

September 2023

# Review of Tax Confidentiality Breaches and Related Questions



**pwc**

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Since May 2023, PwC Australia has been investigating, with the assistance of external counsel, PwC Australia's handling of confidential Treasury information and related failures in professional, ethical or leadership responsibilities (**2023 Investigation**). The 2023 Investigation is now complete, and PwC Australia has identified the persons who engaged in wrongdoing, the confidential information that was improperly shared, and the governance failings that allowed the breaches to occur and go unaccounted for as long as they did. As described in [section 3](#), PwC Australia has also made significant changes to prevent such behaviours from happening again. PwC Australia will also make further changes following the recommendations of Dr Ziggy Switkowski AO's [Independent Review \(Independent Review\)](#).

The Independent Review identifies three questions of public concern:

1. How did the breaches of confidentiality and conflicts happen and persist uncorrected for some years?
2. Have responsible parties been identified and disciplined?
3. What processes are now in place to minimise the possibility of any repeat of this experience?

Through this document, PwC Australia seeks to answer these questions.

# 1. How did the breaches of confidentiality and conflicts happen and persist uncorrected for some years?

## A. Background

- 1.1 In 2013, the Organisation for Economic Co-operation and Development (**OECD**) initiated its Base Erosion and Profit Shifting (**BEPS**) project as part of the global focus on multinational companies (**MNCs**). One of the aims was to determine whether MNCs were paying their fair share of tax. The BEPS project resulted in a series of action items which formed the base of the global taxation of MNCs. Many countries advanced the BEPS project by introducing legislation focused on the taxation of large technology companies.
- 1.2 Given the global nature of the BEPS project, taxation authorities in multiple jurisdictions consulted external experts, including partners in PwC network firms.<sup>1</sup> The nature of these consultations differed by jurisdiction, and a number of stakeholders were consulted. The OECD BEPS project received more than 1,400 submissions from industry, advisers, non-government organisations, and academics, totalling approximately 12,000 pages of comments. Eleven public consultations were held, gathering a variety of stakeholders for open discussions of their views and suggestions. To ensure full transparency, these public consultations were streamed live, as were a number of webcasts where the OECD Secretariat periodically updated the public and answered questions.
- 1.3 In connection with the BEPS project, the Australian Treasury invited industry experts from the private sector, including individuals from other professional services firms, law firms, Corporate Heads of Tax, and the Australian Taxation Office (**ATO**), to become members of the BEPS Tax Advisory Group (**BEPSTAG**).

<sup>1</sup> PwC is the brand under which the individual member firms of PricewaterhouseCoopers International Limited (**PwCIL**) operate and provide professional services. The PwC network consists of member firms in 151 countries each of which are separate legal entities. See [here](#) for further information.

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**1.4** Two of the industry professionals invited to join BEPSTAG were then-PwC Australia partners Peter Collins and Michael Bersten. Messrs Collins and Bersten attended the first BEPSTAG meeting on 28 November 2013 and, in December 2013, signed confidentiality acknowledgements in relation to BEPSTAG. Now-former partner, Pete Calleja, and another PwC Australia partner also signed BEPSTAG confidentiality acknowledgements in December 2013. Through these acknowledgements, the partners each agreed to a personal undertaking that the information and any related documents provided during BEPSTAG consultations were confidential and should not be disclosed without prior approval. Prior to Messrs Collins and Bersten signing their confidentiality acknowledgements, they separately forwarded to Tom Seymour, the leader of PwC Australia's Tax practice at the time, the emails they received from Treasury which attached unsigned BEPSTAG confidentiality acknowledgements. At this time, it does not appear that anyone in the firm identified the potential conflict of interest that arose from having client-facing partners participating in confidential Government consultations, nor does it appear that the partners involved alerted PwC Australia's Office of General Counsel (**OGC**) or Risk teams of their commitments or took any other steps to put controls in place to mitigate the risk.

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**1.5** Confidentiality acknowledgements were also signed by representatives from other professional services firms that were invited to participate in BEPSTAG. PwC Australia is unaware of the measures taken by those firms to prevent the type of conduct that subsequently occurred at PwC Australia.

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**1.6** As part of the BEPSTAG, Treasury shared OECD papers with the group for discussion and comment. These materials were subject to confidentiality acknowledgements and therefore not permitted to be disclosed by BEPSTAG members to others who had not signed confidentiality acknowledgements. This is notwithstanding that it appears that governments elsewhere might have conducted consultations on OECD materials more openly. In addition, Treasury consulted with BEPSTAG members on the introduction of unilateral domestic legislation to protect Australian tax revenues in contemplation of worldwide measures under the BEPS project. In Australia, this led to enactment of the Multinational Anti-Avoidance Law (**MAAL**).<sup>2</sup>

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**1.7** The MAAL was principally designed to drive changes to the business structures of large technology MNCs with the intended result of the MNCs paying more tax in Australia. Some MNCs had to restructure their Australian business operations to create a taxable presence (or an increased taxable presence) in Australia. If impacted MNCs did not do this, the MAAL would apply and the MNCs would potentially be exposed to action under the law. Any MNC that was found to be avoiding Australian tax would have to pay back the tax they owed (plus interest) and face penalties of up to 100 percent.<sup>3</sup>

<sup>2</sup> The Government released an exposure draft of the MAAL on 12 May 2015. The legislation was subsequently passed on 3 December 2015 (receiving royal assent on 11 December 2015), and formally took effect on 1 January 2016. On 9 May 2017, the Government announced that the MAAL would be strengthened and the ATO and the BoT designed new legislation. Exposure draft legislation was published on 12 February 2018.

<sup>3</sup> The Australian Government subsequently enacted the diverted profits tax, which targeted the diversion of profits offshore through contrived arrangements (**DPT**). An exposure draft and draft legislation for the DPT was released on 29 November 2016. The DPT received royal assent on 4 April 2017, and the *Diverted Profits Tax Act 2017* (Cth) was effective from 1 July 2017. The Government also enacted legislation designed to capture tax avoidance through hybrid businesses exploiting tax treatments across different tax jurisdictions (**Hybrid Mismatch Rules**). The Hybrid Mismatch Rules received royal assent on 24 August 2018, and the *Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Act 2018* (Cth) came into force on 1 October 2018.

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- 1.8** Having regard to the need for MNCs to restructure their operations to comply with the MAAL, PwC Australia partners presented to potential and actual clients structures considered responsive to the legislative changes. The ATO took particular objection to one of the structures PwC Australia presented,<sup>4</sup> which was known as the ‘foreign partnership’ structure. This structure met the requirement of creating a taxable presence in Australia but it minimised the size of the presence and corresponding amount of tax due.
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- 1.9** On 15 September 2016, the ATO issued a Taxpayer Alert addressing the ATO’s position with respect to the foreign partnership structure. Following consultation with the ATO, the two MNCs that had initially implemented this structure based on PwC Australia’s advice unwound it and replaced it with a structure acceptable to the ATO.
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- 1.10** The conduct of the PwC Australia partners responsible for proposing and implementing the foreign partnership structure was inconsistent with [PwC’s Global Tax Code of Conduct](#). After this conduct came to light, PwC Australia took a series of steps to reinforce adherence to our policies as outlined in [section 3](#).
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- 1.11** On 7 August 2019, the ATO advised PwC Australia that it was conducting a Promoter Risk Review of PwC Australia in relation to PwC Australia’s advice to certain clients in connection with the introduction of the MAAL (**Promoter Risk Review**). On 5 June 2020, the ATO advised that it had concluded the Promoter Risk Review and would not be taking further action against PwC Australia. Notwithstanding this, the ATO noted that the evidence gathered during the review reflected that PwC Australia had been primarily concerned with expanding its market share and winning new clients, with no contemplation given to engaging with the ATO around contentious structures. The ATO noted that, as a leading advisory firm, including where new laws had been introduced to strengthen the integrity of Australia’s tax regime, PwC Australia had broader responsibilities within the tax system including to balance the effective operation of the tax system while assisting clients with their tax affairs.
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- 1.12** As part of the steps taken by PwC Australia to address the issues raised by the Promoter Risk Review and other cultural issues in the Tax practice, in 2020, PwC Australia commissioned Bruce Quigley, a former ATO official, to conduct an external review of the effectiveness of PwC Australia’s tax governance and internal control framework. The ATO also participated in Mr Quigley’s review, and PwC Australia adopted each of Mr Quigley’s recommendations.<sup>5</sup>
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- 1.13** In connection with the ATO’s inquiry concerning tax structures adopted by MNCs in response to the MAAL, beginning in 2016, the ATO served formal requests for information and documents to PwC Australia and other tax advisors under s353-10 of Schedule 1 to the *Tax Administration Act 1953 (Cth)*. Those notices required production of information and documents relevant to, amongst other matters, the work that was done by PwC Australia for clients in response to the MAAL.

<sup>4</sup> The ATO also had concerns with other structures PwC developed (as well as some developed by other firms), which also needed to be addressed.

<sup>5</sup> On 21 July 2023, [Mr Quigley’s review](#) was made public by PwC Australia in response to questions on notice from the Inquiry into Management and Assurance of Integrity by Consulting Services.

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**1.14** In response to the ATO's notices, PwC Australia withheld certain documents from production on the basis of legal professional privilege (**LPP**). It did so with respect to engagements that were described as being directed by legal practitioners in PwC's engagement letters, which would have permitted clients to claim LPP over their communications.<sup>6</sup> The ATO challenged many of the LPP claims, including by issuing further s353-10 notices.

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**1.15** PwC Australia subsequently engaged in a review of the LPP claims and identified certain engagements that were not being directed by legal practitioners as described in the engagement letters. This conduct was contrary to PwC Australia's values and policies concerning the assertion of LPP. As a result, certain PwC clients decided to waive their privilege claims and some of the earlier productions under the s353-10 notices had to be redone, resulting in additional documents being made available to the ATO.

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**1.16** PwC Australia also took a number of steps, in consultation with the ATO, to enforce adherence to its MDP policies, enhance those policies, and train PwC Australia personnel to prevent recurrence of these issues. PwC Australia also agreed to a settlement with the ATO over one of the client's LPP claims and specific actions it needed to undertake, including independent verification of its adherence to MDP policies. PwC Australia has outlined these actions in [section 3](#).

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**1.17** It has been incorrectly suggested that PwC Australia sought to avoid discovery of confidentiality breaches by withholding documents on the basis of LPP. There is no evidence that any of the documents called for by the ATO or TPB notices showing breaches of confidentiality were withheld from production in response to those notices on grounds of LPP. In fact, none of the [documents](#) produced by the TPB in response to the Senate's questions on notice relating to the confidentiality breaches was ever subject to a claim of LPP by PwC Australia or its clients.

## **B. The confidentiality breaches**

**1.18** PwC Australia's 2023 Investigation included a review of the various Treasury and Board of Taxation (**BoT**) consultations to determine the nature and scope of information that may have been shared by Mr Collins, and others, in breach of confidentiality undertakings. Details of the identified confidentiality breaches are summarised below.

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**1.19** In providing this information, PwC Australia is mindful of the ongoing inquiries being conducted by authorities and for which PwC Australia is fully cooperating. In deference to those inquiries, PwC Australia has de-identified certain PwC Australia personnel and provided the information in summary form.

### **i. Disclosures in relation to the introduction of the MAAL**

**1.20** In the lead up to the announcement of the MAAL in May 2015, there had been speculation in the media that the Government was considering such a measure.<sup>7</sup> In April 2015, Mr Collins, who had participated in confidential BEPSTAG meetings that month, sent a number of emails to other PwC Australia personnel that referred to the Government considering introducing a UK-style Diverted Profits Tax (**DPT**).

<sup>6</sup> In 2008, PwC Australia became a **MDP** which is a partnership between legal practitioners and non-legal practitioners where the business of the partnership includes the provision of legal and non-legal services. As a MDP, PwC Australia may conduct engagements that are primarily for the purpose of providing legal advice to be delivered as legal engagements under the direction of a practising lawyer. Communications relating to the provision of legal advice would in those matters be protected by LPP.

<sup>7</sup> For example, the Australian Financial Review (**AFR**) reported on [10 April 2015](#) that 'As revealed last week by the Australian Financial Review, the government will include in the May 12 budget its own version of Britain's Diverted Profits Tax in a bid to tax profits generated from activity in Australia but shifted offshore' (see also AFR article on [1 April 2015](#) 'Google tax to hit multinationals in budget').

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**1.21** From May 2015, PwC Australia marketed to clients and potential clients PwC Australia's ability to assist MNCs in anticipation of the legislation that would be announced in the Federal Budget. In the course of doing so, a now-former PwC Australia partner, Paul McNab, disclosed that Mr Collins had been *'working behind the scenes with a small group in the Australian Treasury to design the options that Treasury will offer to Government ahead of the Federal Budget next Tuesday evening (Sydney time) 12th May. Unfortunately, confidentiality agreements prevent him discussing his work in detail at this time.'*

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**1.22** After the May 2015 public release of an exposure draft of the MAAL, which included a 1 January 2016 start date, there was speculation that Treasury would delay the commencement of the legislation. On 5 August 2015, Mr Collins sent an email to two internal email distribution lists confirming the 1 January 2016 start date of the MAAL (**5 August Email**). That same day, Mr McNab sent an email to at least one MNC noting that *'January 2016 remains likely with Treasury pushing for October passage through Parliament to law. Various other updates we can chat about if you get a moment.'* A second client also received confirmation of the start date of the MAAL. There was no indication given to these clients that the information was confidential. Since confirmation of the start date of the MAAL was confidential information provided to Mr Collins in his role as a BEPSTAG consultant, Mr Collins should not have disclosed that information internally. Further, the use of that information by Mr McNab to market tax services to clients was a conflict of interest and an additional breach of confidentiality.

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**1.23** It has been inaccurately suggested that breaches of confidentiality by PwC Australia led to a reduction in tax revenues for Australia. First, PwC Australia has not identified evidence that the structuring proposals described in paragraph 1.8, were created using confidential information. They were created after the MAAL exposure draft legislation was released publicly in May 2015, and appear to be based on that draft legislation. Second, to the extent that PwC Australia prepared structures to which the ATO objected were pursued by companies, those companies ultimately revised those structures to ones acceptable to the ATO. As the ATO's Second Commissioner, Jeremy Hirschhorn, confirmed: *'[N]o companies implemented those structures, and we protected the revenue so that Australia did not lose money as a result of this breach of confidentiality'*.<sup>8</sup>

## ii. Additional breaches by Mr Collins

**1.24** In the [TPB's findings](#) against Mr Collins, it noted that Mr Collins received confidential documents and information during consultations facilitated by the BoT. In September 2015, the BoT invited Mr Collins (and other industry representatives) to participate in a consultation on OECD anti-hybrids rules. Although the BoT does not appear to have requested that Mr Collins sign a confidentiality acknowledgement, the BoT's invitation to Mr Collins to participate in the consultation explicitly requested that participants keep their participation 'confidential at this stage.' Mr Collins attended the consultation meeting on 17 September 2015 and, on the same day, Mr Collins sent an email to former PwC Australia partner Neil Fuller disclosing details of the meeting noting 'No need to share this because all supposed to be secret' (**17 September BoT Email**). The disclosure of this information by Mr Collins appears to have been contrary to the BoT's confidentiality request in its invitation to Mr Collins.

<sup>8</sup> Refer to page 98 of the [Official Committee Hansard, Senate Economics Legislation Committee Estimates, 15 February 2023](#).

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**1.25** Between December 2016 and July 2017, Mr Collins also participated in BEPSTAG consultations in relation to the OECD multilateral instrument (**MLI**), which was released in November 2016. Those consultations were held jointly with members of another Treasury advisory group, the Tax Treaties Advisory Panel (**TTAP**). In July 2017, Mr Collins shared a confidential Treasury paper received as part of the MLI consultations with other PwC Australia personnel and a PwC Australia client. There was no indication given to the client that the information was confidential.

### iii. Timing of release and content of OECD information

**1.26** During 2014 and early 2015, BEPSTAG members were provided with working draft OECD reports for comment. BEPSTAG members were also provided with information regarding the timing of public release of the OECD final reports. While this information did not relate to Australian tax laws, it was nevertheless encompassed within the commitments made by BEPSTAG members.

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**1.27** Mr Bersten (on one occasion), Mr Calleja (on two occasions), and Mr Collins (on several occasions) forwarded the reports to other PwC tax partners who had not signed confidentiality acknowledgements. In contrast with the MAAL-related disclosures that were part of an effort to market services to clients, these reports appear generally to have been shared for the purposes of collecting input on the proposals for the purposes of responding to the Treasury consultation.

### iv. Other disclosures

**1.28** In April 2016, Treasury and the ATO invited several industry stakeholders to participate in a confidential consultation in relation to Goods and Services Tax (**GST**) treatment of digital currencies. A now-former PwC Australia partner (**Partner A**) was invited to participate in the consultation and signed a confidentiality acknowledgement. The following day, Partner A forwarded the agenda and papers for the confidential consultation meeting to other PwC Australia personnel, who PwC Australia understands did not sign confidentiality acknowledgements.

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**1.29** In February 2017, a now-former PwC Australia partner (**Partner B**) was invited to participate in Treasury's Black Economy Taskforce Reference Group (**BETRG**). As part of their participation, Partner B signed a confidentiality acknowledgment that prevented them from disclosing any information obtained through participation in the BETRG to any other person without the prior approval of the Commonwealth. On several occasions during 2017, Partner B forwarded BETRG materials to another PwC Australia partner. The purpose of forwarding the materials appears to have been to obtain the other partner's input and comments on the materials. However, PwC Australia understands that the other PwC Australia partner did not sign a relevant confidentiality acknowledgement.

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**1.30** From at least August 2012, a now-former PwC Australia partner (**Partner C**) was a member of **TTAP**. PwC Australia understands that Partner C attended TTAP meetings as the representative of Chartered Accountants Australia and New Zealand (**CAANZ**). PwC Australia also understands that at all times on and from August 2012, TTAP participants were subject to confidentiality arrangements that prohibited them from sharing information obtained through TTAP. On several occasions, Partner C shared TTAP information with PwC Australia personnel in circumstances where PwC Australia understands that those individuals were not members of TTAP.

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**1.31** As part of the 2023 Investigation, PwC Australia has identified other internal communications in which information relating to Government consultations was disclosed by PwC Australia personnel. As indicated in paragraphs 1.32-1.35, confidentiality expectations and commitments varied among various consultations and in some cases there were none. As a result, in some instances it has not been possible to determine whether the disclosures constituted a breach of a confidentiality acknowledgement because it is not clear from the documents whether a confidentiality commitment or expectation applied in relation to the disclosure.

#### **v. Disclosures not subject to confidentiality undertakings**

**1.32** In the [documents](#) produced by the TPB to the Senate, there are instances where PwC Australia partners disclosed internally information concerning Government consultations or meetings that were not subject to confidentiality undertakings. PwC Australia has set out examples below.

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**1.33** On 3 May 2016, as part of the 2016-17 Federal Budget, the Government announced that it would introduce a DPT and **publicly** released a consultation paper, seeking submissions by 17 June 2016. On 10 May 2016, several PwC Australia personnel met with representatives from Treasury and the ATO to provide PwC Australia's views ahead of any formal submission from PwC Australia. On 11 May 2016, Mr Collins sent an email to an internal distribution list and provided an update on the meeting with Treasury and the ATO. PwC Australia has not identified any evidence that this disclosure by Mr Collins was inconsistent with the expectations of Treasury or the ATO.

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**1.34** On 29 November 2016, the Government **publicly** released an exposure draft of legislation in relation to DPT, seeking submissions by 22 December 2016. On 13 December 2016, several PwC Australia personnel met with representatives from Treasury to discuss the draft DPT legislation. On the same day, a PwC Australia partner who attended that meeting emailed an internal distribution list and provided a summary of the meeting with Treasury. PwC Australia has not identified any evidence that this disclosure was inconsistent with the expectations of Treasury.

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**1.35** In January 2017, Treasury emailed several stakeholders who had provided submissions in relation to the draft DPT legislation (including PwC Australia) and indicated that Treasury proposed to undertake further targeted consultations. Treasury provided a revised draft of the DPT legislation to stakeholders, including PwC Australia, on 19 January 2017. The Treasury email stated that although it would not be asking recipients to sign a confidentiality acknowledgement, it requested that the draft legislation be circulated to only a limited number of people within their respective organisations. On 25 January 2017, Mr Collins shared a copy of the draft legislation with another PwC Australia partner, stating *'Not to be shared please.'* This disclosure appears to be consistent with the terms on which Treasury supplied the paper.

#### **C. Issues arising relating to potential confidentiality breaches**

**1.36** **January 2016 email exchange.** In January 2016, Mr McNab sent an email to Mr Seymour, copying Mr Fuller and one other PwC Australia partner, providing an update on the work PwC Australia performed for clients in relation to the MAAL. The email stated, relevantly, that *'we were aggressive in telling these relationships they needed to act early (heavily helped by the accuracy of the intelligence that Peter Collins was able to supply us...'* (emphasis in original). Mr Seymour replied to the email the following day, copying in additional PwC personnel,



congratulating Messrs McNab and Fuller for the outcomes and '*strategic thinking and market hustle*' outlined in Mr McNab's email. PwC Australia has not identified any evidence to indicate that Mr McNab's email prompted any of the recipients to question whether Mr Collins or others had been involved in the improper sharing of information in relation to the introduction of the MAAL.

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**1.37 PwC Australia identification of relevant documents in 2017.** According to the August 2023 timeline published by the ATO (**ATO timeline**), during its review of PwC Australia documents in October 2017, the ATO identified that Mr Collins was involved in the BEPSTAG consultations and may have shared information subject to confidentiality obligations. The ATO timeline does not suggest that the ATO alerted PwC Australia to the issue at that time (nor was it obliged to do so). Nevertheless, shortly thereafter, the PwC Australia Risk team identified the 17 September 2015 email from Mr Collins concerning the BoT anti-hybrids consultation discussed in paragraph 1.24.

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**1.38** Following the identification of the 17 September BoT Email, representatives of PwC Australia's OGC and Risk teams questioned Mr Collins about the email. Mr Collins reportedly said that he did not sign a confidentiality acknowledgement relating to the BoT consultation. This appears to have been accurate in as much as the email (which Mr Collins subsequently forwarded to PwC Australia OGC and Risk teams) does not include any reference to a signed confidentiality acknowledgment. Nevertheless, the email did express the BoT's desire that the consultation be maintained as confidential for the time being: '*We would appreciate if you kept your participation in this targeted consultation session confidential at this stage.*' PwC Australia has not identified evidence of further searches or investigation conducted on the issue at the time.

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**1.39 Further questions raised in 2019.** The ATO timeline further notes that on 29 August 2019, Mr Hirschhorn met with PwC Australia's then-CEO, Luke Sayers, to address a '*range of Tax Office concerns related to PwC conduct and the formal notice process*'. The ATO timeline states that Mr Hirschhorn urged Mr Sayers to personally review PwC Australia's internal emails. Mr Sayers has publicly denied any recollection of Mr Hirschhorn's request and being aware of the confidentiality issues at the time he was CEO.

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**1.40** On 3 September 2019, PwC Australia's Governance Board received an update on a meeting between Mr Sayers and Mr Hirschhorn. The minutes of the Board meeting record: '*Recent developments were outlined, including the substance of matters raised by the ATO in discussions last week with Luke Sayers about the culture in the firm's Tax practice.*'

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**1.41** Notes prepared in advance of the Governance Board meeting by the person providing the update referred to '*a recent discussion that Luke had with the ATO in relation to its concerns about the firm*' and included, as part of a list of several issues, a reference to a PwC Australia partner (not identified) who sat in on confidential Treasury discussions and also disclosed confidential information in a commercial way. PwC Australia's Governance Board does not have records of any follow-up discussions between management and the Governance Board relating to the confidentiality issue in this time frame.

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**1.42** PwC Australia has not been able to determine whether the ATO raised the confidentiality issues directly with Mr Sayers. Regardless, it is clear that the ATO raised these issues with someone within PwC Australia in 2019, and in October 2019, leaders within the tax practice met to discuss Mr Hirschhorn's concerns and it appears that a follow-up meeting between Mr Seymour and Mr Hirschhorn was contemplated.

In preparation for that meeting, a representative of PwC Australia's Risk team prepared a memorandum with talking points in relation to concerns that had been raised by the ATO. One of those concerns was described as a potential breach of confidentiality by Mr Collins. The talking points summarised certain emails that the PwC Australia Risk team described as most likely to have given rise to the ATO's concerns, and noted that confidentiality acknowledgements did not apply in relation to those disclosures, which included the 17 September BoT Email and two emails in relation to another meeting with the ATO and Treasury that was described in the memorandum as not having been undertaken as part of any formal process. The talking points also noted that Mr Collins had confirmed again in 2019 that he was not required to sign a confidentiality acknowledgement in relation to either meeting. PwC Australia has not identified any evidence that is inconsistent with that statement as it relates to those specific meetings.

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**1.43** There is no evidence that any further investigation was done in 2019 relating to this issue. Rather, there appears to have been a belief by PwC Australia's Risk team that Mr Collins' emails had been more thoroughly reviewed in 2017 and a conclusion reached based on that review, although such review does not in fact appear to have occurred. Consequently, those responsible for looking at the issue in 2019 concluded, erroneously, that the concerns being raised by Mr Hirschhorn were matters that had been previously identified and addressed. PwC Australia has not identified evidence of any follow up with the ATO to ensure that the issues that appear to have been raised by ATO were the same as the ones reviewed internally nor of any request for specifics that might have helped PwC Australia to better understand the ATO's concerns.

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**1.44** It was not until the TPB informed PwC Australia that it had commenced its investigation of PwC Australia in 2021 that PwC Australia's OGC team identified relevant emails indicating that Peter Collins had signed BEPSTAG confidentiality acknowledgments. Specifically, in March 2021, the TPB informed PwC Australia that it had commenced an investigation into PwC Australia. In response, PwC Australia undertook its own internal inquiries to understand the scope of the issues that were the subject of the TPB investigation. As part of those internal inquiries, in March 2021, PwC Australia's OGC team called for email searches to be conducted and first became aware that Mr Collins and other PwC Australia partners had signed confidentiality acknowledgments in relation to the BEPSTAG consultations.

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**1.45** Between March and June 2021, PwC Australia (with the assistance of external legal counsel) conducted additional document searches and reviews, culminating in the preparation of privileged legal advice concerning the confidentiality breaches. The legal advice was addressed to PwC Australia's then-CEO, Mr Seymour, and then-Strategy, Risk and Reputation Leader, Sean Gregory.

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**1.46** The records of the Governance Board indicate that the first substantive update in relation to the TPB investigation was provided to the Risk Committee of the Governance Board in May 2022, and that the first substantive update to the full Governance Board was in September 2022.

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**1.47** In responding to the TPB matter, the firm defended the TPB's assertions as would a party to litigation, producing documents and information responsive to the TPB's requests and challenging certain aspects of the TPB's allegations. As PwC's then-CEO, Mr Seymour had direct involvement and oversight, together with PwC Australia OGC, in the handling of the matter. This process continued until 21 October 2022, when the TPB made its [findings](#).

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**1.48** After the TPB's January 2023 press release of its findings, PwC publicly acknowledged the findings and its failings. Faced with subsequent media questioning and public scrutiny, however, former senior leadership downplayed the significance of the matter and severity of the findings and did not adequately represent the key issues. Further, in March 2023, it was reported in the media that Mr Seymour characterised the matter as a 'perception issue' that the firm did not have in place effective systems to manage confidentiality agreements.<sup>9</sup>

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**1.49** In May 2023, acknowledging past failures relating to these matters, instructions were given for three privileged legal analyses:

- a. **King & Wood Mallesons (KWM).** PwC Australia engaged KWM in May 2023 to interview PwC personnel concerning the dissemination of confidential information obtained from Treasury consultations and provide legal advice concerning the existence and scope of any breaches within Australia.
- b. **Linklaters.** Linklaters was engaged by PwC International to scope and conduct a privileged review that considered the sharing of confidential information by PwC Australia with other firms.
- c. **Allens.** PwC International initially engaged Allens to review PwC Australia's historical governance and risk management structures, including the TPB findings. The scope of Allens' work was subsequently expanded to a joint engagement with PwC Australia. In addition to other matters, Allens conducted further interviews and document review to provide advice in relation to PwC Australia's accountability findings concerning the confidentiality breaches and past professional, leadership, and governance failures.

## **D** Why did the breaches occur and persist uncorrected for some period of time?

**1.50** There is no single answer to the question of why the breaches of confidentiality and conflicts occurred and were not discovered and addressed earlier. Rather, it appears to be the result of a combination of multiple failings as well as missed opportunities to address the issues at an earlier point in time.

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**1.51** **Failure of individuals to identify and mitigate potential conflicts of interest at the outset.** Fundamentally, the confidentiality breaches occurred due to PwC Australia's failure to recognise and take steps to mitigate the inherent conflict of interest that existed from PwC Australia advising Treasury on the implementation of tax legislation while, at the same time, assisting clients to structure their business operations to comply with the new laws.

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**1.52** When PwC Australia partners were asked to participate in confidential Treasury consultations and advised the former tax leader, Mr Seymour, of their participation, those partners, and tax leadership, should have:

- a. Reviewed PwC's policies concerning the protection of confidential information and preventing conflicts of interests;
- b. Consulted with PwC Australia's OGC and Risk teams on the necessary steps to mitigate potential conflicts; and
- c. Taken steps to safeguard information provided in connection with the Treasury consultations from being shared in contravention of the terms on which that information was provided.

<sup>9</sup> As reported in the AFR on [9 March 2023](#).

At the relevant time, PwC had policies in place requiring that partners identify conflicts of interest in connection with their engagements and take steps to mitigate them. Those policies should have been followed.

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**1.53 Inadequate controls relating to confidentiality undertakings.** PwC Australia failed to maintain an appropriate register for tracking and monitoring the confidentiality undertakings that had been signed by PwC Australia personnel. For example, when the PwC Australia partners signed their confidentiality acknowledgements and sent them to Treasury in December 2013, there was no requirement that they consult with, or identify their undertakings to, others within the firm in order to maintain appropriate controls. Since there was no centralised record or means of providing notice of these restrictions, the PwC Australia Risk and OGC teams were unaware of them and others within the firm relied exclusively on PwC Australia personnel to conduct themselves in accordance with the commitments they entered into. PwC Australia has since implemented a register for tracking and monitoring confidentiality agreements as outlined in its [Compliance Report](#) submitted to the TPB on 14 July 2023.

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**1.54 Failure of individuals to identify potential breaches by others.** PwC Australia partners are expected to speak up if they observe conduct by other professionals that is contrary to PwC's policies and values. PwC Australia's 2023 Investigation identified circumstances where certain PwC Australia personnel had enough information that they should have asked questions about whether confidential Treasury information was being shared under circumstances that were not permitted. Those professionals should have spoken up when they received the information and brought the issue to the attention of PwC Australia's OGC and Risk teams so that it could be appropriately investigated and addressed in a timely manner. This did not happen, and PwC Australia has identified and addressed this conduct in its accountability assessments described in response to question 2 below.

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**1.55 Inadequate issues management.** Likewise, PwC Australia's handling of the confidentiality issues when suspicions were initially raised in 2017, and subsequently in response to the ATO's concerns in 2019, was inadequate.

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**1.56** In 2017, when PwC Australia OGC and Risk teams identified the 17 September BoT Email referred to in paragraph 1.24, they questioned Mr Collins who reportedly stated that he did not sign a confidentiality acknowledgement in connection with the BoT consultation. Although this appears to have been accurate as it relates to that single consultation, given the nature of the email exchange, it does not appear that sufficient investigation of the matter was conducted. Nor was there appropriate regard for the email itself, which noted that Mr Collins' participation was supposed to have been '*confidential at this stage.*'

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**1.57** Similarly, in 2019, when the ATO raised concerns about a possible breach of confidentiality, PwC Australia should have engaged with the ATO about the merits of the issue, including informing the ATO of Mr Collins' position that he had not signed a confidentiality acknowledgement with respect to internally identified consultations (and thereby possibly learning that ATO's concerns focused on a different consultation). Instead, the PwC Australia individuals involved concluded that the ATO's concerns were misplaced and do not appear to have pursued the matter further.

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**1.58 Failure to assess appropriate accountability.** Finally, after the TPB initiated its investigation in 2021 and evidence of confidentiality breaches was uncovered, a rigorous internal investigation and consequence management process should have followed. While the firm provided the information requested by the TPB and cooperated with its investigation, it did not take adequate steps to fully

understand the facts, identify root causes, and assess responsibility (including at a leadership level). It appears that this failure was due at least in part to the fact that the firm's then-CEO, Tom Seymour, who had leadership responsibility for the tax group at the relevant times, was directly involved in decision-making regarding the handling of the matter and did not take steps to remove himself from the process nor to ensure that the underlying facts were fully reported to those charged with governance.

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**1.59** Other than requiring Mr Collins to retire from the partnership in October 2022 (more than a year after the identification of evidence of Mr Collins' breaches of his BEPSTAG confidentiality acknowledgment), PwC Australia did not take any steps to exit partners or impose financial consequences for the identified conduct until recently.

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**1.60** **Shortcomings in governance, culture and accountability.** Dr Switkowski's Independent Report identifies key shortcomings. Those shortcomings are significant. Elements of those shortcomings were present over the period relevant to the confidentiality breaches and contributed to an environment within PwC Australia's international tax practice where pressure to perform was paramount and insufficient regard was had to obligations of confidence and identifying and mitigating potential conflicts of interest. Those shortcomings also contributed to an environment where, when issues were identified, there was inadequate attention and action taken to investigate those issues and hold individuals to account.

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## 2. Have responsible parties been identified and disciplined?

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**2.1** In response to these matters, PwC Australia has made a number of changes to senior leadership. On 8 May 2023, Tom Seymour stepped down as PwC Australia's CEO and has since exited the partnership. PwC Australia appointed Kevin Burrowes as its CEO, effective 19 July 2023. The Strategy, Risk and Reputation leader, Mr Gregory, and the Financial Advisory leader, Mr Calleja, stood down from their leadership roles and positions on the PwC Australia Executive Board and have since exited the firm. The Chairs of the Governance Board and its designated risk committee also stepped down from their respective roles. PwC Australia appointed Jan McCahey as the firm's Risk and Ethics Leader, a newly created role.

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**2.2** Having now completed its 2023 Investigation, PwC Australia is confident that those responsible for the confidentiality breaches have been identified.

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**2.3** As has been reported, Mr Collins retired as a partner of PwC Australia on 20 October 2022 for reasons connected with the TPB's investigation. All other partners whom PwC Australia identified as having been responsible, including from a leadership standpoint, for the confidentiality breaches or the failure to take appropriate action once the issues were identified, are no longer partners in the firm.

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**2.4** It is important to note that the vast majority of PwC Australia personnel who received confidential information received it in circumstances that did not indicate that the recipients should have known that the information was confidential.

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**2.5** There were, however, recipients who should have questioned (by virtue of their position, experience, or the descriptive language or nature of the information received) whether the circumstances reasonably suggested that a breach of confidentiality had occurred and, consistent with [PwC's Code of Conduct](#), flagged the issue for others so that it could be addressed. Depending on the applicable facts and circumstances, PwC Australia has either exited those partners or has assessed the maximum financial consequences allowable under PwC Australia's consequence management framework on the grounds that their conduct fell below PwC's expectations.

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### 3. What processes are now in place to minimise the possibility of any repeat of this experience?

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**3.1** Since 2016, PwC Australia has been making changes within the tax practice to improve its culture, governance, controls, and training to enhance its standards and meet community expectations and has taken actions to prevent recurrence of past conduct. These actions were initiated by PwC Australia, in some cases in coordination with the ATO,<sup>10</sup> in response to Bruce Quigley's 2021 review or in response to the TPB matter. PwC Australia believes that these changes, together with the initiatives of new leadership and the controls put in place since May 2023, have resulted in a markedly different tone at the top and that PwC Australia's actions in response to the Independent Review and continued focus will serve to minimise and mitigate the possibility of similar conduct occurring in the future.

Previously implemented and ongoing changes are summarised below.

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**3.2** **Transparency of advisory and policy roles and maintenance of central confidentiality agreement register.** Commencing in 2021, PwC Australia senior partner approval is required prior to entry into any Government or BoT consultations.

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**3.3** PwC Australia's policy 'Confidentiality agreements with clients, prospective clients or third parties' has also been updated to provide further clarity on entering confidentiality agreements or undertakings. In parallel, the firm is expanding its Confidentiality Agreement Register to include identification and retention of all confidentiality undertakings. This register has been and will be revalidated on a periodic basis. Failures of PwC Australia personnel to appropriately record confidentiality or non-disclosure agreements will be evaluated under PwC Australia's consequence management framework.

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**3.4** **Avoidance of conflicting roles and responsibilities.** In November 2022, PwC Australia established a prohibition on client partners entering into Government or BoT consultations. At the same time, a protocol was established and advised to Treasury, BoT and the ATO that the only point of contact for them in relation to confidential consultations would be a named tax adviser who has a non-client facing position in the firm.

<sup>10</sup> See [March 2023 Deed of Settlement between PwC Australia and the Commissioner of Taxation of the Commonwealth of Australia](#).

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**3.5** The sale of PwC Australia’s government advisory practice to Allegro Funds in the form of the newly formed Scyne Advisory was announced, and the share purchase agreement was signed on 19 September 2023. This will reduce certain inherent potential conflicts of interest but not eliminate the need for improvements in our conflict management systems and controls.

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**3.6** **Enhanced MDP protocols.** PwC Australia’s MDP protocols and controls were updated in compliance with ATO directives. A requirement that clients be alerted to the LPP protocols in engagement letters when hiring PwC Australia to provide tax advice as a legal service has been established. In addition, a mandatory triage and approval process for certain ‘legal services engagements’ has been established and is being maintained.

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**3.7** To support the PwC Tax practice quality controls relating to legal engagements, annual file reviews will be conducted on a sample basis to assess compliance with the firm’s MDP protocol and mandatory triage and approval process. PwC will also engage an independent reviewer by 2025 to assess the design and operational effectiveness of the MDP protocol and the mandatory triage and approval process. Both the file reviews and the engagement of the independent reviewer are also measures being implemented in compliance with ATO directives.

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**3.8** **Enhanced and focused training.** PwC Australia has maintained an ongoing required course curriculum and elective training opportunities related to tax matters and professional behaviors, which are undertaken throughout the year by PwC Australia partners and staff.

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**3.9** Since 2017, the PwC Australia Tax practice has made significant efforts to raise awareness and provide training (much of it mandatory) for critical practice areas including conflicts of interest, confidentiality, ethics, operating as a MDP, application of LPP, complex tax matters and providing tax advice in complex areas involving judgment. Examples of training programs are set forth in the [Compliance Report](#) submitted to the TPB on 14 July 2023.

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**3.10** In addition, all PwC partners and staff receive mandatory and comprehensive induction training when they join PwC Australia. The curriculum for new joiners includes, but is not limited to, modules on PwC’s Code of Conduct, audit independence, confidentiality, conflicts of interest, cyber, ethics and integrity and data protection policies.

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**3.11** **PwC Australia’s Tax Policy Panel.** In December 2016, to promote adherence to PwC’s Tax Code of Conduct, PwC Australia established a Tax Policy Panel (**TPP**) to support the provision of tax advice for PwC Australia clients. The TPP consists of two non-client facing partners along with other subject matter tax partners independent of the advice under discussion. These PwC Australia partners, independent of the specific client engagement teams, review complex tax advice matters involving issues of tax policy or complex or potentially controversial tax matters.

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**3.12** **Central issues reporting and management.** PwC Australia’s issues reporting process is being expanded so that it will centrally capture and manage all ethics-related matters including those that come through whistleblower channels, are directly reported to PwC personnel or raised to OGC or Risk teams. PwC Australia also redesigned its ethics functions to triage, assess and recommend responses to ethics matters, and new protocols are in the process of being implemented.

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**3.13** PwC Australia is also taking steps to improve and prioritise its consequence management, including reinforcing minimum expectations, proactively and transparently identifying, reporting and holding parties accountable.

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**3.14 Embracing feedback, best practices and independent findings.** In 2020, PwC Australia commissioned an external review of the effectiveness of its tax governance and internal control framework, which was conducted by former ATO official, Bruce Quigley. The ATO participated in this review. PwC Australia adopted all of Mr Quigley's recommendations. In August 2023, Mr Quigley commenced a planned refresh of his 2021 review. The review includes the same terms of reference as the previous review and has been expanded to include the [Australian Tax Advisory Firm Governance - Best Practice Principles \(the Principles\)](#). The Principles were developed in conjunction with the ATO and the TPB by Deloitte Australia, EY Australia, KPMG Australia and PwC Australia and relate to the provision of tax advice. They are designed to complement compliance with the legal, professional and regulatory regime, and comply with the current and future requirements relating to government procurement.

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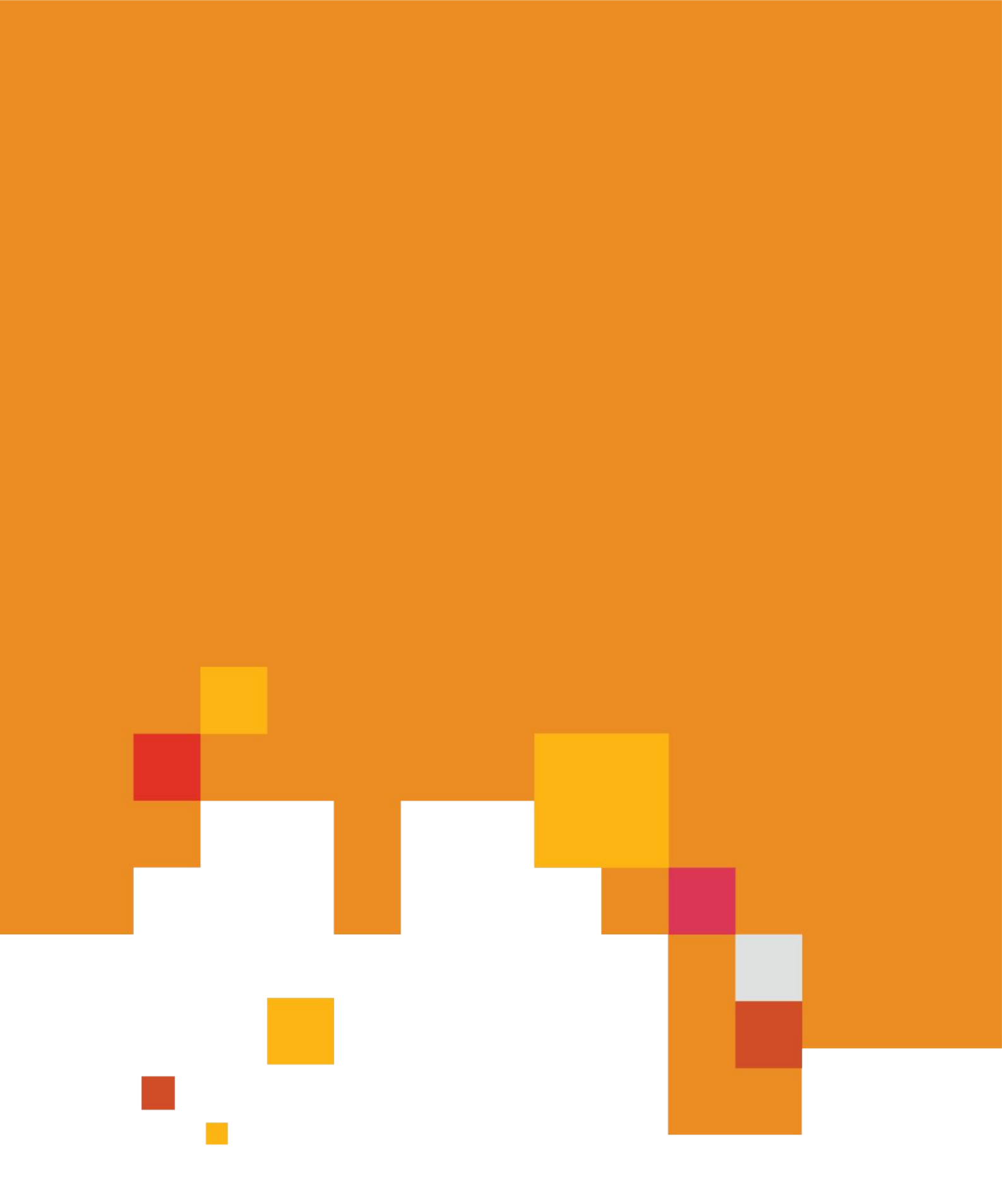
## 4. Conclusion

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**4.1** Through this review document, PwC Australia has attempted to answer the serious questions being asked by stakeholders, as summarised by Dr Switkowski AO. PwC Australia accepts full responsibility for the historical misconduct that occurred and notes that significant repairs are being made, and will continue to be made, to improve the firm's internal processes and culture going forward and restore trust.

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