

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

Agency: Tax Practitioners Board
Question No: 1
Topic: TPB interactions with professional associations
Reference: Spoken p. 17 (9 February 2024)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: Could I ask about your interactions with the professional entities that are the registration bodies for taxation practitioners, in addition to you as their formal registration place—so the professional bodies.

Mr de Cure: The professional bodies, yes.

Senator O'NEILL: What's going on in terms of your interactions and oversight there?

Mr de Cure: There are a range of things. Obviously, we conduct consultative forums and the Tax Practitioner Governance and Standards Forum. Particularly in relation to the Tax Practitioner Governance and Standards Forum—there's an acronym, but I can never get it right—we are actively engaged in consultation on both the implementation of the legislative change last year and our preparation for the other bill that is currently before parliament. We're working closely with them on finding the implementation and practical issues around those law changes. We're working closely with them in terms of consultation, and we're potentially working through Treasury to influence the course of that legislation to make sure it is able to best achieve the goals of the changes that then happen in our regulatory space. The professional bodies are engaging with us and with Treasury on an active and appropriate basis. So I think that relationship is good. There has been a little bit of press where some of the professional bodies have expressed some opinions, and they might have said that we should have consulted earlier. But, in reality, we can't consult until government has said what government wants to say. The relationship is productive and good, and it's heading the consultation process in the right place.

Senator O'NEILL: That means a change for improvement rather than continuing the status quo—

Mr de Cure: Yes.

Senator O'NEILL: because, clearly, there are some problems there.

Mr de Cure: Definitely, and I think the law reform processes are changes for the better. But, as with any piece of law reform, there needs to be sensible, practical guidance around the implementation and a sensible understanding of the reform. For example, what is a significant breach of the code? What does 'significant' mean? It doesn't mean a one-off mistake. It means, within a practice, somebody doing the wrong thing on purpose.

Senator O'NEILL: Yes.

Mr de Cure: So we've got to work through—

Senator O'NEILL: Leading the whole show astray.

Mr de Cure: Correct.

Senator O'NEILL: The pied piper.

Mr de Cure: Yes. Also, at a board level and at a management level, there is ongoing interaction with the professional bodies. Our management team works on a daily basis with representatives, and they discuss the issues. At a board level, since I've been chair, we've been running a process where in most board meeting months we have had an external visitor.

We've had the CPA, the Tax Institute and CA ANZ. At this week's board meeting, we had a presentation from the Inspector-General of Taxation. So we, as a board, are interacting with the broader profession.

Senator O'NEILL: Mr O'Neill, perhaps on notice I might task you with giving us a summary report of the interactions, including the key topics of conversation that are underway with those entities and what the forward program might look like, just to give comfort to the board.

Mr O'Neill: Yes, Senator.

Answer:

Tax practitioners and their professional associations are key stakeholders for the TPB. We work together, through ongoing consultation, including dedicated forums – the Tax Practitioner Governance and Standards Forum (TPGSF) and Consultative Forum (CF). These forums provide advice, feedback and input in relation on relevant matters, however final operational and strategic decisions are matters for the TPB Board. Further details about the TPGSF and CF are articulated in the respective published Charters, available at www.tpb.gov.au.

Current discussions with the professional associations are focussed on the reforms arising from the Government's announcement on 6 August 2023 to 'crackdown on misconduct'. In particular, at the most recent meeting with the TPGSF and CF on 15 December 2023, which included Treasury attendees, focussed on the following matters :

- Public consultation on:
 - Response to PwC – Enhancing the Tax Practitioners Board's sanctions regime
 - Response to PwC – Tax Agent Services (Code of Professional Conduct) Determination 2023
- The TPB's draft guidance to support tax practitioner understanding of the new obligations relating to engagement of disqualified entities.

Given the breadth of current reforms impacting tax practitioners, we expect discussions over at least the next 12 months will continue to focus on reform and the TPB's implementation of it (guidance and operational considerations). We expect to reconvene the TPGSF and CF in March/April 2024 to discuss the TPB's draft guidance that seeks to explain to tax practitioners the new breach reporting obligations that were introduced through the recent passage of the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023.

In addition to engaging with the associations through dedicated forums, our interactions also include:

- ongoing regular one on one ad-hoc discussion
- attendance at TPB Board meetings – discussions include association insights about the profession, relevant issues their members are raising or dealing with, and seeking opportunities to work more closely as co-regulators. In particular, enhancing information sharing arrangements and referral of cases where their members may have engaged in misconduct.

More formally, under the *Tax Agent Services Act 2009*, The TPB has a role in 'accrediting' recognised professional associations. Some associations hold recognition as a tax agent association, BAS agent association or both, allowing their voting members an additional avenue to become registered with the TPB. A full list of recognised associations can be found

at www.tpb.gov.au, and include CPA Australia, Chartered Accountants Australia and New Zealand, Institute of Public Accountants, The Tax Institute, Financial Advice Association Australia and Institute of Certified Bookkeepers.

It is noted that as part of the James Review, it was recommended that the TPB should no longer accredit professional associations (Recommendation 4.2). Mr James' recommendation was based on the fact that the TPB has limited capacity/capability to test and assess whether a professional association complies, both initially and in an ongoing sense, with the requirements to become recognised.

The TPB seeks to have this issue addressed as part of the recently enacted provisions relating to the 'prescribed disciplinary bodies' framework to assess the appropriateness of having both regimes operating. This will ensure an appropriate regulatory framework is applied with appropriate regulatory oversight and corresponding obligations, whilst being mindful of unnecessary regulatory burdens being placed on associations.

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

Agency: Tax Practitioners Board
Question No: 2
Topic: TPB interactions with relevant Ministers and their staff
Reference: Spoken p. 19 (9 February 2024)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: Did anyone at the Tax Practitioners Board, prior to the release of the emails—so we're stepping back in time a little here—have any communication with any minister or member of their office throughout the course of the investigation of Mr Collins?

Mr de Cure: I don't believe so. If it did happen, I'm not aware of it.

Senator O'NEILL: It is my understanding that the Tax Practitioners Board engaged directly with then Assistant Treasurer Michael Sukkar's office regarding the Keith James review into the TPB's independence.

Mr O'Neill: From time to time, we would engage with the minister's office. On one occasion, I, in the presence of Mr Klug, met with Mr Sukkar. I think on one occasion, in the presence of the chair before Mr Klug—Ian Taylor—I met with then Assistant Treasurer Stuart Robert. Only on a couple of occasions, as I recall, have we met with ministers. We regularly engage with their staff. In the course of the James review, we would have had updates with various minister's staffers; I don't recall the details of those. Those meetings with staffers and Treasury folk around reform would be fairly common.

Senator O'NEILL: Could I ask you to go to your records, Mr O'Neill, and provide the committee with your recollections of your interactions, as the representative of the TPB, with both then minister Stuart Robert and then minister Michael Sukkar, and anything the committee might find relevant from your interactions with their staff members—dates, times, conversations et cetera. Finally, did discussion of the Collins matter or any discussion around matters relating to the investigation of PwC ever occur in the context of meetings with Mr Robert or Mr Sukkar?

Mr O'Neill: I'm not aware of any. It's not our practice. I'm not aware of any operational discussions which would be held with staffers or with ministers. To my knowledge there hasn't been, but I can't speak for all the members of the board.

Senator O'NEILL: Mr de Cure, could I ask you to follow that up at board level to confirm for me?

Mr de Cure: I'm happy to. I'd like to correct my previous answer a little bit because I think I slightly misjudged your question. I am aware that Peter Hogan, who is a board member, has, from time to time, private interactions with Michael Sukkar, and he was at one stage the relevant minister. As we have stated here previously, Mr Hogan is still a board member and Ms Sullivan was a board member. When the PwC matter commenced, the board took an active decision, with their understanding that they had a conflict of interest, and they were sidelined from any discussions about the PwC investigation. They would have had no knowledge of any matters around the investigation or any details of the investigation. But it is appropriate for you to know that Mr Hogan and Mr Sukkar do have a private discourse from time to time.

Answer:Board member interactions with Ministers Michael Sukkar and Stuart Robert and their staff

The TPB Chair, Peter de Cure AM, sought input from current Board members and from previous Board members who were appointed to the TPB at the time Ministers Sukkar and Robert were the relevant Minister responsible for the TPB.

The following Board members have advised that they have had no interactions with Ministers Sukkar and Robert and/or their staff:

- Peter de Cure AM (current TPB Chair)
- Simone Carton (current TPB Board member)
- Kerrie Sadiq (current TPB Board member)
- Phillip Davies (current TPB Board member)
- Debra Anderson (current TPB Board member)
- Craig Stephens (former TPB Board member)
- Judy Sullivan (former TPB Board member)
- Steven Dobson (current TPB Board member)
- James Hawson (former TPB Board member)
- Julie Berry (former TPB Board member)
- Ria Sotiropoulos (former TPB Board member)
- Greg Lewis (former TPB Board member)
- Julianne Jaques (former TPB Board member)

The following Board members have indicated that they have had interactions with Ministers Sukkar, Robert and/or their staff. Details of their interactions are contained in **Attachment A**

- Andrew Conway (current TPB Board member)
- Peter Hogan (current TPB Board member)
- Ian Klug (previous TPB Chair)
- Ian Taylor (previous TPB Chair)

All of the Board members listed above have advised that they did not have discussions about any TPB compliance cases, including in relation to Mr. Peter-John Collins and PricewaterhouseCoopers, with Ministers Sukkar and Robert and/or their staff.

Michael O'Neill's interactions with Ministers Sukkar and Robert and their staff*Minister Robert*

On 20 September 2018, Mr. Michael O'Neill, Mr. Ian Taylor (TPB Chair at the time) and Ms. Janette Luu (Director of Policy and Senior Adviser to the Chair) met with Minister Stuart Robert. The purpose of the 1-hour meeting was to discuss with the Minister the details of the TPB's incoming Minister brief that was provided to the Minister on 3 September 2018.

The following key issues were discussed:

- introduction to the TPB;

- Board appointments, noting a significant number of appointments were due to expire in the next four months;
- conducting legislative review into the *Tax Agent Services Act 2009*;
- the Inspector-General of Taxation's Report into the Future of the Tax Profession; and
- administrative matters, including the TPB's Annual Report and ongoing reporting requirements.

There were no discussions about any TPB compliance cases, including in relation to Mr. Peter-John Collins and PricewaterhouseCoopers.

Mr. O'Neill did not have any further meetings with Minister Robert and has no recollection of separate discussions with staff from Minister Roberts's office.

Minister Sukkar

On 11 July 2019, Mr. Michael O'Neill and Mr. Ian Klug (TPB Chair at the time) met with Minister Michael Sukkar. The purpose of the 30-minute meeting was to discuss with the Minister the details of the TPB's incoming Minister brief that was provided to the Minister on 29 May 2019.

The following key issues were discussed:

- introduction to the TPB;
- key priorities for the Minister's attention
- Board appointments;
- conducting legislative review into the *Tax Agent Services Act 2009*; and
- administrative matters, including the TPB's Annual Report and ongoing reporting requirements.

There were no discussions about any TPB compliance cases, including in relation to Mr. Peter-John Collins and PricewaterhouseCoopers.

Mr. O'Neill did not have any further meetings with Minister Sukkar and has no recollection of separate discussions with staff from Minister Sukkar's office.

ATTACHMENT A to QoN 2 (Consultants Inquiry 9 February 2024)

QoN 2 - TPB interactions with relevant Ministers and their staff

1. Response from Andrew Conway – received via email on 21 February 2024

Given my role at the IPA I have had quite a number of interactions with former Minister Sukkar particularly in relation to financial services and COVID stimulus measures. I can verify that at no stage have I had any discussion with Mr Sukkar nor Mr Robert about PWC or Peter Collins. All of my interactions related to policy, exposure drafts and other advocacy on behalf of IPA members.

Mr Sukkar/Office

Interactions post- appointment to TPB 30 March 2022 (electronic unless indicated otherwise)	Date	Contact with Mr Sukkar/office & Topic
	30/3/2022	Speech to Federal Budget Breakfast hosted by IPA at Parliament House Canberra
Interactions pre- appointment to TPB (electronic unless indicated otherwise)		Contact with Mr Sukkar/office & Topic
	25/2/22	Meeting re Accounting profession
	21/2/2022	Letter invitation Min Sukkar Budget Breakfast event
	10/2/2022	Budget
	10/12/2021	Small business
	13/10/2021	Meeting re Federal Budget
	21/9/2021	Financial services regulation
	27/8/2021	Financial services & COVID measures
	20/8/2021	Financial services & COVID measures
	23/6/2021	Member representations
	17/6/2021	Member representations
	31/3/2021	Meeting re member representations
	7/10/2020	Event follow up
	16/4/2020	COVID measures

	26/3/2020	Representation on financial services
	5/2/2020	Accounting standards
	23/1/2020	Invitation to speak at IPA event
	6/12/2019	Accounting standards
	29/11/2019	Attendance at IPA National Congress
	16/11/2019	Pre-event brief
	29/10/2019	Financial services
	23/9/2019	Member representation
	4/9/2019	Meeting re Small business
	15/7/2019	Meeting re Financial Services
	26/6/2019	Event invitation
	18/5/2018	SMSF policy
	9/5/2018	Speech to Federal Budget Breakfast hosted by IPA
	12/2/2018	Accounting profession
	12/9/2017	Policy
	26/6/2017	Accounting profession
	15/3/2017	Superannuation policy
	9/2/2017	IPA recognition
	1/2/2017	Seeking meeting

Mr Robert/Office

Interactions post-appointment to TPB 30 March 2022 (electronic unless indicated otherwise)	Date	Contact with Mr Robert/office & Topic
	Nil	Nil
Interactions pre-appointment to TPB (electronic unless indicated otherwise)		Contact with Mr Robert/office & Topic
	14/9/2018	Meeting re small business policy and in advance of National Congress
	1/11/2018	Speech at IPA National Congress

2. Response from Peter Hogan – received via email on 26 February 2024

‘I have never had any contact with Minister Robert nor any of his ministerial staff. My only contact with Government officers on TPB (or ACNC) matters has been with Minister Sukkar or his former Chief of Staff, Barmak Amini. My last contact with either Minister Sukkar or Barmak was on 18 August 2022 when I caught up with them for lunch to farewell Barmak who was moving back into private enterprise. I had never discussed with either Minister Sukkar nor Barmak the Peter Collins/PwC matter. My interactions with Minister Sukkar and Barmak only ever related to appointments to Board of the TPB.

3. Response from Ian Klug – received via email on 26 February 2024

‘Re Question 1, I advise that I never met with Minister Robert. I met only once with Minister Sukkar. It was an introductory meeting in Melbourne at his office shortly after my appointment as Chair. We met on 11 July 2019.’

4. Response from Ian Taylor – received via email on 22 February 2024

‘Based on my recollection.

1 I am 100% confident that I never met with Minister Sukkar. His second term is post my departure date. His first term is within my tenure however all my meetings in that time were with Kelly O’Dywer. She was Minister for Revenue and Financial Services from 19 July 2016 to 24 August 2018.

2 I met with Minister Robert on one occasion in the period between 28 August 18 and my departure approx. 21 Jan 2019.

My recollection is that Janette also attended that meeting in his office at Parliament House. I have no evidence of the exact date.

3 I am 100% confident that I never at any time had any discussion with any Minister (or their staff) in relation to PWC and or Peter Collins.

4 I do recall that I met with the Chair, CEO, Head of Tax (and 1 or 2 other tax partners) of PWC at their offices in Sydney (probably around 2016/2017 but no evidence of exact date) – again no discussion re Peter Collins or the issues around that.

I do recall discussion around PWC’s success fee charging re R & D tax claims on behalf of clients. I also recall discussion of issues around all partners of the firm (whether TPB registered or not) being fit and proper and being up to date with their tax filing obligations. Again my recollection is that

Janette attended that meeting (and possibly Rosemary Holloway).’

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

Agency: Tax Practitioners Board
Question No: 3
Topic: TPB's general approach to managing conflicts of interest
Reference: Spoken p. 21 (9 February 2024)
Senator: Deborah O'Neill

Question:

Senator O'NEILL: So my particular interest I think is clear to you now, I hope. I would like the documentation around what instrument of the committee, what document, triggered a declaration of a conflict of interest and what protocols you put in place—

Mr de Cure: We'll provide that to you.

Senator O'NEILL: as well as any occasion on which those protocols were reversed and the rationale for that and what documentation each of these individuals...

Answer:

The TPB's conflict of interest protocols are contained in the TPB's Governance Framework as well as the respective charters for TPB committees. An extract of the relevant part of this the TPB Governance Framework is as follows:

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.²³ 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.

For more information, see the documents released FOI Request #29/22-23. That FOI request sought all versions of Conflict of Interest and Confidentiality Policies for Board members from 2015 to the current version (see

<https://www.tpb.gov.au/sites/default/files/2023-07/FOI%20Request%20%2329%20-%20Disclosure.pdf>)

The Board seeks to apply our conflict of interest protocol consistently at relevant meetings, including Board meetings and Committee meetings.

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

Agency: Tax Practitioners Board
Question No: 4
Topic: TPB's management of conflicts of interest for Ms Judy Sullivan and Mr Peter Hogan
Reference: Spoken p. 20 (9 February 2024)
Senator: Deborah O'Neill and Barbara Pocock

Question:

Mr de Cure: That's fine. The thing I would say is that as a board we believe we've taken absolutely appropriate action where that conflict of interest came to play in a particular investigation, and we took the right steps to isolate those people who had a conflict from that
Senator O'NEILL: Declaration of a conflict of interest can only occur when there's sufficient information. When we get our papers before we go to a meeting, you read the papers and you say, 'I see there is a conflict of interest,' and it's declared. You can't do it if you don't have the information. At the very least, there would have been an initial piece of information provided to Ms Sullivan and Mr Hogan—is that correct?

Mr de Cure: Yes.

Senator O'NEILL: And a discernment was made by somebody at that point of time that there was a sufficient conflict of interest to, from that point on, disconnect them from the processes that you were undertaking

Mr de Cure: Both Mr Hogan and Ms Sullivan declared their position adequately to the TPB. We understood their conflict. It was declared. It was in no way hidden.

Senator O'NEILL: When did they declare that, and in response to which trigger?

Mr de Cure: My understanding is that the positions were declared at the time of their appointments to the board. I can check that for you on notice, but it's my understanding that we were always aware of that. It's my understanding, having been in the room, that as soon as this matter came up the considerations were clearly that there were two people who had an untenable conflict of interest and were excluded from all discussions around it. There's one exception to that, and that was the September board meeting, when the commission—

Senator BARBARA POCOCK: Which one? What date? Was it the 21st or the 3rd?

Mr de Cure: It was the 21st. Sorry—the board meeting was on 1 September. So, the commissioner joined that meeting and made his statements about what he was unhappy—

Senator BARBARA POCOCK: There was no prepared agenda for that meeting?

Mr de Cure: We were not aware of what his topic of discussion was going to be, so they were in the room for that. In the course of that there was no discussion of the facts or circumstances of the case. The commissioner did not attempt to influence the outcome of the case. He expressed some dissatisfaction with the way we were pursuing it.

Senator O'NEILL: So my particular interest I think is clear to you now, I hope. I would like the documentation around what instrument of the committee, what document, triggered a declaration of a conflict of interest and what protocols you put in place—

Mr de Cure: We'll provide that to you.

Senator O'NEILL: as well as any occasion on which those protocols were reversed and the rationale for that and what documentation each of these individuals—Mr Hogan and Ms Sullivan—received with regard to board papers. Did they receive the same board papers as everybody else or was that information carved out? So, on notice—

Mr de Cure: I'm happy to give you all of this. I would like to repeat some evidence that I've given to this inquiry previously, and that it is that we use a board pack—

Senator BARBARA POCOCK: You've already put that on—

Senator O'NEILL: Yes.

Mr de Cure: and the pack that went to Ms Sullivan and Mr Hogan had blank pages in it where relevant information—

Senator O'NEILL: Yes, but that is post the declaration of conflict of interest. So, I'm interested in the documentation they got before, and I'm particularly interested, given your evidence today, Mr de Cure, about their initial appointment and the declaration of conflict of interest at that point.

Mr de Cure: And we're happy to provide that.

Senator O'NEILL: Thank you.

CHAIR: Was it a declaration of a conflict of interest, or an assessment of a conflict of interest—if you know the difference, if you know what I mean?

Mr de Cure: I understand the difference.

CHAIR: Did they become aware of a matter and therefore say, 'We're out'? Or did you, having a matter brought before you, say—

Mr de Cure: We'll provide clear advice on that.

CHAIR: 'Before we make them aware that there's a matter, they're out' if you know what I mean?

Mr O'Neill: Perhaps I could take you through the sequence of this, because it might be helpful. When somebody is onboarded as a new board member they make a declaration through the Treasury—

CHAIR: Of interests?

Mr O'Neill: Yes. That's the initial one. From time to time the board members give an update of the declaration to the minister in writing. Sometimes a meeting will come up and there'll be a clear conflict—a person they know—so there'll be a call at the start for exclusions. And then, in your processes, questions on notice have come up and then we've responded on the record to confirm that both Ms Sullivan and Mr Hogan have told us that no, they didn't know anything about the circumstances of Mr Collins's particular misconduct, but they did declare their PwC broad engagement, remuneration, as Senator O'Neill said. As a result of that they've recused themselves from any operational meetings about that matter. So, there were quite a few parts of that, but we can put all that in on notice.

Senator O'NEILL: Have you ever sought confirmation from Mr Hogan that he did not discuss the existence of an investigation with Mr Sukkar?

Mr de Cure: I have not sought such a confirmation. But what I can say is that Mr Hogan was excluded from any of the discussions at the board table or at the board conduct committee or any information in relation to—

Senator O'NEILL: Post the first moment of becoming aware of the matter? Mr de Cure: Correct.

Senator O'NEILL: What you give us on notice is going to be very important. So, what was disclosed at that first point was that there is an investigation—like, how serious was the matter—

Mr de Cure: Understood.

Senator O'NEILL: Have you taken the necessary steps to confirm that neither Ms Sullivan or, in particular, Mr Hogan gave the former Assistant Treasurer, Mr Sukkar, a heads up that an investigation was under way? Have you sought to assure yourself of that? As a board, not just you, Mr de Cure.

Mr de Cure: The question's understood, and we'll respond to it fully.

Senator O'NEILL: Thank you.

Mr de Cure: I just want to emphasise to this day we have an opening section of our board meeting which is an update on the PwC matter, and Mr Hogan doesn't join the meeting until after that. But it's pretty hard to say that he's not aware of it now.

Senator BARBARA POCOCK: Can I add to that the names of Mr Sayers and Mr Seymour—that no such conversations were held with the previous CEOs of PwC.

Senator O'NEILL: And add Ms Beattie, the general council, to that as well.

Senator BARBARA POCOCK: Ms Beattie is an excellent addition. I just want to go a little further on this particular question in relation to conflicts of interests for Ms Sullivan and Mr Hogan. At the meeting between the ATO and the TPB on 1 September, for which there was no prepared agenda, it became a discussion clearly about the investigation into PwC. Did those partners, Judy Sullivan and Peter Hogan, attend any part of that meeting?

Mr de Cure: They were there at that meeting.

Senator BARBARA POCOCK: So they were part of a discussion which was about the investigation into PwC, both at the time holding a financial interest in PwC.

Mr de Cure: Yes. It was unexpected. The commissioner came—

Senator BARBARA POCOCK: It's often unexpected, Mr de Cure.

Mr de Cure: Yes.

Senator BARBARA POCOCK: You understand a conflict. I've been on many boards. You stand and declare your conflict of interest. This is a very important question. Two members of the board of the TPB are in the room when the tax commissioner comes in, also with a second commissioner, and has a major argument about the nature of the pursuit. We have heard this morning there was no disagreement between there being an investigation—it was the steps in the investigation.

Mr de Cure: Yes, so—

Senator BARBARA POCOCK: Something of critical importance to PwC and its leadership and its financial outcome and they did not say to the chair of the meeting: 'This is the PwC. I'm out of here.' That is a major problem, and any member of any board across the country of a public or private organisation would know that's something where you put your hand up, declare your interests and get out of there.

Mr de Cure: The only thing I can say is I was in the meeting. I was not the chair of that meeting.

Senator O'NEILL: No, Mr Klug was the chair of that meeting.

Senator BARBARA POCOCK: I'm not blaming you; I'm saying it's inappropriate practice.

Mr de Cure: I agree. I will say that it was a very forthright presentation from the commissioner at the time.

Senator BARBARA POCOCK: Yes, we've had much discussion about it.

CHAIR: Was it clear to you as directors during that meeting that it was about PwC matter, or was it a matter about data?

Mr de Cure: It was crystal clear that it was about the PwC matter.

Senator O'NEILL: To be clear for the record, neither Ms Sullivan nor Mr Hogan stood and declared a conflict of interest and left the room. They stayed for the entire meeting. Is that correct?

Mr de Cure: I believe so, yes.

Senator BARBARA POCOCK: Is Mr Hogan still on the board? I think we've heard that this morning.

Mr de Cure: Mr Hogan is still on the board.

Senator BARBARA POCOCK: How can someone remain a director of a public institution like that when they have breached rule No. 1 of how to act as a director?

Mr de Cure: I can only say that the appointments to the board are a matter for the minister. It's not within my gift to appoint or remove a board member.

Senator O'NEILL: Do you know if Mr Klug responded to this situation in any way, as you might expect a chair to do?

Mr de Cure: The only thing I can say is that from that point onwards they've kept their distance from the discussions.

Senator BARBARA POOCK: There was a further meeting upon 3 September which also considered, I understand, the PwC matter. Were they present in that meeting on 3 September?

Mr de Cure: I believe yes. That was a Teams meeting, and I—

Senator BARBARA POOCK: Still a meeting.

Mr de Cure: Yes, still a meeting. My recollection of the meeting was that the discussions were around not so much the technicalities of the PwC investigation but the implications for the board of the commissioner's statements about how we were conducting our investigation and what our consideration of those assertions from the commissioner was. I'm very comfortable that there is no possible influence by either the commissioner's statements or by Mr Hogan and Ms Sullivan on the outcome of the investigation.

Answer:

Conflict of interest declarations

Conflict of interest declaration processes at the time of TPB Board appointments are a matter for Treasury.

In relation to Ms Judy Sullivan, Ms Sullivan has advised that:

‘My first conflict of interest declaration in relation to PwC matters was made to Treasury in August 2020 as noted in response to Question 3.a above. There was no relevant investigation into PwC at that time to my knowledge, and therefore no relevant discussions or disclosures.

Regarding the specific PwC investigation regarding PwC/Mr Collins, I do not recall precisely when I first was told about it or whether Mr Collins’ name was mentioned at a later time. I recall being told in general terms that an investigation had commenced and I reconfirmed that I had disclosed a conflict of interest in respect of PwC and could not participate. The Board and the TPB Secretariat ensured that procedures were in place to exclude me from relevant parts of subsequent Board meetings, any Board Conduct Committee (BCC) meetings relating to the investigation, and other communications (including emails, Convene board and BCC papers relating to the PwC matter) while the PwC investigation was under way.’

In relation to Mr Peter Hogan, Mr Hogan has advised that:

‘The first time the Peter Collins matter appeared in the Board papers - at that stage it was only a Peter Collins matter, not a PwC matter as I understood it - I again declared my potential conflict, not only because of my PwC background and on-going pension, but also because Peter was a Melbourne-based Partner and was known to me - albeit I hadn't seen him for 14 years following my retirement from the Firm in March 2008. Furthermore, Board member, Judy Sullivan, also an ex-PwC Partner, had already recused herself from that part of the Board meeting where the Peter Collins matter was outlined to the Board. I queried the then Board Chair, Ian Klug, why I shouldn't also recuse myself when the Peter Collins matter was discussed at the Board meeting. Ian expressed the view to me and the Board that my position was very different to that of Judy as she was still with PwC at the time of the alleged offending by Peter Collins whereas I had been retired from the Firm for 14 years which was many years before the alleged offending by Peter Collins.

I accepted Ian's comment at this time, however, the next time the Peter Collins matter appeared as part of the Board papers I informed Ian that I had become increasingly uncomfortable about being present when the Peter Collins matter was being discussed and about being treated differently to Judy and, after some discussion, Ian agreed that it was appropriate for me to recuse myself from a meeting any time when the Peter Collins was raised at Board level. Thereafter, I was never present when the Peter Collins matter was discussed which then morphed into including when the PwC matter and the proposed Government response was discussed. Thereafter, Board papers forwarded to me omitted all reference to the Peter Collins/PwC matter other than it being mentioned in the agenda which would indicate that part of the meeting that Judy and I would withdraw from the Board room or the Teams meeting if the meeting was being held online.'

Access to relevant documents/information

Neither Ms Sullivan or Mr Hogan had access to documents/information (including through Board papers, relevant to Mr Collins or PwC). In particular:

- Because Ms Sullivan and Mr Hogan were never sitting Committee members on the TPB's Board Conduct Committee when Mr Collins or PwC were discussed, neither Ms Sullivan or Mr Hogan would have been able to access the relevant papers in the TPB's electronic system, Convene.
- The Board meeting minutes do not generally include any sensitive compliance details, including in relation to Mr Collins and PwC. However, in two instances, on 6 October 2021 and 10 November 2021, the relevant Board meeting minutes did contain information relating to Mr Collins and PwC. In both those instances, the versions of Board meeting minutes that Ms Sullivan and Mr Hogan had access to were redacted to remove sensitive information relation to Mr Collins and PwC.

Ms Sullivan has advised that:

'I did not receive any documents or information in relation to the PwC investigation, due to my disclosed conflict of interest and was excluded from relevant meetings and communications.'

Mr Hogan has advised that:

'The only information I have ever seen in relation to the Peter Collins/PwC matter was the brief information that was included in the Board packs for the first and second times the matter was raised at Board level. Thereafter, once I recused myself, I was never provided with any information in relation to the matter'

Confirmation about interactions by Ms Sullivan and Mr Hogan with relevant PwC personnel

Ms Sullivan has advised that:

‘I did not discuss the existence of or give a ‘heads up’ of the TPB’s investigation into PwC/Collins to any of these people.’

Mr Hogan has advised that:

‘I have not had any contact with Tom Seymour, Luke Sayers nor Meredith Beattie since 2008 when I retired from PwC - and I have never met Meredith. As for Michael Sukkar and Barmak Amini - the only staff member from Michael's office I have ever met - I have never discussed the Peter Collins/PwC matter with them and I did not provide them with a "heads up" on the matter.’

Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the management and assurance of integrity by consulting services

Agency: Tax Practitioners Board
Question No: 5
Topic: Records related to meetings on 1 and 3 September 2021
Reference: Spoken p. 23 (9 February 2024)
Senator: Barbara Pocock

Question:

Senator BARBARA POCOCK: You are the chair; you are acting strongly. But you also said this had not happened. This has happened. We have people in the room in receipt of money, clearly current income, from PwC and yet they are part of a meeting where the only matter that was on the mind of the TPB at that moment was the big explosion from the leadership of the ATO on 1 September, and then further discussion about how to respond to it. They do not leave the room. They are not appropriate to be members of boards when they do that. If you do that basic training as a board member, you'd know that. Do you keep notes of those meetings, Mr de Cure?

Mr de Cure: We keep minutes.

Senator BARBARA POCOCK: You keep minutes. Do you keep personal notes or diary entries?

Mr de Cure: No, I don't keep personal notes.

Senator BARBARA POCOCK: I'm an inveterate note-taker. Who is your board member—there may be people who keep notes of their meetings. Are there people who do that?

Mr de Cure: I believe so, yes.

Senator BARBARA POCOCK: Would those notes be appropriate for this committee to see?

Mr de Cure: That would be a matter for other people. I don't know what other peoples' notes say.

Senator BARBARA POCOCK: We are hearing contradictory evidence about what happened in various meetings, including in relation to Mr O'Neill and his employment. This committee has to have clarity about the facts. There are notes and this committee has an interest in those notes. I'm just giving you notice that that is important.

Mr de Cure: I apologise if you think I've been contradictory. I'm trying very hard to not be.

Senator BARBARA POCOCK: I'm not saying you were contradictory. Let me correct that.

Mr de Cure: Thank you.

Senator BARBARA POCOCK: I'm saying that we've heard contradictory evidence from witnesses this morning and the contradictions are with previous evidence we have heard. So, you don't keep personal notes. Other people do. They may exist, and they may be relevant in helping us clear this up. Can I move along? I'm sure you'll be delighted, if I do.

Answer:

The following Board members present at the meetings on 1 September 2021 and/or 3 September 2021 have advised that they do not have any file notes, recordings or documents related to those meetings:

- Peter de Cure AM (current TPB Chair)
- Debra Anderson (current TPB Board member)

- Craig Stephens (former TPB Board member)
- Greg Lewis (former TPB Board member)
- Judy Sullivan (former TPB Board member)
- Julianne Jaques (former TPB Board member)