previous behaviour, including ethical conduct, of an organisation when undertaking value for money assessments, and
- sent joint correspondence from the Secretaries of Finance and Treasury to the other Secretaries advising them of the updated clauses and the release of the procurement policy note.
- engaged with PwC to remove specific individuals from existing and future Management Advisory Services Panel<sup>1</sup> contracts until the independent review of PwC's accountability, governance and culture is complete.
- written to all Management Advisory Panel suppliers seeking their agreement to vary the existing panel agreement to include the notification of significant event clauses.
  - Finance is also preparing updates to other Finance led whole of government panel arrangements to include these clauses.
  - The Digital Transformation Agency has advised Finance that it will review its panel contract arrangements to ensure the requirements and similar clauses are in all of its whole of government ICT panel arrangements.
- commenced developing a Supplier Code of Conduct, which will outline the behavioural standards expected from suppliers during procurement processes and while under contract.

### **Treasury-specific actions**

#### *Review of the Tax Practitioners Board and Tax Agent Services Act 2009*

- In October 2019, the Final Report of the Independent Review of the Tax Practitioners Board (TPB Review) was delivered to the former Government.
  - It contained 28 recommendations relating to the TPB and the operation of the Tax Agent Services Act 2009 (TASA).
  - The former Government's response to the TPB Review was released in November 2020 and supported 20 recommendations in full, in part, or in principle.

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<sup>1</sup> The Management Advisory Services Panel is a Finance-managed mandatory coordinated WoAG arrangement to supply commonly-used non-ICT management advisory services (consultancies).

- Through the Announced-but-Unenacted-Measures process, the Government endorsed the former Government's response to the TPB review.
- Legislation giving effect to the first tranche of TPB Review recommendations was introduced into the House of Representatives on 16 February 2023, and is currently before the Senate Economics Legislation Committee, with their report due on 26 May 2023.
- This legislation, amongst other things, 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.
  - ss 34(3), 47C and 47E(d) ss 34(2) and (3), 47C and 47E(d)
- In addition, Treasury is preparing consultations papers on implementation options for a second tranche of TPB recommendations, focussed on:
  - boosting the TPB's regulatory powers, including a broadening of sanctions powers, changes to limits on TPB information gathering and investigations, and enhancements to information published on the TPB Register; and
  - lifting qualification standards for tax professionals to strengthen the education and experience requirements in the sector.
- Public consultation on the second tranche is expected to commence in the second half of 2023.

#### *Enhancing Internal Safeguards to Protect the Confidentiality of Information*

- Treasury has enhanced its internal safeguards to protect the confidentiality of information and is asking tax advisory firms and industry bodies to set out governance and other internal processes to ensure confidentiality of information and appropriate management of conflict of interest.
  - There have been no confidential tax consultations with PwC since the TPB decision.
- The Board of Taxation is also in the process of implementing additional safeguards to improve and strengthen its systems, including:
  - Developing and maintaining a central conflict of interests register covering Board members, Secretariat members and working group members; and
  - Reminding private sector working group members, at the beginning of every future consultation meeting, of their obligations to declare any conflicts of interest and protect the confidentiality of information – and recording that this has taken place in the meeting minutes.
- Treasury has reviewed and strengthened its templates for organisational and individual deeds of confidentiality and secondment agreements to ensure they are robust, fit-for-



purpose and legally enforceable. Treasury will introduce more accountability at the advisory firm level and with industry bodies by increasing usage of organisational deeds of confidentiality when conducting targeted and confidential consultations.

- Treasury has commenced updating internal processes for conducting targeted and confidential consultations. The updates will, when complete, include clearer annotation of confidential documents with appropriate ‘warnings’, a rating system to assess non-disclosure risks on a case-by-case basis, and improved record-keeping and storage of deeds of confidentiality.
- Deputy Secretary Ms Diane Brown wrote to PwC and 25 other organisations on 29 March and 3 April 2023 concerning Treasury’s approach to confidential taxation consultations and seeking information on the extent to which each entity’s internal governance arrangements reflect professional and ethical expectations.
  - Treasury will engage directly with advisory firms and other organisations to discuss their processes for managing conflicts of interest and confidentiality and reinforce Treasury’s expectations concerning the handling of confidential information.



## Back pocket brief: Confidentiality – PwC Collins

Budget Estimates (May 2023)

Contact officer: s 22

Ext: s 22

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*When did Treasury become aware of the TPB investigations, its findings and the PwC emails?*

- Treasury first became aware that the TPB was conducting an investigation into Mr Collins's actions in November 2020.
  - Apart from providing information formally requested by the TPB during its investigation, Treasury was neither involved in nor privy to the investigation.
- In late 2020, the TPB made enquiries with Treasury regarding information relevant to TPB investigations. There were further discussions with the TPB in 2021 and 2022 and Treasury was made aware of the final outcome of the TPB's investigation in relation to Mr Collins in December 2022.
- Treasury facilitates the tabling of all Treasury portfolio responses to questions on notice with the Senate Economics Committee. As part of that process Treasury received the PwC emails on 2 May 2023.

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#### Private sector secondees to Treasury

- Corporate and International Tax Division and the Board of Taxation Secretariat have recruited several secondees from the private sector in recent years.
  - Secondees inject commercial perspectives on tax policy issues and help to build understanding of public policy frameworks and processes when they return to their firms.
- Secondees' behaviour and responsibilities whilst in Treasury are governed by legally binding secondment agreements. They remain partners of their firms but must:
  - abide by Treasury policies and guidelines as if they were employees, including compliance with the APS Code of Conduct;
  - not sign-off on advice to Ministers;
  - perform work solely at the direction of Treasury;
  - keep all non-public information received by way of their duties in Treasury confidential during and after their secondment;
  - declare personal interests prior to their secondment and declare and manage any conflicts of interest that arise during their secondment.



### History of key engagement with Mr Collins on the BEPS, MAAL and DPT consultations

Date	Details
Late 2013	BEPS Tax Advisory Working Group established – members invited to participate (date unknown).
28 Nov 13	First BEPS Advisory Group meeting. These meetings typically featured: <ul style="list-style-type: none"><li>• Treasury updates from OECD meetings involving the 15 BEPS Actions</li><li>• OECD discussion drafts on the BEPS Actions</li><li>• Discussions on how best to implement in Australian context</li></ul>
11 Dec 13	Mr Collins signs BEPS Tax Advisory Working Group confidentiality agreement
19 Feb 14	BEPS Advisory Group meeting
18 Mar 14	BEPS Advisory Group meeting
17 Apr 14	BEPS Advisory Group meeting
19 May 14	BEPS Advisory Group meeting
1 Aug 14	BEPS Advisory Group meeting
21 Nov 14	BEPS Advisory Group meeting
21 Jan 15	BEPS Advisory Group meeting
20 Feb 15	BEPS Advisory Group meeting
15 Apr 15	BEPS Advisory Group meeting – the group was provided with an initial overview of four proposals for inclusion in the 2015-16 Budget: <ul style="list-style-type: none"><li>• the Multinational Anti-avoidance Law</li><li>• ATO corporate tax transparency report</li><li>• Country-by-Country reporting</li><li>• Increased penalties for large MNEs</li><li>• Extending the GST to imported goods and services</li></ul>
23 Apr 15	BEPS Advisory Group meeting
12 May 15	MAAL announced in the 2015-16 Budget – exposure draft released



16 Sep 15	MAAL legislation introduced into Parliament
5 Aug 15	BEPS Advisory Group meeting
5 Oct 15	OECD releases its final report on the 15 BEPS Actions
15 Apr 16	Mr Collins signs confidentiality agreement on tax reform proposals (not specified but it was the Diverted Profits Tax).
18 Apr 16	Confidential Treasury discussion paper circulated to members – Diverted Profits Tax
3 May 16	Diverted Profits Tax announced in the 2016-17 Budget – consultation paper released
29 Nov 16	Diverted Profits Tax exposure draft released for consultation
9 May 17	Anti-hybrid mismatch rules announced in the 2017-18 Budget
13 Dec 16	Tax Treaties advisory Panel (joint with BEPS Advisory Group)
9 Feb 17	Diverted Profits Tax legislation introduced into Parliament
20 Jun 17	BEPS Advisory Group meeting (joint with Tax Treaties Advisory Panel)
19 Feb 18	Mr Collins signs confidentiality agreement on hybrid mismatches (including branch mismatches and a targeted integrity rule).
24 May 18	Anti-hybrids mismatch legislation introduced into Parliament
Sep 18	Treasury informally became aware of an ATO investigation into possible breach of confidentiality by Mr Collins in relation to the MAAL

### TPB reforms

- Treasury is progressing reforms of the TPB to better equip it to monitor and discipline tax practitioners who engage in misconduct.
  - The Government introduced legislation for the first tranche of reforms in February 2023, implementing the Government response to the 2019 Independent review of the TPB, with a second tranche of reforms focussed on broadening the Board's investigation and sanctions powers and the qualifications for tax professionals, scheduled for consultation later this year.
- Treasury has also enhanced its internal safeguards to protect the confidentiality of information and is asking tax advisory firms and industry bodies to set out governance and other internal processes to ensure



confidentiality of information and appropriate management of conflict of interest.

- There have been no confidential tax consultations with PwC since the TPB decision.
- Given PwC is a contractor to the Commonwealth, the Department of Finance has reviewed the Commonwealth Procurement Framework to examine Commonwealth protections from the poor behaviour of service providers and the ethical accountability of entities awarded Government contracts
- The Commonwealth Procurement Framework is robust and enables officials to consider a range of information regarding tenderers past practices, including unethical behaviour, failure to abide by confidentiality provisions and deficiencies in past performance. To enhance that Framework, Finance has:
  - through the publication of a procurement policy note on the Finance website, reminded officials that, when undertaking a procurement, they can consider the previous behaviour, including ethical conduct, of an organisation when undertaking value for money assessments
  - updated the Commonwealth Contracting Suite and ClauseBank to include notification of significant events clauses in future Commonwealth contracts
    - : these clauses will enable the Commonwealth to terminate a contract for material breach of contract if an adverse event occurs, and the contract manager is dissatisfied with the supplier's subsequent management of the event.
  - sent joint correspondence from the Secretaries of Finance and Treasury to the other Secretaries advising them of the updated clauses and the release of the procurement policy note
  - engaged with PwC to remove specific individuals from existing and future Management Advisory Services Panel<sup>[1]</sup> contracts until the independent review of PwC's accountability, governance and culture is complete
  - commenced developing a Supplier Code of Conduct, which will outline the behavioural standards expected from suppliers during procurement processes and while under contract.

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<sup>[1]</sup> The Management Advisory Services Panel is a Finance-managed mandatory coordinated WoAG arrangement to supply commonly-used non-ICT management advisory services (consultancies).



- The Government has committed to implementing recommendations from the 2019 independent TPB Review, which will strengthen the independence and effectiveness of the TPB.
- In the October 2022-23 Budget, the Government committed an extra \$30 million in funding for the TPB to increase compliance investigations of high-risk tax practitioners.
- The Government is making changes to the Commonwealth Procurement Framework to enhance Commonwealth protections from the poor behaviour of service providers, and improve the ethical accountability of entities that are awarded Government contracts.

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## Background

- An investigation conducted by the TPB found Mr Peter Collins – former head of international tax at PwC - had made unlawful disclosures of confidential information provided to him by Treasury to colleagues at PwC.
  - The TPB deregistered Mr Collins as a tax agent for a period of 2 years, from 23 December 2022. In addition, the TPB ordered PwC to take steps to ensure it manages conflicts of interest appropriately
- Mr Collins was part of confidential consultations undertaken by Treasury between 2013 and 2018 to develop tax laws relating to multinational tax avoidance.
  - The consultation group included Treasury and ATO officials, tax practitioners and industry and peak body representatives familiar with international tax issues.
- The group provided input that contributed to Australia’s implementation of measures designed to prevent multinational tax avoidance, arising from the G20/OECD Base Erosion and Profit Shifting (BEPS) recommendations.
- In addition, some members of the group, including Mr Collins, were involved in separate 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).
- Mr Collins also participated in a number of Board of Taxation consultation sessions regarding the implementation of some BEPS initiatives.
- Mr Collins gave some “confidentiality acknowledgments” relating to the Treasury consultations.
- On 23 December 2022, the TPB deregistered Mr Collins as a tax agent for two years. In addition, the TPB ordered PwC to take steps to ensure it manages conflicts of interest appropriately.
- On 2 May 2023, certain PwC emails uncovered during the TPB investigation were tabled in Parliament by the TPB in response to Senate questions on notice, highlighting the significant extent to which breaches occurred.





## **Whole-of-Government actions**

### *Changes to Commonwealth Procurement*

- Finance is progressing amendments to the Commonwealth Procurement Framework to enhance Commonwealth protections from the poor behaviour of service providers and improve the ethical accountability of entities awarded Government contracts.
  - Since 1 July 2019, there have been 1,453 contracts supplied to the Commonwealth by PwC, with a value of approximately \$1.06 billion.
  - 781 of the 1,453 contracts were for management advisory, audit and accounting services representing 3.2 per cent by volume and 4.8 per cent by value of all Commonwealth contracts for these services.
- As policy stewards of the Commonwealth Procurement Framework, Finance has implemented the following:
  - updated the Commonwealth Contract Suite (CCS) and Clausebank to include *notification of significant events* clauses in future Commonwealth contracts
  - published a procurement policy note that focuses on the importance of ethical conduct as a key value for money consideration
  - using existing clauses under the whole of government Management Advisory Services (MAS) Panel, directed the removal of specific personnel from being engaged under MAS Panel contracts
- In addition, Finance will also develop a Supplier Code of Conduct by the end of 2023 which will outline the behavioural standards expected from suppliers during procurement processes and engagements under contract and clearly set the Australian Government's expectations on the standards of ethical behaviour of both suppliers to the Commonwealth and any sub-contractors, including disclosing conflicts of interest and confidentiality obligations.

## **Treasury-specific actions**

### *Review of the Tax Practitioners Board and Tax Agent Services Act 2009*

- In October 2019, the Final Report of the Independent Review of the Tax Practitioners Board (TPB Review) was delivered to the former Government.
  - It contained 28 recommendations relating to the TPB and the operation of the Tax Agent Services Act 2009 (TASA).



- The former Government’s response to the TPB Review was released in November 2020 and supported 20 recommendations in full, in part, or in principle.
- Through the Announced-but-Unenacted-Measures process, the Government endorsed the former Government’s response to the TPB review.
- Legislation giving effect to the first tranche of TPB Review recommendations was introduced into the House of Representatives on 16 February 2023, and is currently before the Senate Economics Legislation Committee, with their report due on 26 May 2023.
- This legislation, amongst other things, 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.
  - ss 34(3), 47C and 47E(d) ss 34(2) and (3), 47C and 47E(d)
- In addition, Treasury is preparing consultations papers on implementation options for a second tranche of TPB recommendations, focussed on:
  - boosting the TPB’s regulatory powers, including a broadening of sanctions powers, changes to limits on TPB information gathering and investigations, and enhancements to information published on the TPB Register; and
  - lifting qualification standards for tax professionals to strengthen the education and experience requirements in the sector.
- Public consultation on the second tranche is expected to commence in the second half of 2023.

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~~Legal Privilege~~



Australian Government  
The Treasury



## TREASURY EXECUTIVE SUBMISSION

12 May 2023

PDR No. EC23-001252

Secretary

cc: Executive Board

**Action in Response to the Tax Practitioner Board’s Investigation of the PricewaterhouseCoopers (PwC)-Collins Matter**

**Timing:** At your convenience.

### Recommendation

- That you note the actions taken to date by Treasury in response to the unlawful disclosure of confidential information by former PwC partner, Mr Collins, ss 42 and 47E(d)

[Redacted]

**Noted / Please discuss**


Signature	Date: / /2023
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~~OFFICIAL Sensitive~~

## KEY POINTS

- PricewaterhouseCoopers (PwC) Australia's former head of international tax, Mr Peter Collins, was part of a confidential consultation undertaken by Treasury between 2013 and 2018 to develop tax laws relating to multinational tax avoidance.
- An investigation conducted by the Tax Practitioners Board (TPB) found Mr Collins had made unlawful disclosures of confidential information to colleagues at PwC. Certain emails uncovered during the investigation were recently tabled in a TPB response to Senate questions on notice, highlighting the (significant) extent to which breaches occurred.
  - Mr Collins has been deregistered as a tax agent for a period of 2 years. In addition, the TPB ordered PwC to take steps to ensure it manages conflicts of interest appropriately.
- Attachment A outlines actions taken to date at both the departmental and government level, to reduce the risk of recurrence of such breaches and ensure appropriate sanction mechanisms are in place to deal with breaches of confidentiality agreements should they occur in the future.
- Broadly, these steps will incentivise tax advisory firms to put in place appropriate governance arrangements to curb misconduct and include:
  - enhancing safeguards within Treasury to protect the confidentiality of information and asking tax advisory firms and industry bodies to set out governance and other internal processes to ensure confidentiality of information and appropriate management of conflict of interest;
  - changes to the Commonwealth procurement framework to enhance Commonwealth protections from the poor behaviour of service providers and improve the ethical accountability of entities awarded Government contracts; and
  - implementation of TPB Review recommendations to better equip the TPB to monitor and discipline tax practitioners who engage in the type of misconduct exposed in the Collins-PwC matter.

ss 42 and 47E(d)



ss 42 and 47E(d)

Clearance Officer

Diane Brown

Deputy Secretary

Revenue, Small Business, and Housing Group

12 May 2023

Contact Officer

Laura Berger-Thomson

First Assistant Secretary

Personal and Indirect Tax, Charities and Housing Division

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**CONSULTATION**

Corporate and International Tax Division

Law Division

Market Conduct Division

Chief Financial Officer, Corporate and Foreign Investment Group

Australian Competition and Consumer Commission

Australian Securities and Investments Commission

**ATTACHMENTS**

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A: Actions taken to date

ss 42 and 47E(d)

## ATTACHMENT A – ACTIONS TAKEN TO DATE

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### Enhancing Internal Safeguards to Protect the Confidentiality of Information

- Treasury has reviewed and strengthened its templates for organisational and individual deeds of confidentiality and secondment agreements to ensure they are robust, fit-for-purpose and legally enforceable. Treasury will introduce more accountability at the advisory firm level and with industry bodies by increasing usage of organisational deeds of confidentiality when conducting targeted and confidential consultations.
- Treasury has commenced updating internal processes for conducting targeted and confidential consultations. The updates will, when complete, include clearer annotation of confidential documents with appropriate ‘warnings’, a rating system to assess non-disclosure risks on a case-by-case basis, and improved record-keeping and storage of deeds of confidentiality.
- Deputy Secretary Ms Diane Brown recently wrote to PwC and 25 other organisations concerning Treasury’s approach to confidential taxation consultations and seeking information on the extent to which each entity’s internal governance arrangements reflect professional and ethical expectations.
  - Treasury will engage directly with advisory firms and other organisations to discuss their processes for managing conflicts of interest and confidentiality and reinforce Treasury’s expectations concerning the handling of confidential information.

### Changes to Commonwealth Procurement

- Treasury and the Department of Finance are progressing amendments to the Commonwealth Procurement Framework to enhance Commonwealth protections from the poor behaviour of service providers and improve the ethical accountability of entities that are awarded Government contracts.
  - Since 1 July 2019, there have been 1,453 contracts supplied to the Commonwealth by PwC, with a value of approximately \$1.06 billion.
  - 781 of the 1,453 contracts were for management advisory, audit and accounting services representing 3.2 per cent by volume and 4.8 per cent by value of all Commonwealth contracts for these services.

s 42 and s 47E(d)

- The new contract clauses would:
  - require a service provider to notify the Commonwealth immediately on becoming aware of any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct of the service provider or its capacity to deliver the agreed services; and
  - allow the termination of procurement contracts for a material breach related to breaches of confidentiality and breaches of moral rights.

- It is not mandatory for agencies to use pre-drafted clauses for procurements over \$200,000. <sup>s 47E(d)</sup>

[Redacted]

s 47E(d)

[Redacted]

- Finance is also developing a Supplier Code of Conduct which will outline the behavioural standards expected from suppliers during procurement processes and engagements under contract.
- The Supplier Code of Conduct will clearly set out the Australian Government's expectations on the standards of ethical behaviour of both suppliers to the Commonwealth and any sub-contractors, including disclosing conflicts of interest and adhering to confidentiality obligations.


#### Implementation of TPB Review recommendations

- Treasury sought the TPB's view on the best means to effectively equip it to monitor and discipline tax practitioners who engage in the type of misconduct exposed in the Collins-PwC matter.
- The TPB confirmed the importance of swift implementation of the Government Response to the 2019 independent Review of the TPB. Treasury also engaged with Keith James, the independent expert who led the TPB Review, who backed this view.
- The Government introduced legislation giving effect to the first tranche of TPB Review recommendations into the House of Representatives on 16 February 2023, and is currently before the Senate Economics Legislation Committee, with their report due on 26 May 2023.
- This legislation, amongst other things, 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.

– ss 34(3), 47C and 47E(d) [Redacted] ss 34(2) and (3), 47C and 47E(d) [Redacted]


- In addition, Treasury is preparing consultation papers on implementation options for a second tranche of TPB recommendations, focussed on:
  - boosting the TPB's regulatory powers, including a broadening of sanctions powers, changes to limits on TPB information gathering and investigations, and enhancements to information published on the TPB Register; and
  - lifting qualification standards for tax professionals to strengthen the education and experience requirements in the sector.
- We expect public consultation on the second tranche to commence in the second half of 2023.

ss 42 and 47E(d)





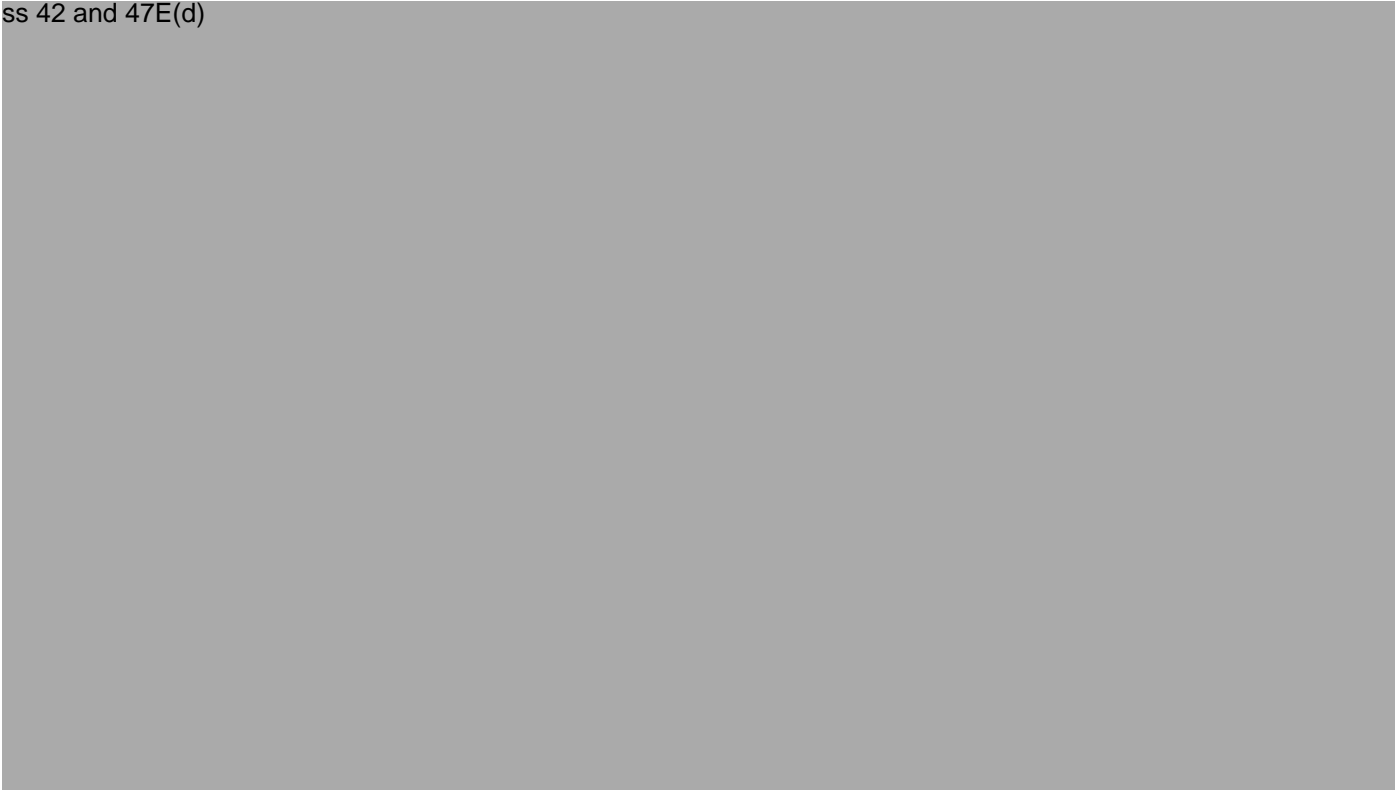
ss 42 and 47E(d)




*Panel Arrangements*

- In 2021, the Department of Finance established a Whole of Australian Government Management Advisory Services Panel (MASP) which provides Commonwealth agencies with a vetted list of professional services firms for which to procure consultancy projects. Use of the panel is mandatory for Treasury. PwC is one of the 411 current suppliers.

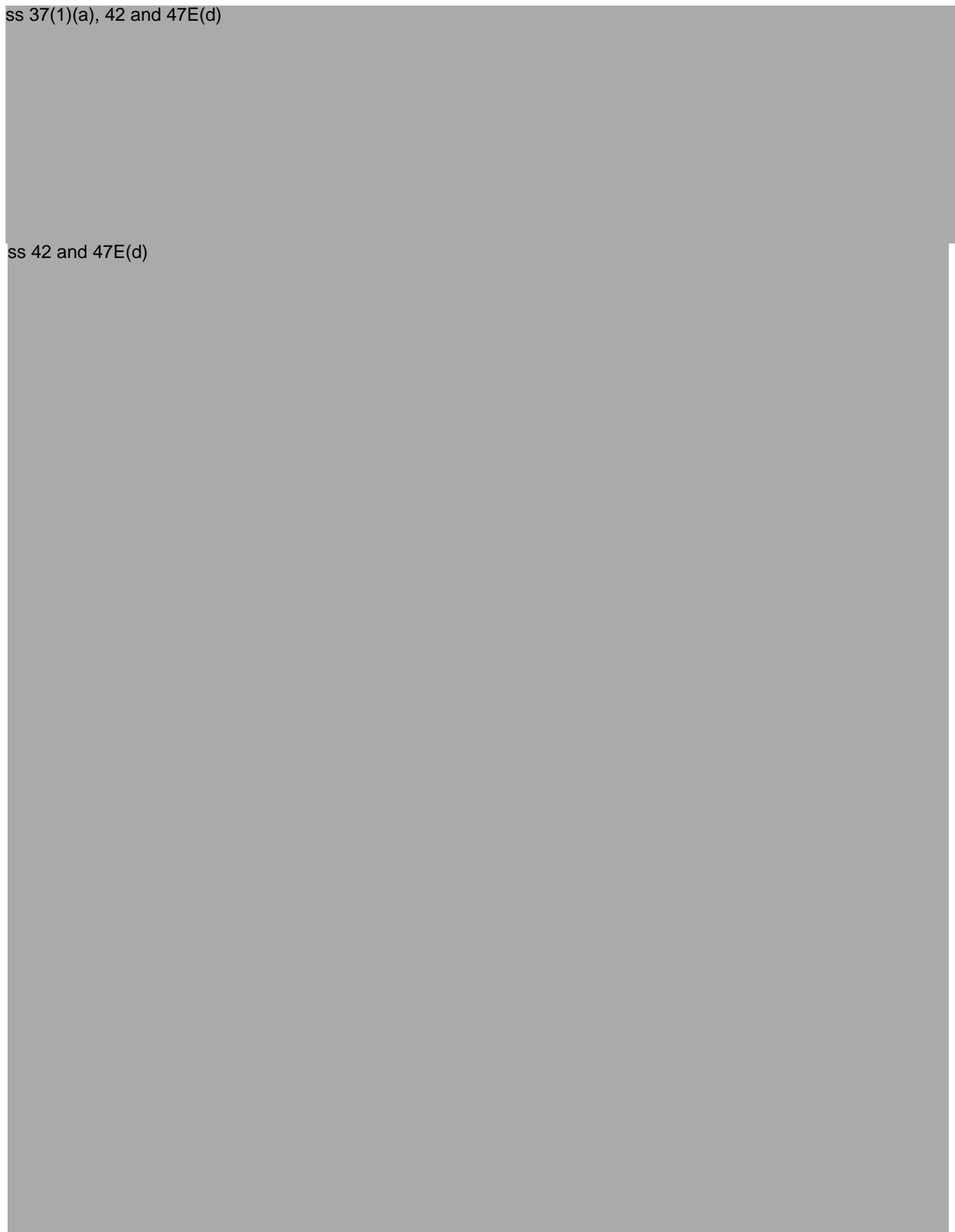
ss 42 and 47E(d)



ss 37(1)(a), 42 and 47E(d)



ss 37(1)(a), 42 and 47E(d)



ss 42 and 47E(d)

- ASIC advises that it has reviewed the information currently in the public domain (which does not include the names of individual PwC partners save for Mr Collins and Mr Seymour), and that on current information there does not appear to be any conduct actionable under the Corporations Act.
- The ASIC Chair has indicated (in the context of a February 2023 hearing of the Parliamentary Joint Committee on Corporations and Financial Services) that ASIC has limited jurisdiction over the accounting firms - in particular, ASIC is responsible for registered company auditors, including reviewing the quality of the audits they conduct.

ss 42 and 47E(d)

