



Independent Pricing and Regulatory Tribunal
New South Wales

Disclosure of pecuniary interests and conflicts of interest

Protocol for Tribunal members

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1 Introduction

This protocol sets out the legislative obligations of Tribunal members and IPART policy requirements in relation to disclosure of pecuniary interests and conflicts (or potential conflicts) of interest.

Section 2 of this protocol sets out the legislative obligations of Tribunal members under the *Independent Pricing and Regulatory Tribunal Act 1992 (IPART Act)* to disclose pecuniary interests.

Section 3 of this protocol sets out IPART policy requirements in relation to:

- ▼ disclosure of any conflicts (or potential conflicts) of interest by Tribunal members, and
- ▼ annual declarations by Tribunal members to confirm that the Tribunal member has not engaged in any trading activities in a restricted company, does not hold a financial interest in a restricted company, or has not otherwise engaged in conduct which is likely to be perceived as a conflict of interest.

Section 4 of this protocol sets out some guidance on what amounts to a pecuniary interest under the IPART Act and for the purposes of the conflict disclosure policy.

This protocol refers to 2 registers:

- ▼ The Register of Conflicts of Interest, currently held by the Principal Risk Officer, and
- ▼ The Pecuniary Interests Register for Tribunal Members, maintained by the Legal Team.

2 Legislative obligations of Tribunal members under the IPART Act to disclose pecuniary interests

2.1 Obligation to disclose pecuniary interest

Under the IPART Act, a Tribunal member must disclose a pecuniary interest that appears to present a conflict with the proper performance of the member's duties.

The IPART Act provides that:

"If:

(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Tribunal, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Tribunal". [Emphasis added]

2.2 Disclosure register and Tribunal procedure following disclosure

Particulars of any disclosure made must be recorded by the Tribunal in a register kept for the purpose and must be available for inspection by the public.

The disclosure register is maintained by the Legal Team. As at December 2019, there are no pecuniary interest disclosures of current Tribunal members.

After a member has disclosed the nature of an interest in any matter, the member must not, unless the Premier or the Tribunal otherwise determines:

- ▼ be present during any deliberation of the Tribunal with respect to the matter, or
- ▼ take part in any decision of the Tribunal with respect to the matter.

When the Tribunal is making a determination under the above provisions, the Tribunal member with the disclosed interest must not be present during the deliberation or take part in the making of the determination.

The relevant provisions of the IPART Act are set out in full in **Appendix A**.

3 Disclosure of conflicts of interest

3.1 Register of conflicts of interest

If a Tribunal member:

- ▼ has a conflict of interest or a potential conflict of interest in a matter being considered or about to be considered at a meeting of the Tribunal, or
- ▼ has an interest in a matter which raises the appearance of a conflict of interest in a matter being considered or about to be considered at a meeting of the Tribunal,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the Chief Executive Officer. The Chief Executive Officer will propose actions to manage the actual or potential conflict to the Chief Audit Executive – who will review the actions and either approve them or propose an alternative. The Chief Audit Executive will then request that the Principal Risk Officer include the conflict and actions in the Register of Conflicts of Interest.

The Register of Conflicts of Interest is currently held by the Principal Risk Officer.

Conflicts of interest may include:

- ▼ direct or indirect pecuniary interests, where a person has a financial interest in a matter, for example, through share ownership,
- ▼ conflicts of duty, generally where a person has roles in different organisations and one of those organisations makes decisions which affect the other organisation's interests, and
- ▼ non-pecuniary interests, which do not have a financial component and may arise from a tendency to favour as a result of friendship or membership of a particular association.

3.2 Restricted companies list annual declaration

At the end of each financial year, IPART will issue a Restricted Companies List. The Restricted Companies List sets out a number of restricted companies and Tribunal members and staff must not hold, purchase or sell securities, shares, debentures, futures, units, commodities or other interests in these companies.

The list is updated annually by the Executive Leadership Team. A copy of the current list is an **Attachment** to this Protocol.

A Tribunal member must sign a declaration (i) on the commencement of his or her appointment; and (ii) at the end of each financial year, to confirm that the member does not have a direct or indirect pecuniary interest in a restricted company.

4 Guidance on what amounts to a pecuniary interest

Note: this section 4 is intended as general guidance only

4.1 What is a ‘direct pecuniary interest’?

The IPART Act does not define ‘direct or indirect pecuniary interest’. The natural and ordinary meaning of pecuniary interest may be taken to be an interest sounding in a financial benefit.

Some further guidance may be gleaned from the legislative definition of pecuniary interest in the *Local Government Act 1993* (NSW), which provides that a pecuniary interest is “an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person”. This provides a useful working definition of a pecuniary interest.

Some examples of circumstances giving rise to a direct pecuniary interest may include where a Tribunal member:

- ▼ holds shares or another beneficial interest in a particular company,
- ▼ is on the board of, or holds a position in, a particular company or organisation, or
- ▼ holds an interest in land,

and the matter being considered by the Tribunal affects that interest. This list is a non-exhaustive list of the circumstances in which a pecuniary interest may arise.

4.2 What is an ‘indirect pecuniary interest’?

An indirect interest may include where the relevant interest is the interest of a Tribunal member’s spouse, de facto partner or immediate family members. An indirect pecuniary interest may also include ownership of shares through a self-managed superannuation fund, where the Tribunal member does not have immediate access to the fund.

If a Tribunal member has no knowledge of the particular pecuniary interest of an immediate family member, the interest could not be said to influence any decision the member might make in relation to the matter.

4.3 What amounts to a ‘conflict’ affecting the proper performance of the member’s duties?

The IPART Act does not provide any clarification as to when a pecuniary interest raises a conflict, or appears to raise a conflict, with the proper performance of the Tribunal member’s duties.

A useful principle is that, for a conflict or an appearance of a conflict to arise, there must be a connection between the pecuniary interest and the decision to be made by the Tribunal on the matter before it, such that the pecuniary interest constitutes an interest in the outcome of the matter before the Tribunal.

Relevant factors as to whether a pecuniary interest appears to present a conflict with the proper performance of the member's duties may include:

- ▼ the size of the interest, and
- ▼ the nature of the matter under consideration by the Tribunal.

In some circumstances, the pecuniary interest may be so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the member might make in relation to the matter. This is, of course, a question of degree and depends on the particular circumstances involved.

A Appendix A – Schedule 2, clause 6 of the IPART Act

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Tribunal, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Tribunal.

- (2) A disclosure by a member at a meeting of the Tribunal that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Tribunal in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Tribunal.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Tribunal otherwise determines:
 - (a) be present during any deliberation of the Tribunal with respect to the matter, or
 - (b) take part in any decision of the Tribunal with respect to the matter.
- (5) For the purposes of the making of a determination by the Tribunal under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Tribunal for the purpose of making the determination, or
 - (b) take part in the making by the Tribunal of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Tribunal.

B Current Restricted Companies List