

Management of Conflicts of Interest by Corporate Commonwealth Entity Boards

Across Entities

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Canberra ACT
11 November 2024

Dear President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, the acting Auditor-General undertook an independent performance audit across entities. The report is titled *Management of Conflicts of Interest by Corporate Commonwealth Entity Boards*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caralee', is positioned below the 'Yours sincerely' text.

Dr Caralee McLiesh PSM
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out their duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Audit snapshot

Auditor-General Report No.12 2024–25

Management of Conflicts of Interest by Corporate Commonwealth Entity Boards



Why did we do this audit?

- ▶ Boards comprise members that are appointed based on their specialist expertise and industry affiliations. This can present a risk of conflicts of interest that can undermine the integrity of boards as the accountable authority for corporate Commonwealth entities (CCE).
- ▶ This audit was conducted to provide assurance to the Parliament that the operations of the boards of four CCEs were effectively managing conflicts of interest.



What did we find?

- ▶ The boards of the four CCEs were largely effective in their management of conflicts of interest.
- ▶ The arrangements implemented by boards had shortcomings in sufficiently documenting policies and procedures, developing management plans for potential conflicts of interest, and demonstrating that declared interests had been assessed and considered by boards to inform mitigations.



Key facts

- ▶ There were 74 CCEs as at 1 August 2024. Most CCEs are governed by a group of people described as a 'board' or 'commission' that are the accountable authority of the entity.
- ▶ This audit assessed the operations of the boards of four CCEs for the period 1 July 2021 to 31 December 2023: the Australian Sports Commission, Food Standards Australia New Zealand, Infrastructure Australia and the National Portrait Gallery of Australia.



What did we recommend?

- ▶ Three recommendations were made to the boards to strengthen the design and operating effectiveness of arrangements for managing conflicts of interest.
- ▶ One recommendation was made to the Department of Finance to improve training and education arrangements for CCE boards.
- ▶ The boards, as the accountable authorities of the four CCEs, and the Department of Finance agreed to all recommendations.

66

board meetings held by the four boards.

37

board meetings where at least one interest was declared.

2

ex-officio board positions across the four boards.

Summary and recommendations

Background

1. The National Anti-Corruption Commission's (NACC's) 2022/2023 Integrity Outlook states:
Conflicts of interest are also a prevalent source of corruption issues. Many types of corrupt conduct – such as breaches of public trust, abuse of office and misuse of information – originate from conflicts of interest. Such conflicts therefore pose a substantial risk for government agencies, parliamentarians, and public officials. This is why identifying, disclosing and managing potential conflicts of interest is a critical pillar of integrity architectures.¹
2. The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) sets out general duties of accountable authorities and officials of Australian Government entities.² The general duties related to conflicts of interest for an official include:
 - not improperly using their position or information obtained through their position to gain or seek to gain a benefit or advantage for themselves or others, or to cause detriment to the entity, Commonwealth or others³; and
 - disclosing the details of any material personal interests that relate to the affairs of the entity.⁴
3. The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) provides further detail on requirements for managing conflicts of interest.⁵ Under the PGPA Act, accountable authorities have a duty to establish and maintain appropriate systems of risk oversight and management and internal control.⁶ In addition, the PGPA Rule establishes a requirement for the accountable authority to take all reasonable measures to prevent, detect and deal with fraud and corruption relating to the entity.⁷
4. Boards of corporate Commonwealth entities (CCEs) are the accountable authority unless otherwise prescribed by an Act or the rules. Membership of boards can consist of both executive directors and non-executive directors. CCE boards are responsible for the operations of their entities.
5. The Department of Finance states:
Corporate Commonwealth entities generally have enabling legislation that establishes the scope of their activities and a multi-member accountable authority (such as a board of directors).

-
- 1 NACC, *Integrity Outlook 2022/23*, Commonwealth of Australia, Canberra, 2023, p. 4, available from https://www.nacc.gov.au/sites/default/files/documents/2023-10/integrity_outlook_22-23_-_final_version_for_publication_0.pdf [accessed 22 May 2024].
 - 2 Accountable authorities are responsible for the operations of Australian Government entities and can be individuals (such as secretaries or chief executive officers) or groups of individuals (such as governing boards). Officials include employees, officers or members of Australia Government entities (including directors and statutory office holders). Accountable authorities are also officials under the PGPA Act.
 - 3 PGPA Act, sections 27 and 28.
 - 4 PGPA Act, sections 29.
 - 5 PGPA Rule, Part 2-2, Division 2, sections 12–16D.
 - 6 PGPA Act, section 16.
 - 7 PGPA Rule, section 10. This section of the PGPA Rule is referred to as the Fraud and Corruption Rule.

6. Specialist skills and expertise may be required to provide a suitable composition for a CCE board. The board members that are appointed to CCE boards in respect of their specialist skills or expertise can have inherent interests that exist as a consequence of their specialist experience. For example, they may be involved in industry associations or have duties to other organisations. These interests can conflict with their duties as a board member of a CCE.

7. The operations of boards for four CCEs were selected for examination as a part of this audit:

- the Australian Sports Commission (ASC);
- Food Standards Australia New Zealand (FSANZ);
- Infrastructure Australia (IA); and
- the National Portrait Gallery of Australia (NPGA).

Rationale for undertaking the audit

8. According to the Australian Public Service Commissioner, the public is entitled to have confidence in the integrity of public officials, and to know that the personal interests of public officials do not conflict with their public duties.⁸ Apparent conflicts can be just as damaging to confidence in public administration as real conflicts, so disclosures and effective management of real, apparent and potential conflicts of interest is an important element of the Australian Government's integrity framework.

9. Section 29 of the PGPA Act provides a duty to disclose material interests. CCE board members may have material personal interests that relate to their role as a member of an accountable authority. Board requirements for specific qualifications, skills and experience pose the risk that domain knowledge and industry familiarity may lead to conflicts of interest.

10. This audit was conducted to provide assurance to the Parliament that the boards of the four CCEs are effectively managing conflicts of interest.

Audit objective and criteria

11. The objective of the audit was to assess the effectiveness of the operations of the boards of four CCEs in managing conflicts of interest.

12. To form a conclusion against the objective, the ANAO examined:

- Have the boards developed appropriate arrangements to manage board conflicts of interest?
- Have the boards effectively managed board conflicts of interest consistent with their own policies?

13. The audit examined the operations of the boards of four CCEs in managing conflicts of interest over the period 1 July 2021 to 31 December 2023. The appointment process for board members was not examined as part of this audit.

⁸ Australian Public Service Commissioner, *APS Values and Code of Conduct in practice*, APSC, Canberra, 2021, section 5.1, available from <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice/section-5-conflict-interest> [accessed 13 May 2024].

Conclusion

14. The operations of the boards in managing conflicts of interest were largely effective. Arrangements for managing conflicts of interest were implemented by the boards in accordance with legislative requirements and documented by some of the boards in policies and procedural guidance. The effectiveness in implementing these arrangements were inconsistent across the boards which resulted in deficiencies in declaring and managing conflicts of interest by the boards. This reduced the overall effectiveness of the boards in their management of conflict of interest risks.

15. The boards have developed largely appropriate arrangements for managing conflicts of interest. All boards have implemented arrangements to support the declaration of interests by board members, including following their appointment and during the term of their appointment. The arrangements implemented by the boards were aligned to requirements in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). The board of the NPGA did not have a conflict of interest policy that included managing conflicts of interest related to its board. The boards of the ASC and FSANZ had not developed conflict of interest management plans for board members holding other roles within the Australian Government. The boards have largely relied on board induction processes to provide training and education in relation to managing conflicts of interest. The boards had implemented varying arrangements to obtain assurance over the management of conflicts of interest relating to board members.

16. The boards were partly effective in implementing arrangements for managing board conflicts of interest consistent with their own policies. There were shortcomings in the operating effectiveness of processes for declaring and managing conflicts of interest across all boards. This included instances where: declarations of interest were not obtained from newly appointed board members in a timely manner; declarations of interests were not implemented as a standing agenda item at board meetings; and boards' assessments of declarations of interest were not sufficiently documented to record whether the board had determined declarations to be material personal interests.

Supporting findings

Arrangements to manage conflicts of interest

17. The boards had identified and assessed fraud and corruption risks within their risk management frameworks. The board of IA had identified conflict of interest controls for its then board within its operational and fraud risk registers. (See paragraphs 2.3 to 2.14)

18. All boards had arrangements for board members to declare interests following appointment and at board meetings. The arrangements implemented by the boards were aligned to requirements in the PGPA Act and PGPA Rule. The ASC, FSANZ and IA boards had policies and procedural guidance to manage board conflicts of interest. The NPGA board did not have a conflict of interest policy that provided coverage of the board, with the exception of a policy for declaring, managing and overseeing board conflicts of interest related to the acquisition of works. The boards for ASC and FSANZ had not developed management plans for potential conflicts of interest

relating to ex-officio board members that held other roles within the Australian Government. (See paragraphs 2.15 to 2.60)

19. The boards largely relied on board induction processes and related resources from the Department of Finance for promoting compliance with conflict of interest requirements. The boards for the ASC and FSANZ had developed guidance specific to managing board conflicts of interest. The FSANZ board provided board members with access to its learning management system, which included training related to conflicts of interest. The IA board had delivered training for board members that included a module on conflicts of interest. None of the boards had documented training plans for board members or arrangements for monitoring training undertaken by board members. The Department of Finance's resources on managing conflicts of interest are not specific to boards of corporate Commonwealth entities. (See paragraphs 2.61 to 2.84)

20. None of the boards had implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflicts of interest. All boards had developed some form of arrangement to obtain assurance over board conflicts of interest.

- The ASC board obtained attestations from its board members on compliance with section 29 of the PGPA Act and provided reporting to its audit committee.
- The FSANZ board maintains a centralised register of interests declared by board members that is published on its website.
- The IA board undertook an internal audit in 2018–19 that covered board conflicts of interest and conducted Australian Securities and Investments Commission register searches of board members' interests in 2021 to confirm declarations.
- The NPGA board had undertaken a specific review of board declarations to update its register of interests for board members. (See paragraphs 2.85 to 2.105)

Effectiveness of conflict of interest arrangements

21. There were instances across all boards where processes for declaring interests were not operating effectively.

- The ASC, FSANZ and NPGA boards had instances where they held board meetings where declarations of interests were not included in agendas or obtained during board meetings.
- The ASC and NPGA boards had instances where they did not obtain declarations of interests from newly appointed board members in a timely manner.
- All boards did not sufficiently document their assessment of declared interests and whether they were considered to be material personal interests. (See paragraphs 3.3 to 3.24)

22. All boards had implemented induction processes for their board members that covered conflict of interest. The ASC's board induction processes were updated to provide coverage of conflicts of interest for board members commencing from March 2022, but not all current members had received the guidance. The FSANZ, IA and NPGA boards had implemented additional training and education arrangements on conflict of interest obligations for board members. (See paragraphs 3.25 to 3.35)

Recommendations

Recommendation no. 1
Paragraph 2.52 The National Portrait Gallery of Australia update its conflict of interest policy to document requirements and arrangements for declaring, managing and overseeing conflicts of interest relating to the board.

National Portrait Gallery of Australia response: *Agreed.*

Recommendation no. 2
Paragraph 2.58 The Australian Sports Commission and Food Standards Australia New Zealand assess conflict of interest risks for board members holding other roles within the Australian Government, and develop mitigations that are documented in a management plan.

Australian Sports Commission response: *Agreed.*

Food Standards Australian New Zealand response: *Agreed.*

Recommendation no. 3
Paragraph 2.82 The Department of Finance improve training and education arrangements for corporate Commonwealth entities to raise awareness for entities and their board members in understanding how to implement arrangements to meet conflict of interest obligations. This should be undertaken in consultation with portfolio departments.

Department of Finance response: *Agreed.*

Recommendation no. 4
Paragraph 3.21 The Australian Sports Commission, Food Standards Australia New Zealand, Infrastructure Australia and National Portrait Gallery of Australia implement arrangements to record the board's assessment of whether a declaration made by a board member is determined to be a material personal interest. Where the interest is determined to be a material personal interest, boards should record the disclosure and consequence in accordance with the Public Governance, Performance and Accountability Rule 2014.

Australian Sports Commission response: *Agreed.*

Food Standards Australian New Zealand response: *Agreed.*

Infrastructure Australia response: *Agreed.⁹*

National Portrait Gallery of Australia response: *Agreed.*

Summary of entity responses

23. Extracts of the proposed report were provided to the ASC, the Department of Finance, FSANZ, IA and the NPGA. The summary responses are provided below, and the full responses are

⁹ On 15 April 2024, Infrastructure Australia's board was replaced by three commissioners that are the members of the accountable authority for Infrastructure Australia.

included at Appendix 1. Improvements observed by the ANAO during the course of the audit are listed in Appendix 2.

Australian Sports Commission

Thank you for providing the Australian Sports Commission (ASC) with the opportunity to comment on the Australian National Audit Office (ANAO) proposed audit report on Management of Conflicts of Interest by Corporate Commonwealth Entity Boards.

The ASC acknowledges and accepts the key findings, recommendations and the opportunities for improvement presented in the Section 19 Report.

Department of Finance

The Department of Finance agrees the recommendation and findings provided in the report extract.

Food Standards Australia New Zealand

FSANZ acknowledges the importance of this audit to provide assurance to Parliament that the operations of Boards effectively manage conflicts of interest. In this context it is noted FSANZ is one of four entities (out of 74 CCE's) assessed over the period July 2021 to December 2023.

The Board notes the audit's findings that our arrangements for managing conflicts of interest align with the relevant legislation and are largely effective. As the independent agency responsible for the development of draft food standards for Australia and New Zealand, trust and confidence of decision-makers and stakeholders is important. The FSANZ Board takes a very conservative approach to managing conflicts of interest and, for transparency, we maintain and manage a register of all interests of Board members, regardless of whether they are classified as a material personal interest or not.

Infrastructure Australia

As the Australian Government's independent adviser on nationally significant infrastructure investment planning and project prioritisation Infrastructure Australia values accountability, acting with integrity and upholding the highest ethical standards.

We appreciate the work of the ANAO which found that the boards of the four CCEs were largely effective in their management of conflicts of interest.

Infrastructure Australia accepts the recommendation that we strengthen our recording of the assessment and consequences of declared conflicts of interest. We have also commenced work to reflect the ANAO feedback on opportunities for improvement in administrative and management practices to strengthen our governance framework in relation to conflicts of interest.

National Portrait Gallery of Australia

The National Portrait Gallery (NPGA) welcomes the Australian National Audit Office's (ANAO) report and accepts the recommendations made for the agency.

The report finds that the NPGA has developed largely effective arrangements for managing conflicts of interest for its the Board in accordance with legislative requirements.

The report identifies areas for improvement and makes two recommendations where the NPGA can take steps to strengthen its processes and assurance activities through update of its existing

Conflict of Interest policy and processes. The NPGA agrees with, and is already taking steps to implement, these recommendations.

The NPGA also recognises the other areas of improvement identified in the Report, notably the expansion of assurance activities and the implementation of a Board training workplan. This will ensure that the NPGA is operating in alignment with government best practice in conflicts of interest management.

The NPGA thanks the ANAO audit team for their professionalism during the audit process.

Key messages from this audit for all Australian Government entities

24. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance and risk management

- As accountable authorities of organisations, boards have a key role to play in setting the tone for dealing with risk and acting with integrity. Identifying and managing conflicts of interests is an area in which the way a board operates can influence the entity it governs. Developing good practice and assuring it can be a positive signal to the entity.
- Public sector board members have of a duty to disclose and manage material personal interests. The composition of boards can include members who are appointed based on their specialist expertise and industry affiliations. This presents risks to corporate Commonwealth entities — the integrity of operations and functions of an entity can be compromised if conflicts of interest are not managed. Corporate Commonwealth entity boards should assess these risks and develop appropriate arrangements to manage conflicts of interest, including policies and procedures that are tailored to entity risks and training that is specific to board members' roles. Establishing assurance activities over the management of board conflicts of interest can help to help to ensure arrangements are operating effectively.

Audit findings

1. Background

Introduction

1.1 For Australian Government entities, a conflict of interest can occur when there is a conflict between the public duties and personal interests of a public official. For example, an official may hold shares in a company that they are regulating. Another example of a conflict of interest is an official procuring services from a family member. Conflicts of interest can be real, apparent and potential. Real conflicts of interest occur when personal interests improperly influence officials in performing their public duties.

Conflict of interest risks for Australian Government entities

1.2 The Commonwealth Fraud Risk Profile notes that conflicts of interest are a common enabler of internal fraud. The National Anti-Corruption Commission's (NACC's) *2022/2023 Integrity Outlook* states:

Conflicts of interest are also a prevalent source of corruption issues. Many types of corrupt conduct – such as breaches of public trust, abuse of office and misuse of information – originate from conflicts of interest. Such conflicts therefore pose a substantial risk for government agencies, parliamentarians, and public officials. This is why identifying, disclosing and managing potential conflicts of interest is a critical pillar of integrity architectures.¹⁰

1.3 The NACC's *Corruption prevention priorities for 2024* identified conflicts of interest as one of three areas of focus:

Conflicts of interest happen when public officials have personal connections or interests that could be affected by the decisions they make in their jobs. Not every conflict leads to corrupt conduct, but there is a conflict of interest at the heart of most corruption.

Conflicts of interests are inevitable. Public officials must be able to identify them and manage them properly to prevent them becoming integrity issues.¹¹

1.4 The NACC and the Australian Public Service Commission (APSC)¹² have highlighted four functions undertaken by Australian Government entities that have heightened risk of conflicts of interest (see Table 1.1). The nature and extent of a board's involvement in these functions will differ between entities.

10 NACC, *Integrity Outlook 2022/23*, Commonwealth of Australia, Canberra, 2023, p. 4, available from https://www.nacc.gov.au/sites/default/files/documents/2023-10/integrity_outlook_22-23_-_final_version_for_publication_0.pdf [accessed 22 May 2024].

11 NACC *Corruption prevention priorities for 2024*, Commonwealth of Australia, 22 April 2024, available from <https://www.nacc.gov.au/news-and-media/corruption-prevention-priorities-2024> [accessed 3 May 2024].

12 The *Public Service Act 1999* (PS Act) and subordinate legislation govern the operation of the Australian Public Service (APS), including establishing APS Values and a Code of Conduct that APS employees must follow.

Table 1.1: Entity activities with heightened risk of conflicts of interest

Function	Potential risk activity
Procurement and recruitment	<ul style="list-style-type: none"> • Procuring goods or services • Tendering for and managing contracts • Engaging and promoting employees • Making appointments to statutory positions
Regulating individual or business activities	<ul style="list-style-type: none"> • Inspecting, regulating or monitoring standards, businesses, equipment or premises • Issuing qualifications or licences • Issuing or reviewing fines or penalties
Distributing goods, services, grants or funds	<ul style="list-style-type: none"> • Providing a service • Allocating grants of public funds • Allocating subsidies, financial assistance, concessions or other relief
Making binding decisions	<ul style="list-style-type: none"> • Issuing determinations on matters • Passing binding judgements • Exercising statutory powers • Voting as a member of a board or committee

Source: NACC, *Towards Integrity Maturity: Mapping the Commonwealth integrity landscape*, undated, available from https://www.nacc.gov.au/sites/default/files/documents/2023-08/CIMF-towards-integrity-maturity-mapping-the-commonwealth-integrity-landscape_0.pdf [accessed 23 May 2024]; and APSC, *APS Values and Code of Conduct in practice*, September 2021, available from <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice/section-5-conflict-interest> [accessed 23 May 2024].

1.5 To assist in managing integrity risks, the NACC has developed a Commonwealth Integrity Maturity Framework. The framework outlines eight integrity principles derived from Australian Government integrity laws, policies and procedures, all of which relate to managing conflicts of interest (see Table 1.2).

Table 1.2: Obligations and controls from Commonwealth Integrity Maturity Framework related to conflicts of interest

Integrity maturity principle	Related obligations and controls
1. Values and Code of Conduct	<ul style="list-style-type: none"> • Code of Conduct requirements include avoiding and managing actual, perceived and potential conflicts of interest and declaring material personal interests.
2. Integrity knowledge and performance management	<ul style="list-style-type: none"> • Provide integrity education to help manage key integrity risks such as conflict of interest.
3. Integrity policies, resources and systems	<ul style="list-style-type: none"> • Develop and implement policies, resources and systems to manage identified integrity risks, including establishing systems to report and manage actual, perceived and potential conflicts of interests and declare associations, assets and interest.

Integrity maturity principle	Related obligations and controls
4. Integrity risk management	<ul style="list-style-type: none"> • Embed integrity risk management in key business processes. • Review the effectiveness of controls to manage integrity risks. • Develop a positive risk and pro-integrity culture where leaders are positive role models and officials talk openly and honestly about risk and integrity.
5. Prevent, detect and manage fraud and corruption	<ul style="list-style-type: none"> • Comply with the Commonwealth Fraud and Corruption Control Framework, including conducting risk assessments and developing and implementing a control plan for identified risks.
6. Integrity in public resource management	<ul style="list-style-type: none"> • Maintain probity in the management of public resources, including assessment and provision of grants and procurement. • Manage the risk of unethical supplier practices, such as actual, perceived or potential conflicts of interest.
7. Protect people, information and assets	<ul style="list-style-type: none"> • Comply with the Protective Security Policy Framework, including screening and vetting the eligibility and suitability of personnel and contractors and assessing and managing their ongoing suitability.
8. Monitor and evaluate organisational integrity	<ul style="list-style-type: none"> • Monitor and evaluate integrity performance, including periodically assessing the maturity of the entity's management of integrity risks.

Source: ANAO analysis, based on NACC, *8 Integrity Principles and Maturity Indicators*, no date, available from <https://www.nacc.gov.au/8-integrity-principles-and-maturity-indicators> [accessed 23 May 2024].

Legislative and policy frameworks for managing conflicts of interest

Public Governance, Performance and Accountability Act

1.6 The Commonwealth Resource Management Framework governs how Australian Government entities use and manage public resources. The cornerstone of the framework is the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). The PGPA Act sets out general duties of accountable authorities and officials of Australian Government entities.¹³

1.7 Relevant to conflicts of interest, a member of an accountable authority of a corporate Commonwealth entity¹⁴ (CCE) has duties that include:

- not improperly using their position or information obtained through their position to gain or seek to gain a benefit or advantage for themselves or others, or to cause detriment to the entity, Commonwealth or others¹⁵; and

13 Accountable authorities are responsible for the operations of Australian Government entities and can be individuals (such as secretaries or chief executive officers) or groups of individuals (such as governing boards). Officials include employees, officers or members of Australia Government entities (including directors and statutory office holders). Accountable authorities are also officials under the PGPA Act.

14 There are three types of entities under the PGPA Act: non-corporate Commonwealth entities, which are legally and financially part of the Commonwealth of Australia; and corporate Commonwealth entities and Commonwealth companies, which are body corporates with separate legal personalities from the Commonwealth.

15 PGPA Act, sections 27 and 28.

- disclosing the details of any material personal interests that relate to the affairs of the entity.¹⁶

1.8 The Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) provides further detail on this requirement.¹⁷ Material personal interests must be disclosed as soon as practicable after becoming aware of them or when there are changes in the interests. Members of an accountable authority must disclose such interests orally or in writing to other members at a meeting of the accountable authority and have the disclosure recorded in the minutes.¹⁸

1.9 Under the PGPA Act, accountable authorities have a duty to establish and maintain appropriate systems of risk oversight and management and internal control.¹⁹ In addition, the PGPA Rule establishes a requirement for the accountable authority to take all reasonable measures to prevent, detect and deal with fraud and corruption relating to the entity.²⁰ To assist in meeting these requirements, the accountable authority is authorised to issue accountable authority instructions, which can impose obligations additional to the minimum standards established under the PGPA Act and PGPA Rule.²¹

1.10 The Department of Finance's *Resource Management Guide 203: General Duties of Officials* (RMG 203) provides guidance on general duties of officials, including the duty to disclose material personal interests in accordance with the PGPA act. RMG 203 states:

The overriding principle for a declaration of a material personal interest should be: if in doubt, declare the interest in accordance with the appropriate process. Taking this step should protect both the official and the Commonwealth entity.

A material personal interest is one that can give rise to a real or apparent conflict of interest that could affect the ability of an official to discharge their duties.²²

Corporate Commonwealth entity boards

1.11 Boards of a CCE are the accountable authority unless otherwise prescribed by an Act or the rules. Membership of boards can consist of both executive directors and non-executive directors. CCE boards are responsible for the operations of their entities.

1.12 The Department of Finance states:

Corporate Commonwealth entities generally have enabling legislation that establishes the scope of their activities and a multi-member accountable authority (such as a board of directors).²³

16 PGPA Act, sections 29.

17 PGPA Rule, Part 2-2, Division 2, sections 12–16D.

18 PGPA Rule, Part 2-2, Division 2, section 14.

19 PGPA Act, section 16.

20 PGPA Rule, section 10. This section of the PGPA Rule is referred to as the Fraud and Corruption Rule.

21 The Department of Finance has developed guidance and training and education arrangements to support entities meet their related obligations under the PGPA Act (refer to paragraphs 2.75 and 2.79).

22 Department of Finance, *Resource Management Guide 203 – General duties of officials, Duty to disclose interests*, 27 February 2023, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/general-duties-officials-rmg-203/duty-disclose-interests> [accessed 20 May 2024].

23 Department of Finance, *Types of Australian Government Bodies* [Internet], 11 February 2021, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies#what-is-a-corporate-commonwealth-entity> [accessed 19 June 2024].

1.13 Specialist skills and expertise may be required to provide a suitable composition for a CCE board. The board members that are appointed to CCE boards in respect of their specialist skills or expertise can have inherent interests that exist as a consequence of their specialist experience. For example, they may be involved in industry associations or have duties to other organisations. These interests can conflict with their duties as a board member of a CCE.

1.14 The operations of boards for four CCEs were selected for examination as a part of this audit:

- the Australian Sports Commission (ASC)²⁴;
- Food Standards Australia New Zealand (FSANZ);
- Infrastructure Australia (IA); and
- the National Portrait Gallery of Australia (NPGA).

Australian Sports Commission board

1.15 The ASC is the Australian Government agency responsible for supporting and investing in sport. The ASC's purpose in its 2024–25 Corporate Plan states:

Our purpose is to increase participation in organised sport and continued international sporting success through leadership and development of a cohesive and effective sports sector, provision of targeted financial support, and the operation of the AIS.

We invest in national sporting organisations (NSOs) and national sporting organisations for people with disability (NSODs) and work with them to achieve greater sport participation outcomes and industry growth. We will work on generating a competitive advantage for Australian athlete success. We also identify opportunities to work strategically in partnership with sports and organisations that enhance the broader Australian sport sector.²⁵

1.16 The ASC board is established under the *Australian Sports Commission Act 1989* (ASC Act).²⁶ Subsection 13(1) of the ASC Act prescribes that the board comprises a maximum of 13 members which includes the Secretary of the Department of Health and Aged Care who is an ex-officio member.²⁷ Subsection 13(3) prescribes that the board's Chairperson and Deputy Chairperson can be appointed for a term that does not exceed a period of five years. Subsection 13(4) prescribes that other members of the board (excluding the ex-officio member) can be appointed for a term that does not exceed a period of three years. Members are eligible for re-appointment under these subsections.

1.17 The board guides the strategic direction of ASC, influencing the development of policies and making decisions in relation to overall management of ASC's activities. This includes responsibilities for approving grants and procurements.²⁸

24 Australian Sports Commission does not employ staff under the PS Act so is not an APS entity or subject to requirements of the PS Act.

25 Australian Sports Commission, *Corporate Plan 2024-28*, Canberra, Our purpose, available from https://www.sportaus.gov.au/data/assets/pdf_file/0003/1157430/ASC-Corporate-Plan-2024-28.pdf [accessed 27 August 2024].

26 The Australian Government is undertaking a review of the ASC Act. Public consultation for the review closed 28 June 2024.

27 An ex officio board member is a member of the board by virtue of holding another office.

28 Australian Sports Commission, *ASC Board Charter* [Internet], available from https://www.ausport.gov.au/about/staff#asc_board_charter [accessed 27 August 2024].

Food Standards Australia New Zealand board

1.18 FSANZ is an independent statutory agency that develops standards that regulate the use of ingredients, processing aids, colouring, additives, vitamins and minerals. These standards can impose labelling requirements. FSANZ's purpose in its 2023–24 Corporate Plan states:

Our purpose is to ensure a safe food supply and well-informed consumers in Australia and New Zealand. We do this through the development of food standards, promotion of their consistent implementation across jurisdictions, coordination of food recalls and national food incidents, provision of food safety information to the public and monitoring of consumer and industry practices.

FSANZ operates within statutory requirements for timeliness and effectiveness while actively engaging stakeholders to understand and meet their expectations. Our standards setting is based on the latest evidence and considers rapid food sector change driven by evolving science, advancing technologies, globalised supply chains and shifting market and consumer needs. We strive to find new and improved ways to do our work, including by identifying and monitoring emerging food safety issues and trends and through digital transformation of our systems and processes. Together these approaches ensure we set effective standards, deliver strong and sustainable performance and maintain our capacity to respond to challenges and opportunities.

Innovation plays a critical role in driving growth in the food sector and international trade. In developing food standards, FSANZ considers the impact of food regulatory measures on innovation and trade. We focus on developing high quality standards which achieve health outcomes and protect our shared bi-national reputation for safe food, whilst enabling industry to innovate quickly and cost effectively to remain competitive in the global market.²⁹

1.19 FSANZ's board is established under section 115 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). Section 116 of the FSANZ Act prescribes that the board comprises a maximum of 12 members which includes 11 part-time members from Australia and New Zealand, and the full-time Chief Executive Officer (CEO) who is an ex-officio member. The 11 part-time members consist of officials nominated under subsection 116(1) of the FSANZ Act. The appointment of a board member (excluding the CEO) must not exceed a term of four years under subsection 117(2). Subsection 117(4) allows a board member to be reappointed for a second term but not for a third or subsequent term.³⁰

1.20 The composition of the board, under subsection 116(1) of the FSANZ Act, requires board members to be nominated by consumer organisations, and organisations established for the purposes related to science, public health and the food industry. This composition can provide industry and specialist experience from board members to support deliberations in FSANZ's development of food standards.

Infrastructure Australia board and commissioners

1.21 IA is the Australian Government's independent adviser on nationally significant infrastructure investment planning and project prioritisation. IA's purpose in its 2023–24 Corporate

29 Food Standards Australia New Zealand, *Corporate Plan 2023-24*, Canberra, Our purpose, available from <https://www.foodstandards.gov.au/sites/default/files/2023-11/FSANZ-Corporate-Plan-2023-24.pdf> [accessed 27 August 2024].

30 Food Standards Australia New Zealand, *Board Charter*, Canberra, 2023, Board Membership, available from <https://www.foodstandards.gov.au/sites/default/files/2024-02/FSANZ-Board-Charter-December-2023.pdf> [accessed 27 August 2024].

Plan is: 'To provide robust, independent advice on infrastructure planning, decision making, policy and priorities.'³¹

1.22 During the period 1 July 2021 to 31 December 2023, IA's board was established under section 6D of the *Infrastructure Australia Act 2008* (IA Act). Section 7 of the IA Act prescribed that the board comprises of 12 members being the Chair and 11 other members. A board member, under section 9 of the IA Act, was appointed for a period that did not exceed three years.

1.23 The Independent review of Infrastructure Australia (October 2022)³² recommended shifting from a board governance model to a commission model, with commissioners appointed based on a publicly advertised merit-based process. The government accepted the recommendation and passed an amendment to the IA Act in December 2023, which provides for the appointment of a Chief Commissioner and two other Commissioners to govern the entity as the accountable authority. In March 2024, the government announced the commencement of the recruitment process to appoint commissioners. As at October 2024, the Chief Commissioner and two Commissioners had been appointed and commenced five-year terms.

1.24 IA's commissioners are the accountable authority and are responsible for setting the objectives, strategies and policies of the organisation.³³

National Portrait Gallery of Australia board

1.25 The NPGA develops, preserves, maintains, promotes and provides access to a national collection consisting of portraits that reflect the identity, history, diversity and culture of Australia. The NPGA's purpose in its 2023–24 Corporate Plan states:

The National Portrait Gallery's role is to:

- develop, preserve, maintain and promote a national collection of portraits and other works of art
- develop and engage a national audience for the collection, exhibitions, education, research, publications, and public and online programs.³⁴

1.26 The NPGA's board is established under section 13 of the *National Portrait Gallery of Australia Act 2012* (NPGA Act) and supporting regulations. Section 15 of the NPGA Act prescribes that the board comprises a maximum of nine board members, all of which are non-executive directors. The term of a board member, under subsection 16(5), must not exceed nine years.

31 Infrastructure Australia, *Corporate Plan 2023-24 to 2026-27*, Canberra, p. 16, available from https://www.infrastructureaustralia.gov.au/sites/default/files/2024-03/IA_2023-24%20Corporate%20Plan.pdf [accessed 27 August 2024].

32 Nicole Lockwood and Mike Mrdak, *Independent review of Infrastructure Australia*, Canberra, 2022, available from <https://www.infrastructure.gov.au/sites/default/files/documents/independent-review-of-infrastructure-australia-october2022.pdf> [accessed 27 August 2024].

33 Infrastructure Australia, *Commissioners* [Internet], available from <https://www.infrastructureaustralia.gov.au/commissioners> [accessed 27 August 2024].

34 National Portrait Gallery of Australia, *Corporate Plan 2023-24*, Canberra, Purpose, available from <https://www.portrait.gov.au/document/710> [accessed 27 August 2024].

1.27 The board is responsible for the appropriate and efficient performance of the NPGA's functions.³⁵ This includes responsibilities for approving the NPGA's policies, proposals from sub-committees and procurements.

Rationale for undertaking the audit

1.28 According to the Australian Public Service Commissioner, the public is entitled to have confidence in the integrity of public officials, and to know that the personal interests of public officials do not conflict with their public duties.³⁶ Apparent conflicts can be just as damaging to confidence in public administration as real conflicts, so disclosures and effective management of real, apparent and potential conflicts of interest is an important element of the Australian Government's integrity framework.

1.29 Section 29 of the PGPA Act provides a duty to disclose material personal interests. CCE board members may have material personal interests that relate to their role a member of an accountable authority. Board requirements for specific qualifications, skills and experience pose the risk that domain knowledge and industry familiarity may lead to conflicts of interest.

1.30 This audit was conducted to provide assurance to the Parliament that the boards of the four CCEs are effectively managing conflicts of interest.

Audit approach

Audit objective, criteria and scope

1.31 The objective of the audit was to assess the effectiveness of the operations of the boards of four CCEs in managing conflicts of interest.

1.32 To form a conclusion against the objective, the ANAO adopted the following two high-level audit criteria.

- Have the boards developed appropriate arrangements to manage board conflicts of interest?
- Have the boards effectively managed board conflicts of interest consistent with their own policies?

1.33 The audit examined the operations of the boards of four CCEs in managing conflicts of interest over the period 1 July 2021 to 31 December 2023. The appointment process for board members was not examined as part of this audit.

Audit methodology

1.34 To address the audit objective, the audit team:

- met with the chairs of the boards and officials supporting the boards;

35 National Portrait Gallery of Australia, *Annual Report 2022–23*, Board of the National Portrait Gallery of Australia, Canberra, available from <https://www.portrait.gov.au/content/annual-report> [accessed 27 August 2024].

36 APSC, *APS Values and Code of Conduct in practice*, APSC, Canberra, 2021, section 5.1, available from <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice/section-5-conflict-interest> [accessed 13 May 2024].

- undertook observation of a board meeting for each of the four boards;
- reviewed legislative, policy and internal arrangements related to management of board conflicts of interest;
- examined relevant risk registers, particularly for fraud and corruption risks;
- examined training and messaging to the boards and officials supporting the boards on conflicts of interest;
- reviewed records to support declarations of conflicts of interest and mitigation strategies relating to board members; and
- examined the monitoring and reporting arrangements for board conflicts of interest, including follow-up of breaches of conflict of interest policies.

1.35 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$403,000.

1.36 The team members for this audit were Mark Tsui, Kerrie Nightingale and Daniel Whyte.

2. Arrangements to manage conflicts of interest

Areas examined

This chapter examines whether the boards for the Australian Sports Commission (ASC), Food Standards Australia New Zealand (FSANZ), Infrastructure Australia (IA) and the National Portrait Gallery of Australia (NPGA) have developed appropriate arrangements to manage conflicts of interest.

Conclusion

The boards have developed largely appropriate arrangements for managing conflicts of interest. All boards have implemented arrangements to support the declaration of interests by board members, including following their appointment and during the term of their appointment. The arrangements implemented by boards were aligned to requirements in the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). The NPGA did not have a conflict of interest policy that included managing conflicts of interest related to its board. The ASC and FSANZ had not developed conflict of interest management plans for board members holding other roles within the Australian Government. The boards have largely relied on board induction processes to provide training and education in relation to managing conflicts of interest. The boards had implemented varying arrangements to obtain assurance over the management of conflicts of interest relating to board members.

Areas for improvement

The ANAO made three recommendations aimed at: the NPGA updating its conflict of interest policy to provide coverage of its board; the ASC and FSANZ developing conflict of interest management plans for ex-officio board members holding other roles within the Australian Government; and the Department of Finance improving training and education arrangements for corporate Commonwealth entities (CCE) and board members in understanding their conflict of interest obligations.

The ANAO also identified an opportunity for improvement relating to developing additional arrangements to obtain assurance that obligations for managing board conflicts of interest have been met.

2.1 Conflicts of interest can pose risks for boards of Australian Government entities, particularly in relation to the independence of members of accountable authorities. Board requirements for specific qualifications, skills and experience can present the risk that domain knowledge and industry familiarity may lead to a conflict of interest.

2.2 Boards need to establish arrangements for board members to declare and manage interests in accordance with the PGPA Act and enabling legislation of an entity (where relevant). Arrangements should be informed by assessments of board-specific risks within an entity's operational environment. To promote compliance with these arrangements, boards should provide training and education on relevant obligations and processes and establish mechanisms to obtain assurance over the effectiveness of controls.

Have boards assessed conflicts of interest risks?

The boards had identified and assessed fraud and corruption risks within their risk management frameworks. The board of IA had identified conflict of interest controls for its then board within its operational and fraud risk registers.

Australian Sports Commission

2.3 The Commission, as the ASC's board and accountable authority, has a risk management policy and framework, and a risk appetite statement. The risk appetite statement is categorised by the ASC's strategic goals and references the ASC's enterprise risks.

2.4 The ASC's risks are recorded in an enterprise risk register, operational risk register and fraud risk register. The registers do not include conflict of interest risks that are recorded as directly relating to the board. Conflict of interest policies and procedures are identified as a control for two of the ASC's enterprise risks relating to compliance and fraud and corruption, as summarised in Table 2.1.

Table 2.1: Reference to integrity risks and conflict of interest controls in the ASC's enterprise risk register

Risk event	Sources and causal factors	Existing controls (relevant to risk and conflict of interest)
Enterprise risk #3: Compliance — We fail to meet legislated or agreed performance and compliance obligations.	<ul style="list-style-type: none"> • Lack of appropriate/effective planning. • Lack understanding of legislative requirements. • Lack of corporate knowledge. • Reduced government appropriation or limited commercial revenue. • Inappropriate allocation of resources or ASL limitations. 	<ul style="list-style-type: none"> • Compliance oversight provided by the Finance, Audit and Risk Committee and ASC Executive Committee established to discuss matters of shared focus. • Policies, guidelines^a, and standard operating procedures (including for conflict of interest (COI), fraud, risk, procurement, project management, travel and credit cards), annual compliance reporting and new automated COI declaration process in place. • Updated Accountable Authority Instructions in place. • Staff compliance awareness and training, and specific training for financial delegates (including annual refresher training). • Risk and project management frameworks in place. • Internal ASC governance committee structure in place including dedicated Internal Risk Committee.

Risk event	Sources and causal factors	Existing controls (relevant to risk and conflict of interest)
Enterprise risk #4: Fraud and Corruption — The established fraud & corruption control framework fails to mitigate fraud within the workplace.	<ul style="list-style-type: none"> • Ineffective fraud control framework. • Lack of staff training. • Lack of segregation of duties. • External parties seek to defraud the ASC. • Insider threat to defraud the ASC. • Collusion. • Lack of fraud oversight, direction, and decision-making. 	<ul style="list-style-type: none"> • Mandatory online fraud module for new staff and all staff on a biennial basis. • Dedicated fraud officer within governance and risk team. • Fraud and corruption control plan and risk register. • Public Interest Disclosure (PID) scheme. • Security clearances, onboarding induction — police checks. • Fraud risk supporting governance documents, including — Code of Conduct and conflict of interest. • Fraud investigation (Response Activities). • General Counsel and internal legal support/advice.

Note a: The ASC's guidelines include a Conflict of Interest Guide for Board Members.

Source: ANAO analysis of ASC risk registers.

2.5 The ASC's fraud risk register identifies risks relating to functions and delegations that have elevated conflict of interest risks (refer to Table 1.1), including procurement and grants. These risks are related to the ASC's board, as the board is the key delegate for procurement and grants. The ASC's conflict of interest policy and procedure and electronic declaration form are identified as controls against all nine fraud risks in ASC's fraud risk register. The ASC has assessed these controls as effective.

Food Standards Australia New Zealand

2.6 The FSANZ board, as the accountable authority, publishes its board risk appetite statement on its website which states:

FSANZ has zero tolerance and no appetite for risk in relation to misconduct, fraud, harassment or discrimination and non-compliance behaviour that undermines our reputation.³⁷

2.7 FSANZ's strategic risk profiles, operational risk register and fraud risk register do not include conflict of interest risks that directly relate to the board. FSANZ's operational risk register includes a risk relating to regulatory non-compliance:

FSANZ fails to identify, prevent or respond to non-compliance with Australian and New Zealand government and international regulatory requirements and privacy rules and regulations, resulting in penalty or reputational damage.

2.8 Internal frameworks, policies and processes for integrity and staff learning and development are identified as key controls mitigating this risk.

2.9 A conflict of interest risk was recognised by the board at its meeting in March 2024, which related to stakeholder engagement and communications by board members with industry.

³⁷ Food Standards Australia New Zealand, *FSANZ Board Risk Appetite Statement*, available from <https://www.foodstandards.gov.au/about-us/board/risk-appetite> [accessed 27 August 2024].

Stakeholder engagement and communications had previously been captured as a generalised risk in the strategic risk register. FSANZ advised the ANAO in April 2024 that the board had agreed to implement a new standing agenda item on stakeholder engagement by board members to support identification of whether any lobbying is taking place.

Infrastructure Australia

2.10 The IA board, as the accountable authority, has a risk management policy and risk management plan. The risk appetite statements contained in the risk management policy includes:

We have a very low appetite for risk associated with our financial, compliance and safety obligations, and will implement systems and processes which aim to mitigate those risks.

2.11 IA records its risks in a key risk register, operational risk register and fraud risk register. IA's operational risk register and fraud risk register each identify a risk related to conflicts of interest and included controls relating to board conflicts of interest. These risks are summarised in Table 2.2.

Table 2.2: References to integrity risks and conflict of interest controls in IA's risk registers

Risk description	Cause	Current controls and measurement of controls
Operational risk #7: Independence — Actual or perceived lack of independence from Commonwealth or other Government agencies.	<ul style="list-style-type: none"> Transitioning the agency to work more collaboratively and relevantly with government could impact/reduce perception of independence. Conflicts of interest not managed effectively. Inappropriate influence from third parties. Conducting business in a manner which gives the appearance of inappropriate influence. Accusations of a failure to model transparency and accountability in infrastructure decision-making. 	<ul style="list-style-type: none"> Management reports to independent board. Register of interests for board members maintained and updated at each meeting. Internal conflict of interest processes in place, to manage conflicts of interests in relation to employees. CEO actively monitors engagement with government bodies and minister. Assessment panel minutes record any actual or perceived conflicts for the evaluation of investment proposals. Policy approach is developed in collaboration with independent board and provides transparent, accountable and internally coherent policy development. Formalised stakeholder engagements plans for launch of all documents. Assessment framework provides a consistent, transparent approach to business case evaluations. All business case evaluations are published on the website.
Fraud risk #7: Personal Advantage — Improper influence over projects for	<ul style="list-style-type: none"> Advocating for or negatively impacting the progress of policy, projects or initiatives to derive directly, or indirectly, personal advantage, including any 	<ul style="list-style-type: none"> All conflicts of interest are updated at each board and committee meeting by all members. All employees complete a conflict of interest form on commencement and are obliged to update when circumstances changes.

Risk description	Cause	Current controls and measurement of controls
personal advantage.	benefit to family members or associates.	<ul style="list-style-type: none"> Any employees or board members with conflicts of interest in relation to any decisions being made, will not partake in that decision or discussion regarding the decision. The CEO and executive leadership team (ELT) update their conflict of interest declaration at least annually. All declared conflicts are reviewed against financial records as part of our year ended processes. All decisions are made by a committee or the ELT rather than any one individual.

Source: ANAO analysis of IA risk registers.

National Portrait Gallery of Australia

2.12 The NPGA board, as the accountable authority, has a risk and opportunity framework which incorporates the NPGA's risk management process and risk appetite statement. The NPGA's risk appetite statement states:

The NPGA has the lowest risk appetite for:

- compromising staff and visitor safety and welfare
- compromising the security of confidential and personal information held by the NPGA
- compromising the ongoing preservation of the NPGA collection
- non-compliance with legal, professional and regulatory requirements
- fraud and corruption.

2.13 The NPGA's risk and opportunity framework includes risks recorded in an enterprise risk register, operational risk register and fraud risk register. The registers do not include conflict of interest risks that are recorded as directly relating to the board.

2.14 The NPGA's fraud risk register identifies fraud risks relating to functions and delegations that have elevated conflict of interest risks (refer to Table 1.1), including procurement and recruitment. For procurement, the requirement for tender panels to submit conflict of interest declarations is highlighted as a key control. For recruitment, conflicts of interest not being declared and/or appropriately managed is identified as a potential cause of fraudulent conduct in recruitment.

Have boards developed appropriate arrangements for declaring, managing and overseeing conflicts of interest?

All boards had arrangements for board members to declare interests following appointment and at board meetings. The arrangements implemented by the boards were aligned to requirements in the PGPA Act and PGPA Rule. The ASC, FSANZ and IA boards had policies and procedural guidance to manage board conflicts of interest. The NPGA board did not have a conflict of interest policy that provided coverage of the board, with the exception of a policy

for declaring, managing and overseeing board conflicts of interest related to the acquisition of works. The boards for ASC and FSANZ had not developed management plans for potential conflicts of interest relating to ex-officio board members that held other roles within the Australian Government.

2.15 Section 29 of the PGPA Act requires officials to disclose material personal interests. Paragraphs 14(2)(a) and 14(2)(b) of the PGPA Rule requires that disclosures must include details of the nature and extent of the interest and how the interest relates to the affairs of the entity. Section 15 of the PGPA Rule outlines requirements for boards in circumstances where members of the accountable authority have disclosed a material personal interest that relates to the affairs of the entity. Entity enabling legislation for FSANZ and ASC also prescribes requirements relating to disclosure of interests.

2.16 The ANAO's assessment of conflict of interest policies, procedures and guidance developed by the boards is summarised in Table 2.3.

Table 2.3: Overview of conflict of interest policies and procedural guidance

Board	Conflict of interest policy applicable to the board	Entity-specific guidance for board members	Policies and procedural guidance were aligned to the PGPA Act and PGPA Rule
ASC	◆	◆	◆
FSANZ	◆	◆	◆
IA	◆	▲	◆
NPGA	■	▲	▲

Key: ◆ Yes ▲ Partially ■ No

Source: ANAO analysis of entity policies, procedures and guidance relating to conflict of interest that are applicable to board members.

Australian Sports Commission

2.17 The ASC board has a conflict of interest policy and entity-specific guidance: Conflicts of Interest Guide for Board Members (April 2022). The guidance refers to legal cases and related examples, and outlines:

- the Board Charter;
- types of conflict of interest (including personal interests, such as financial interests, and conflict of roles) and how to identify conflicts of interest;
- an overview of duties of board members in relation to conflicts of interest;
- obligations under the PGPA Act in relation to material personal interests;
- managing conflicts of interest; and
- additional guidance relating to the ex-officio role.

2.18 The guidance is consistent with the requirements of the PGPA Act and PGPA Rule and prescribes the requirements to disclose a material interest and for the board to consider the consequence of the disclosure. The guidance also states:

The PGPA Act provides a mandatory minimum regime to be followed by Board members in dealing with their ‘material personal interests’.

Not all ‘conflicts of interest’ relate to ‘material personal interests’. The two terms are not interchangeable. A Board member could have what could be regarded as a ‘conflict of interest’ giving rise to duties as described in this Guide, without it necessarily involving a ‘material personal interest’.

Declarations of interest

2.19 Section 5.2 of the ASC’s guidance outlines the duty of board members to disclose material personal interests:

A Board member who has a material personal interest that relates to the affairs of the Commission must disclose that interest to each other Board member.

A Board member should declare an interest if he or she is unsure as to whether the interest is a ‘material personal interest’. RMG 203 states that *‘the overriding principle for a declaration of a material personal interest should be: if in doubt, declare the interest in accordance with the appropriate process’* and *‘taking this step should protect both the official and the Commonwealth entity’*.

Exceptions to duty to disclose ‘material personal interests’

A Board member does not need to give a notice of a material personal interest if it is an interest that:

- a) arises in relation to the Board member’s remuneration as a Board member of the Commission;
- b) relates to a contract that insures, or would insure, the Board member against liabilities the Board member incurs as a Board member of the Commission (but only if the contract does not make the Commission or a subsidiary of the Commission the insurer);
- c) relates to a payment by the Commission or a subsidiary of the Commission in relation to an indemnity meeting the requirements of section 22B of the PGPA Rule or any contract relating to such indemnity; or
- d) is in a contract or proposed contract with, for the benefit of, or on behalf of, a subsidiary of the Commission and arises merely because the Board member is also a board member of the subsidiary.

Board members should not rely on an exception to disclosure unless it is manifestly clear that the exception applies.

2.20 Section 5.3 of the ASC’s guidance outlines the disclosure requirements for material personal interests in accordance with the PGPA Rule:

A disclosure by a Board member of a material personal interest must include details of:

- a) the nature and extent of the interest; and
- b) how the interest relates to the affairs of the Commission.

The Board member must make the disclosure at a Board meeting as soon as practicable after the Board member becomes aware of his or her interest.

If there is a change in the nature or extent of the interest after the Board member has disclosed the interest, the Board member must disclose the changed interest at a Board meeting as soon as practicable after the Board member becomes aware of that change.

The Board member may disclose their interest orally or in writing, but in either case must ensure that the disclosure is recorded in the minutes of the Board meeting.

In addition to the above minimum statutory disclosure obligations, a Board member with a material personal interest should raise the issue with the Chair and/or the Board Secretary, as soon as he or she becomes aware of his or her conflict (whether he or she becomes aware on or before receipt of any relevant Board papers). Early disclosure allows Board papers relevant to a matter being the subject of the conflict to be withheld from that Board member if appropriate.

At the Board meeting, a reasonable opportunity should be provided to the other Board members to ask the disclosing Board member any questions they may have about the nature and extent of the interest and how it relates to the Commission.

2.21 The ASC board maintains a centralised register of interests declared by board members.

Management and oversight of declared interests

2.22 The ASC's guidance does not specify a process for assessing board declarations to determine the likelihood that an interest may give rise to a perceived, potential or actual conflict of interest based on the nature of the ASC's operations. It also does not specify considerations for determining appropriate mitigation strategies (if required).

2.23 The management of conflict of interest occurs during board meetings rather than conflict management plans being developed. The ASC's Conflicts of Interest Guide for Board Members states:

If a matter in which a Board member has disclosed a material personal interest is being considered at a Board meeting, the Board member must not:

- a) be present while the matter is being considered at the meeting; or
- b) vote on the matter.

The above restrictions against being present or voting are subject to the following exceptions:

- a) if the Board members who do not have a disclosed material personal interest in the matter have decided that the Board member with the interest is not disqualified from being present or voting (or both), and the decision is recorded in the minutes of the Board meeting; or
- b) if the responsible Minister for the Commission (i.e. Minister for Sport) makes a written declaration that the Board member may be present or vote (or both); or
- c) if one of the statutory exceptions to the duty to disclose is applicable (see section 5.2 [of ASCs Conflicts of Interest Guide] above).

If the other Board members are considering whether the Board member with a material personal interest should be permitted to be present or vote or both in relation to a matter despite the interest, the Board member with the interest should leave the meeting during such consideration. In considering whether to lift the restriction, the other Board members should always act in accordance with the best interests of the Commission and should ensure that perceptions of conflicts of interest, as well as actual conflicts, are avoided.

2.24 In relation to managing conflict of interest which are not material in nature, the ASC's Conflicts of Interest Guide for Board Members states:

As a matter of better practice, Board members should manage conflicts of interest that do not involve material personal interests in a manner corresponding with the requirements for material personal interests described in section 5 above.

Without limitation to any other obligations, the Board should consider including 'disclosure of conflicts' as a standing item on the agenda for Board meetings.

In all cases, better practice is for notice of a conflict of interest to be given to all other Board members as soon as practicable and in a full, frank and formal manner. Better practice is for a notice of conflict to be in writing and for all declarations of interest to be recorded, regardless of materiality.

In some circumstances, disclosure of a conflict and not being present or voting will be insufficient to satisfy a Board member's duty to appropriately manage conflicts of interest. In such cases, the Board member may be under a positive duty to take additional steps to remove the conflict of interest, including if necessary resignation from a position or divestment of an interest. The action required will depend on matters such as the nature and extent of the conflict.

Where ongoing competing duties become irreconcilable, the Board member must consider his or her position. Too substantial or too frequent a declaration of conflicts of interest raises the issue of whether the Board member concerned should properly remain as a Board member of the Commission and should consider resigning.

Food Standards Australia New Zealand

2.25 The FSANZ board has developed entity-specific guidance: Management of conflicts of interest for FSANZ Board members. The guidance refers to legal cases as related examples and outlines:

- general statutory obligations for board members to declare and manage interests;
- a definition of material personal interest;
- disclosure requirements for material personal interests including consequences of non-disclosure;
- duties relating to broader interests (other than material personal interests); and
- a checklist guide to declaration of interests.

2.26 The guidance is consistent with requirements set out in the PGPA Act and PGPA Rule, and references related statutory requirements from the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The guidance includes templates for board members to declare interests.

Declarations of interest

2.27 The FSANZ Act specifies requirements for establishing a system for declaring board member interests. Subsection 125(5) of the FSANZ Act states:

The Board must establish and maintain a system for the declaration and registration of material personal interests of its members that have been disclosed under this section or for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.

2.28 The FSANZ Act also specifies a requirement for publishing the register of material personal interests. Subsection 125(6) of the FSANZ Act states:

The entries recorded in the register of members' interests must be published by the Board on the Authority's website.

2.29 The FSANZ board maintains a centralised register of interests declared by board members, the Standing Interests Register, which is published on FSANZ's website.³⁸

2.30 The FSANZ guidance for board members in relation to declarations states:

Requirement to disclose material personal interests at Board meetings (PGPA Rule, rules 12 and 14)

A Board member who has a material personal interest that relates to the affairs of FSANZ must disclose details of that interest (section 29 of the PGPA Act).

2.31 Subsection 125(4) of the FSANZ Act states:

A member who has a material personal interest, including an interest in relation to academic or research associations of the member, in a matter being considered or about to be considered by the Board in accordance with section 124 must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of that interest to the Minister.

2.32 The FSANZ guidance includes a requirement regarding the lapsed time since cessation of an interest, stating:

[T]he fact that a matter occurs in the past does not necessarily mean that there can be no perception of conflict. It is the capacity of the matter (taking into account its age) to impact on the discharge of the member's duties which is important.

The Board has agreed that:

- a) if a Board member ceases to receive personal compensation for a role outside FSANZ, and ceases to be directly involved in that role, there would not appear to be a conflict of interest in relation to that role and FSANZ; and
- b) an interest shall not give rise to a perceived conflict of interest in relation to an agenda item if that interest had lapsed or expired four or more years prior to the meeting or teleconference at which the agenda item is to be considered.

However, both the above are subject to the nature of the interest and any relevant exceptional circumstances.

Management and oversight of declared interests

2.33 The FSANZ guidance states the procedure for the board to undertake when an interest is declared at a board meeting:

The normal FSANZ Board practice is for Board members to disclose interests at the commencement of a Board meeting. However, members may disclose interests at any time before consideration of a relevant agenda item commences.

1. The Board member declares the interest, giving details and answering any questions from other members. *Minutes will record the nature and extent of the interest declared.*
2. The Board member leaves the room while the matter is discussed by the remaining members.

38 Food Standards Australia New Zealand, *FSANZ Board* [Internet], 1 July 2024, available from <https://www.foodstandards.gov.au/about-us/board> [accessed 14 August 2024].

3. The remaining members decide whether the absent member should vote and/or participate in the debate on the issue. *Minutes will record this decision, including in relation to any limitation on the Member's participation.*
4. If the remaining members decide to allow the absent Member to vote and/or participate, the Member is recalled and notified of the decision. When the matter that is the subject of a Member's disclosure comes up for consideration during the meeting, the Board's decision is followed and recorded in the minutes of that meeting.

2.34 FSANZ's Standing Interests Register, which records interests declared by board members, does not record an assessment of whether the interest may give rise to a perceived, potential or actual conflict of interest based on the nature of FSANZ's operations. It also does not record whether mitigations were implemented.

2.35 The FSANZ guidance includes possible actions in response to declarations:

P-NV – Indirect benefit – participate in discussion, not vote on matters requiring a decision

P-NS – Participate / not sign

NP-NV – Not participate / not vote

PN-VNS – Participate, not vote, not sign

S-NP-NV – Make a statement/not vote

Infrastructure Australia

2.36 The IA board has developed a conflict of interest policy that applies to board members and outlines related requirements in accordance with section 29 of the PGPA Act and section 15 of the PGPA Rule. IA's conflict of interest policy was updated to include applicability to board members following an internal audit recommendation made in 2018–19 (refer to paragraphs 2.94 to 2.97).

2.37 IA has a governance framework document that sets out obligations for board members relating to conflict of interest:

Outside employment

The Chair must not engage in paid employment outside the duties of the office without the Minister's approval, when the Chair is appointed on a full-time basis (section 15 IA Act).

The CEO must not engage in any paid employment outside the duties of the office except with the Chair's approval (section 35 IA Act).

Duty of disclosure

A Board member who has a material personal interest in a matter that relates to the affairs of Infrastructure Australia must disclose details of the interest, orally or in writing, to each other Board member (section 29 PGPA Act and rule 14 PGPA Rules). Details of the policy and procedure for the disclosure of interests is set out in IA's Conflicts of Interest Policy.

The CEO must disclose details of any material personal interest to the Board (section 34 IA Act).

Declarations of interest

2.38 IA's conflict of interest policy states:

Board members must, as soon as practicably possible:

- a) disclose any interests with IA upon their appointment to the board by completion and submission of the Disclosure of Interest Statement (Attachment A);
- b) disclose at each board meeting any conflicts of interest relating to the affairs of IA that they have become aware of, along with any required strategies to address the conflict;
- c) the disclosure must include details of:
 - i. the nature and extent of the interest; and
 - ii. How the interest relates to the affairs of IA.
- d) inform at any board meeting if any disclosed conflict has ceased or changed in nature;
- e) ensure that each disclosure is recorded in the minutes of the meeting; and
- f) complete a related party transaction form as requested by the Australian National Audit Office (ANAO) at the end of each financial year.³⁹

2.39 IA's governance framework states in relation to a register of interests:

Register of interests

The Company Secretary and General Counsel maintains a register of interests that lists all current disclosures by Board members. The Register is included in the papers for each Board meeting.

2.40 Declarations of interests are recorded in registers categorised by financial years, referred to as Cumulative Registers of Interests, which provide a historical record of board members' declarations.

2.41 A summary of the register of interests is included in board meeting papers and provides the date the interest was declared, the date the interest ceased, and the organisation and position that the interest relates to.

Management and oversight of declared interests

2.42 The conflict of interest policy does not specify a process for assessing board declarations to determine the likelihood that an interest may give rise to a perceived, potential or actual conflict of interest based on the nature of IA's operations. It does not outline mitigations that should apply in instances where a conflict of interest may arise.

2.43 IA's conflict of interest policy states:

In accordance with s15 of the PGPA Rule, any Board member who has a conflict of interest in relation to any matter being considered at a Board meeting must not:

- a) be present during any discussion of the matter; or
- b) vote on the matter.

2.44 IA's summary of the register of interests, which is included as a standing agenda item in board papers, states IA's position with regard to management of conflict of interest:

In order to manage the risks associated with any actual, potential or perceived conflicts of interest, Board members acknowledge and agree that they must:

39 This statement relating to a related party transaction form is incorrect. The ANAO does not request the completion of this form. IA completes this form as part of meeting its financial reporting obligations under the AASB 124 Standard on Related Party Disclosures.

- Immediately **notify the Chair** of the Infrastructure Australia Board, as well as the Board Secretary, as soon as they become aware of any actual, potential or perceived conflict of interest;
- **Absent themselves from any discussion** with any Infrastructure Australia staff or Board members regarding any matter in which they have an actual, potential or perceived conflict of interest. [emphasis in original]

National Portrait Gallery of Australia

2.45 The NPGA board has a conflict of interest policy that applies to employees and senior executives, including the requirement for the Director of the NPGA to provide their declarations to the board for consideration. The NPGA board has not implemented a conflict of interest policy or related guidance specific to the board. The NPGA Board Charter and Collection Development Policy each reference a conflict of interest requirement for board members.

2.46 The NPGA Board Charter states:

Board members must at all times: ...

- Disclose immediately to the NPGA any personal conflicts of interest, real or perceived to the NPGA;
- Conduct themselves with due regard to the reputation, purpose and objectives and interests of the NPGA, and not say or do anything which may bring the institution into disrepute, be inconsistent with or detrimental to its objectives and interests, or cast doubt on members' own professional integrity ...

2.47 The Collection Development Policy states a conflict of interest requirement for board members in relation to the acquisition of works:

Acquisitions of works by any method from Gallery Board members, employees (paid or unpaid), or related parties, must be disclosed to and minuted by the Board as part of its approvals process. Board members and employees must exclude themselves from any discussion or decision by the Board in relation to acquisitions in which they, or their related parties, are involved. This exclusion must be minuted.

Declarations of interest

2.48 The NPGA board maintained a centralised register, referred to as Members' Declarations of Interests, during the period 1 July 2021 to 31 December 2023. This register recorded declarations made by board members either upon appointment or at a board meeting, or through communication with the board chair or NPGA's Manager of Governance and Risk. Prior to February 2024, the register did not record the date the interest was declared, so did not distinguish between declarations made at appointment, during meetings or at other times, and did not record the date when an interest ceased (if applicable). In February 2024, the NPGA updated the register to record dates of declarations and cessation of interests.

2.49 The NPGA board has a standing agenda item for declarations of interest at the beginning of each board meeting. The standing agenda item states expectations of board members regarding declarations of interest with reference to the PGPA Act and PGPA Rule:

1. Board members provided a complete list of current directorships or equivalent on commencement to the Board. The full list is available in the Diligent Resource Centre. Board

members are expected to provide a verbal declaration of any changes as required at meetings throughout the year. For more information on duty to disclose Declarations of Interest, members can review Sections 29 and 13 (7) [sic] of the PGPA Act and Sections 12-16D of the PGPA Rule.⁴⁰

2. Board members are also asked to consider any actual or perceived conflicts of interest they may have with relation to items on this meeting's agenda. The Chair will outline the management plan for the relevant item.

Management and oversight of declared interests

2.50 Management and oversight of declared interests by the board are discussed during the board meeting. In circumstances where a board member declares an interest either in advance of, or during the board meeting, the interest is recorded in the board meeting minutes, including the consequence of the declaration.

2.51 The NPGA board chair advised the ANAO in May 2024 that the NPGA's general position is that board members with a declared conflict of interest, whether perceived, potential or actual, recuse themselves for the relevant matter being considered by the board. Such actions are to be recorded at the relevant agenda item within the board meeting minutes.

Recommendation no. 1

2.52 The National Portrait Gallery of Australia update its conflict of interest policy to include requirements and arrangements for declaring, managing and overseeing conflicts of interest relating to the board.

National Portrait Gallery of Australia response: *Agreed.*

2.53 *The NPGA accepts this recommendation, and the revised Conflict of Interest policy was approved in September 2024 alongside the revised Board Charter with expanded Conflict of Interest clauses. These documents will join the existing collection development policy (2022) to prescribe the NPGA's process for managing Conflict of Interest.*

Conflict of interest arrangements for ex-officio members

2.54 The ASC's Conflicts of Interest Guide for Board Members recognises the potential conflict of interest between the role of the Secretary of the Department of Health and Aged Care and their role as an ex-officio member of the board.⁴¹

The Secretary of the Department is automatically a Board member. By providing in the legislation that the Secretary is automatically a Board member, the legislature obviously intended for the dual role to exist, including presumably to promote visibility and communication between the Department and the Commission.

40 The duty to disclose an interest is specified in section 29 of the PGPA Act, sections 12–16D of the PGPA Rule and subsection 13(7) of the PS Act.

41 The Australian Government is undertaking a review of the *Australian Sports Commission Act 1989*. Public consultation for the review closed 28 June 2024. ASC advised the ANAO in July 2024 that, as part of the review, the governance arrangements and composition of the ASC board, including the ex-officio roles was being considered.

Notwithstanding this intent, there is potential for conflicts to arise between the two roles of the Secretary of the Department, as he or she will at the same time be:

- a) in his or her capacity as Secretary of the Department, a chief policy adviser to the Minister with oversight of the Commission's compliance with Government priorities and access to Government information which may impact on the Commission, with responsibility for Departmental oversight of the Commission; and
- b) a Board member of the Commission with responsibilities to act in the best interests of the Commission (at general law) and to effect its legislative objects and functions under the ASC Act.

The Secretary of the Department remains subject to the same duties in relation to conflicts of interest as the other Board members.

2.55 The FSANZ board's Standing Interests Register recognises the potential conflict of interest between the role of its Chief Executive Officer and their role as an ex-officio member of the board. The description of the interest on the Standing Interests Register is recorded as:

Matters relating to the terms, conditions and powers of the CEO, including decisions relating to the powers that might be delegated to that position.

2.56 The ASC and FSANZ boards had not established mitigations or management plans for managing potential conflicts of interest that can arise for their ex-officio members.

2.57 The Governance Institute of Australia recommends that public sector entities distinguish between the roles and functions of the board and management:

A strong and healthy relationship between the board and management is founded on mutual trust and respect. It is good governance however for the two roles and functions to be distinct. Blurring these lines may obscure accountability and give rise to conflicts of interest.

It is the role of the board to steer the direction of the entity while management is responsible for administering the entity's day-to-day affairs. An effective public sector board holds management accountable for the entity's performance while maintaining a respectful and trusting relationship. The board directs the entity while allowing management to operate within clear parameters, guidelines, processes and structures. Boards generally do not stray from their governance oversight role into operational matters.

Generally, board members are not part of management and management executives are not voting members of the board. This separation of roles provides a check and balance on the authority of each role, and may be required by legislation. Where a management executive is a member of the board, any conflicts of interest need to be clearly identified and managed. The board charter or relevant policy should have a clear process for dealing with conflicts where this is not covered by governing legislation.⁴²

42 Governance Institute of Australia, *Governance principles for boards of public sector entities in Australia*, second edition, 2023, available from <https://governanceinstitute.com.au/app/uploads/2023/11/governance-principles-for-boards-of-public-sector-entities-in-australia-2023.pdf> [accessed 19 June 2024].

Recommendation no. 2

2.58 The Australian Sports Commission and Food Standards Australia New Zealand assess conflict of interest risks for board members holding other roles within the Australian Government, and develop mitigations that are documented in a management plan.

Australian Sports Commission response: *Agreed.*

2.59 *The ASC will work to enhance its procedures and practices in managing conflicts of interests for ex-officio Board members.*

Food Standards Australia New Zealand response: *Agreed.*

2.60 *FSANZ would welcome a whole of government approach, including guidance and examples of best practice, for management plans and mitigation measures for members of the Australian Public Service who are also ex-officio Board members.*

Have boards developed training and education arrangements to promote compliance with conflicts of interest requirements?

The boards largely relied on board induction processes and related resources from the Department of Finance for promoting compliance with conflict of interest requirements. The boards for the ASC and FSANZ had developed guidance specific to managing board conflicts of interest. The FSANZ board provided board members with access to its learning management system, which included training related to conflicts of interest. The IA board had delivered training for board members that included a module on conflicts of interest. None of the boards had training plans for board members or arrangements for monitoring training undertaken by board members. The Department of Finance's resources on managing conflicts of interest are not specific to boards of corporate Commonwealth entities.

2.61 On 21 January 2021, the Minister for Finance wrote to CCEs, including the ASC, FSANZ, IA and the NPGA, stating:

The Government expects that Accountable Authorities and all officials (including, where applicable, individual members of a governing body) are inducted on commencement regarding their personal obligations and [entity] obligations under the PGPA Act, other relevant legislation, any Ministerial Statements of Expectations and other Government guidance. Further, it is also good governance practice for regular training updates to be provided to those same officials, to ensure that all are kept fully informed of their obligations.

2.62 Training and induction to CCE boards can support board members without public sector experience in understanding differences in legislative obligations and public expectations relating to integrity and conflicts of interest for public sector entities.

2.63 The ANAO's assessment of training and education arrangements for board members in relation to conflict of interest is summarised below in Table 2.4.

Table 2.4: Overview of board training and education arrangements

Entity	Board induction	Access to LMS or training	Entity-specific guidance on conflict of interest	Monitoring of training completion
ASC	◆	■	◆	■
FSANZ	◆	◆	◆	■
IA	◆	◆	■	■
NPGA	◆	▲	■	■

Key: ◆ Yes ▲ Partially ■ No

Source: ANAO analysis of training and education arrangements relating to conflict of interest that were available to board members.

Australian Sports Commission

2.64 The ASC board members receive induction materials. The board induction materials were updated in January 2022 to include reference to personal obligations and duties of board members, including requirements to declare material interests. The board induction materials outline conflict of interest obligations consistent with PGPA requirements. Board members that commenced prior to January 2022 had not received board induction materials that outlined conflict of interest obligations.

2.65 As noted at paragraphs 2.17 and 2.18, the ASC board has developed entity-specific guidance for its board members on conflict of interest that is consistent with PGPA requirements.

Food Standards Australia New Zealand

2.66 FSANZ board members receive induction materials upon commencement that outline conflict of interest obligations. The induction material references responsibilities of board members consistent with PGPA requirements. This includes disclosing interests, including conflict of interest when they arise, conflict management practices and highlighting that FSANZ board members are statutory office holders and are 'expected to abide by the APS Code of Conduct'.⁴³

2.67 As noted at paragraphs 2.25 and 2.26, the FSANZ board has developed entity-specific guidance for its board members on managing conflicts of interest that is consistent with PGPA requirements and references related statutory requirements from the FSANZ Act. The guidance also includes templates to support board members to declare interests.

2.68 In March 2024, FSANZ's General Counsel briefed the board on their requirements relating to declaring material personal interests. The minutes of the meeting state:

The Board discussed the requirements and expectations for declaration of interests, including personal and material interests.

⁴³ The Australian Public Services (APS) Code of Conduct requires officials to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their role.

The FSANZ General Counsel provided the Board with an overview of the requirements and best practice for declaration of interests and of the obligations imposed on Board members by the APS Code of Conduct, including those relating to conflict of interest and making public comment.

2.69 FSANZ board members are provided with access to FSANZ’s learning management system, LearnHub, which includes three training packages that have relevance to managing conflicts of interest, as summarised in Table 2.5. Instructions for board members on how to access the LearnHub training packages are included in the board induction folder of Diligent.⁴⁴ The FSANZ board did not have a training plan for board members and FSANZ advised the ANAO in May 2024 that these training packages were not mandatory for board members. Completion of training in LearnHub by board members is not monitored or reported to the FSANZ board. FSANZ advised the ANAO in October 2024:

these training packages were not mandatory for Board members as FSANZ’s understanding is that legally the board cannot compel or direct individual board members to undertake training.

Table 2.5: Relevant training packages available to board members

Training title	Training description	Training content relevant to conflict of interest
Integrity in the Australian Public Service	This module is designed to strengthen understanding of the importance of acting with integrity when undertaking duties. undertake their duties. The module contains information and activities that provide a foundation for navigating integrity issues.	<ul style="list-style-type: none"> • Understanding integrity risks • The APS Integrity Framework • Code of Conduct • Illustrative examples/scenarios regarding conflicts of interest, including gifts and benefits.
Fraud Awareness	This module assists in meeting responsibilities to minimise the potential for fraud and details responsibilities for reporting suspected fraud.	<ul style="list-style-type: none"> • Conflicts of interest under policies, procedures and arrangements • Fraud detection — what conflict of interest is, and how to detect and manage it
Introduction to the National Anti-Corruption Commission	This module introduces the National Anti-Corruption Commission to help participants understand the key functions, what the Commission can investigate, who can (and who must make referrals and what investigative options and outcomes are possible.	<ul style="list-style-type: none"> • Examples of corrupt conduct which provide indirect reference to conflicts of interest

Source: ANAO analysis of LearnHub training of relevance to conflict of interest which is available to board members.

⁴⁴ Diligent is a board portal that enables collaboration between leadership and the board including secure access to information and integration with meeting technology tools.

Infrastructure Australia

2.70 IA board members received induction materials that outlined conflict of interest obligations consistent with PGPA requirements.⁴⁵ IA's board induction materials included references to:

- duties to disclose interests under section 29 of the PGPA Act;
- IA's conflict of interest policy;
- a conflict of interest statement for board members;
- disclosure of conflicts arising from advisory and other work;
- disclosure of interests relating to active projects; and
- conflict of interest requirements consistent with section 15 of the PGPA Rule.

2.71 With the shift from a board governance model to a commission model (refer to paragraph 1.23), IA's Accountable Authority Transition Plan included an item identifying that training and education arrangements will need to be reviewed. A verbal update in relation to the status of the Transition Plan was provided at the board meeting observed by the ANAO on 8 April 2024.

2.72 The IA board did not have a training plan for board members. In April 2021, IA engaged an external training provider, BoardFocus, to facilitate training for board members, which included the topic of conflict of interest. IA advised the ANAO in March 2024 that the same training was provided to board members in April 2022.

National Portrait Gallery of Australia

2.73 The NPGA's board members receive induction materials on commencement that outline conflict of interest obligations to disclose a material interest consistent with PGPA requirements. The NPGA's board induction materials refer to the PGPA Act and the Department of Finance's Resource Management Guide 200: Duties of Accountable Authorities, the responsibility of board members to disclose interests, and annual conflict of interest declaration requirements.

2.74 The NPGA board did not have a training plan for board members. The Department of Finance provided presentations to board members on Finance legislation, including the PGPA Act and PGPA Rule, at board meetings in April 2022 and April 2024. These presentations were not specific to conflict of interest however, include reference to section 29 of the PGPA Act (general duties of officials).

Department of Finance resources

2.75 The Department of Finance's (Finance) website⁴⁶ outlines that it has developed training and support tools to help officials understand their responsibilities under the PGPA Act and PGPA Rule. Finance offers an eLearning program on the Commonwealth Resource Management Framework which includes four modules:

- Module 1: Introduction to the PGPA Act;

45 This arrangement for board member induction no longer applies following the transition of Infrastructure Australia to be governed by a Commission instead of a board.

46 Department of Finance, *eLearning and Training*, 16 October 2023, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/learning-and-support/elearning-and-training> [accessed 3 July 2024].

- Module 2: Officials' responsibilities;
- Module 3: Managing public resources; and
- Module 4: Spending relevant money.

2.76 Modules 1 and 2 of the eLearning program reference general duties of officials under the PGPA Act, which includes section 29 on an official's duty to disclose interests.

2.77 Finance has published Resource Management Guide 200: Duties of Accountable Authorities (RMG 200) which provides guidance on the duties of an accountable authority, including the duty to govern an entity under section 15 of the PGPA Act and the application of general duties of officials (sections 25 to 29 of the PGPA Act) to accountable authorities. RMG 200 states that for accountable authorities to promote the proper use and management of public resources, an accountable authority can establish:

[A]ppropriate oversight and reporting arrangements for activities and to address the inappropriate use of resources by officials, including processes to ensure that all officials, disclose material personal interests.⁴⁷

2.78 Finance has also published Resource Management Guide 203: General Duties of Officials (RMG 203) which provides guidance on general duties of officials, including the duty to disclose material personal interests in accordance with the PGPA Act. RMG 203 defines a material personal interest as:

one that can give rise to a real or apparent conflict of interest that could affect the ability of an official to discharge their duties.⁴⁸

2.79 Finance's eLearning program and RMG 203 are not specific to boards of corporate Commonwealth entities.

2.80 The Governance Institute of Australia recommends that boards of public sector entities be supported by a comprehensive board induction process and access to ongoing education and training.

There should be a thorough induction process for new board members to enable them to fulfil their responsibilities. Not all board members will be familiar with the unique circumstances, challenges and regulatory frameworks of the public sector.⁴⁹

2.81 The Victorian Public Sector Commission (VPSC) offers webinars 'designed to support public sector board directors to conduct their work with integrity'. It indicates on its website that the webinar sessions cover: code of conduct; managing conflicts of interest and duty; handling gifts,

47 Department of Finance, *Resource Management Guide 200 – Duties of Accountable Authorities – Duties to govern your entity*, 1 May 2024, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/duties-accountable-authorities-rmg-200/duties-govern-your-entity> [accessed 20 May 2024].

48 Department of Finance, *Resource Management Guide 203 – General duties of officials – Duty to disclose interests*, 27 February 2023, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/general-duties-officials-rmg-203/duty-disclose-interests> [accessed 20 May 2024].

49 Governance Institute of Australia, *Governance Principles for Boards of public sector entities in Australia*, second edition, 2023, Recommendation 2.6, available from <https://governanceinstitute.com.au/app/uploads/2023/11/governance-principles-for-boards-of-public-sector-entities-in-australia-2023.pdf> [accessed 18 June 2024].

benefits and hospitality; and making public comments appropriately. The VPSC also notes on its website that it runs the webinar sessions three times per financial year and states:

Victorian public board members should attend this event at least once during the term of their appointment.⁵⁰

Recommendation no. 3

2.82 The Department of Finance improve training and education arrangements for corporate Commonwealth entities to raise awareness for entities and their board members in how to implement arrangements to meet conflict of interest obligations. This should be undertaken in consultation with portfolio departments.

Department of Finance response: *Agreed.*

2.83 *As noted within the report, Finance provides a range of supports to Commonwealth entities and companies to assist them to meet the requirements and policy intent of the Commonwealth Resource Management Framework. The report also notes that the eLearning program and Resource Management Guides addressing conflict of interest management are not specific to boards of CCEs. Finance will review these existing supports to address the identified gap.*

2.84 *Further, Finance is undertaking a whole of government review into the management of conflicts of interest. As part of this review, Finance will deliver core principles and guidance to support the management of conflicts of interest in a range of contexts, including those relevant to CCEs and boards. The principles support the identification, assessment and management of conflicts of interests, including the regular review and assessment of interests and management strategies. Finance will be working with key stakeholders, including the Australian Public Service Commission and portfolio departments, to develop training material to support the application of the principles in the different operating contexts of the Commonwealth.*

Have boards developed and implemented arrangements to obtain assurance over the management of conflicts of interest?

None of the boards had implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflicts of interest. All boards had developed some form of arrangement to obtain assurance over board conflicts of interest.

- The ASC board obtained attestations from its board members on compliance with section 29 of the PGPA Act and provided reporting to its audit committee.
- The FSANZ board maintains a centralised register of interests declared by board members that is published on its website.
- The IA board undertook an internal audit in 2018–19 that covered board conflicts of interest and conducted Australian Securities and Investments Commission register searches of board members' interests in 2021 to confirm declarations.

50 Victoria Public Service Commission, *Integrity for public board directors: what you need to know*, available from <https://www.boards.vic.gov.au/integrity-public-board-directors-what-you-need-know> [accessed 18 June 2024].

- The NPGA board had undertaken a specific review of board declarations to update its register of interests for board members.

2.85 Establishing an evidence-based assurance strategy or framework supports prioritisation of assurance coverage based on risk and seeks to minimise duplication of assurance effort. Assurance frameworks may include activities to assess the operating effectiveness of preventative and detective controls and support continuous improvement of the control framework. Assurance activities for the management of board conflicts of interest may include:

- internal audit activity that includes coverage of board conflicts of interest;
- reviews of, and/or monitoring and reporting on, the declaration, review and management of board members' interests; or
- processes that require board members to attest that they have complied with relevant conflict of interest requirements.

2.86 The ANAO's assessment of assurance arrangements for board conflicts of interest is summarised below in Table 2.6.

Table 2.6: Overview of board assurance arrangements

Entity	Assurance strategy or framework	Internal audit coverage	Review and/or monitoring and reporting	Attestation processes
ASC	■	■	◆	◆
FSANZ	■	■	◆	■
IA	■	◆	▲ ^a	■
NPGA	■	▲ ^b	▲ ^c	■

Key: ◆ Yes ▲ Partially ■ No

Note a: IA reviewed the completeness of declarations made by board members in April 2021. There was no arrangement implemented for the period 1 July 2021 to 31 December 2023.

Note b: The NPGA completed an internal audit relating to legislative compliance in March 2024. The internal audit report did not include information on how compliance with section 29 of the PGPA Act had been assessed and included no findings or recommendations specific to conflicts of interest.

Note c: The NPGA's annual process for reviewing board declarations of interest did not obtain declarations from all board members for the review undertaken in April 2022. The annual review did not occur between April 2022 and February 2024.

Source: ANAO analysis of assurance arrangements relating to board conflicts of interest.

Australian Sports Commission

2.87 The ASC board had not implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflicts of interest. The ASC had not undertaken internal audits examining board conflict of interest arrangements during the period 1 July 2021 to 31 December 2023.

2.88 The ASC reports annually on PGPA compliance to its Finance, Audit and Risk Committee. This includes specific reporting on compliance with section 29 of the PGPA Act for board members. No matters of non-compliance with section 29 of the PGPA Act were reported in the 2022–23 PGPA compliance reporting. Reporting on section 29 stated:

Assurance has been provided that this section has been complied with.

2.89 The assurance refers to attestation responses to compliance surveys received from ASC board members, as well as Executive General Managers, senior leaders, the Chief Financial Officer, and the CEO.

2.90 The ASC's board secretariat undertakes an annual review process of board declarations of interest. During the period 1 July 2021 to 31 December 2023, the secretariat undertook the reviews in April 2022 and February 2023. The review process obtains updated declarations from board members in relation to themselves, family members and associates.

Food Standards Australia New Zealand

2.91 The FSANZ board had not implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflict of interest. FSANZ advised the ANAO in April 2024 that it was considering including an internal audit relating to conflicts of interest in applications and proposals⁵¹ in its 2024–25 internal audit program. The internal audit program was not finalised and a scope for the internal audit had not been developed as at June 2024.

2.92 As noted at paragraph 2.29, FSANZ maintains a centralised register of interests declared by board members that is published on FSANZ's website. Publicly reporting declared interests supports transparency and provides an opportunity for interested third parties to review and potentially identify gaps in the register.

2.93 FSANZ has a PGPA compliance reporting process. This process does not specifically require attestations relating to conflicts of interest from board members.

Infrastructure Australia

2.94 The IA board had not implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflict of interest. IA's internal audit program included an internal audit over conflict of interest arrangements in 2018–19. Conflicts of interest is a cyclical audit on IA's internal audit work program with the next conflicts of interest audit proposed for 2025–26. The objective of the internal audit undertaken in 2018–19 stated:

The objective of this audit was to assess the design and operating effectiveness of Infrastructure Australia's processes to manage Conflicts of Interest that may arise in delivering its core functions across the organisation.

2.95 A summary of the key recommendations from the 2018–19 internal audit included:

- Update the Col register to include past and current Board members and their interest/declarations. Consider proactively disclosing its processes to manage Board member's COI's [sic] on IA website or in the annual report.

51 Applications and proposals refer to an application to amend the Food Standards Code and a proposal prepared by FSANZ to consider changes to the Food Standards Code.

- Update Col policy to include applicability to Board members, guidance on independent family members and timelines for declaring a Col by new employees.
- Improve monitoring of and periodically reporting on Gifts and Benefits.
- Ensure Col training is completed by the management, staff and the Board.

2.96 IA accepted all recommendations relating to conflicts of interest except for one which is summarised in Table 2.7.

Table 2.7: Internal audit recommendation not accepted by IA in 2018–19

Internal audit recommendation	Management response
The Board of IA includes members having significant experience in infrastructure sector and being sought out by various industry and consulting groups. We recommend supplementing the COI declarations provided by the Board, by designing a process to find potential undeclared conflicts, by periodically performing an independent search on the individual. Some of the resources that can be reviewed are ASIC register of directors, LinkedIn profile, social media etc.	We do not have the resources to search for undeclared conflicts.

Source: Internal Audit Report — Conflict of Interest Review (14 August 2019).

2.97 The remaining internal audit recommendations were reported as implemented to IA’s audit committee in March 2020, May 2020 and September 2020.

2.98 IA advised the ANAO in July 2024 that it assessed the completeness of declarations made by the then-board members in April 2021:

In April 2021 IA completed [Australian Securities and Investments Commission (ASIC)] searches for all serving board members to determine if there were any matters on the ASIC register that were not declared by directors. This was not repeated during the [period 1 July 2021 to 31 December 2023].

2.99 IA has a register of internal audits that have been completed and are planned. The register includes proposed coverage over conflict of interest arrangements in 2025–26.

2.100 IA has a PGPA compliance reporting process. The process does not specifically require attestations relating to conflicts of interest from board members.

National Portrait Gallery of Australia

2.101 The NPGA board had not implemented an assurance strategy or framework that was specific to, or provided coverage of, board conflict of interest. The NPGA’s internal audit program for 2023–24 included an internal audit, Legislative Compliance Review (March 2024), where the scope stated:

The objectives of the internal audit were to ... assess and map the NPGA’s obligations and controls for the PGPA Act and Rule.

2.102 The internal audit report explicitly referenced section 29 of the PGPA Act (duty to disclose interests) as an obligation considered within the scope of the audit. The internal audit report did not include findings or recommendations specific to conflict of interest. The internal audit stated that the NPGA was compliant with section 29 of the PGPA Act, and that the policy was ‘overdue for

review'. There was no information in the internal audit report to support how compliance with section 29 of the PGPA Act had been assessed.

2.103 The NPGA's board secretariat undertakes an annual review of board declarations of interest. This review process was agreed to by the board in June 2022 with the secretariat undertaking the review in August 2022. The secretariat obtained statements from six of the eight board members and the updated declared interests were presented to the board in September 2022. A review was not undertaken in the 2023 calendar year. In February 2024 the secretariat undertook the review and responses were received from all board members.

2.104 The NPGA has a PGPA compliance reporting process. This process does not specifically require attestations relating to conflicts of interest from board members.

Opportunity for improvement

2.105 Boards could implement additional arrangements to obtain assurance that board members have complied with their obligations relating to conflict of interest. This may involve, on a risk basis, validating the accuracy and completeness of declarations, and obtaining attestations from board members in relation to their compliance.

3. Effectiveness of conflict of interest arrangements

Areas examined

This chapter examines whether the boards for the Australian Sports Commission (ASC), Food Standards Australia New Zealand (FSANZ), Infrastructure Australia (IA) and the National Portrait Gallery of Australia (NPGA) have effectively managed board conflicts of interest consistent with their own policies.

Conclusion

The boards were partly effective in implementing arrangements for managing board conflicts of interest consistent with their own policies. There were shortcomings in the operating effectiveness of processes for declaring and managing conflicts of interest across all boards. This included instances where: declarations of interest were not obtained from newly appointed board members in a timely manner; declarations of interests were not implemented as a standing agenda item at board meetings; and boards' assessments of declarations of interest were not sufficient to record whether the board had determined declarations to be material personal interests.

Areas for improvement

The ANAO made one recommendation aimed at improving recordkeeping arrangements to transparently document boards' assessments of declared interests and whether interests are determined to be material personal interests.

The ANAO also identified one opportunity for improvement relating to boards obtaining the timely declarations of interest from newly appointed board members before board members undertake official duties.

3.1 The National Anti-Corruption Commission (NACC) notes that 'identifying, disclosing and managing potential conflicts of interest is a critical pillar in integrity architectures'.⁵²

3.2 Corporate Commonwealth entity (CCE) boards need to ensure that their arrangements for declaring and managing conflicts of interest are operating effectively. This includes monitoring the effectiveness of training and education arrangements to support board members' understanding of their obligations relating to conflicts of interest.

Are the boards' processes for declaring and managing conflicts of interest operating effectively?

There were instances across all boards where processes for declaring interests were not operating effectively.

- The ASC, FSANZ and NPGA boards had instances where they held board meetings where declarations of interests were not included in agendas or obtained during board meetings.

52 NACC, *Integrity Outlook 2022/23*, Commonwealth of Australia, Canberra, 2023, p. 4, available from https://www.nacc.gov.au/sites/default/files/documents/2023-10/integrity_outlook_22-23_-_final_version_for_publication_0.pdf [accessed 22 May 2024].

- The ASC and NPGA boards had instances where they did not obtain declarations of interests from newly appointed board members in a timely manner.
- All boards did not sufficiently document their assessment of declared interests and whether they were considered to be material personal interests.

3.3 In instances where a board member declares an interest that is determined to be a material personal interest, paragraphs 14(2)(a) and 14(2)(b) of the PGPA Rule require that disclosures must include details of the nature and extent of the interest and how the interest relates to the affairs of the entity. Subsection 14(4) of the PGPA Rule requires that disclosures be recorded in meeting minutes. Section 15 of the PGPA Rule outlines requirements for officials who are members of the accountable authority and have disclosed a material personal interest that relates to the affairs of the entity. These requirements relating to disclosure and consequences of material personal interests are summarised in Appendix 3.

3.4 The effectiveness of the boards' processes for declaring and managing conflicts of interest during the period 1 July 2021 to 31 December 2023 is summarised in Table 3.1.

Table 3.1: Overview of the effectiveness of processes for declaring and managing conflicts of interest

	No. of board meetings	No. of board meetings where an interest was declared ^a	Timely declarations of interest following appointment ^b	Standing agenda item for the declaration of interests ^c	Declaration and/or assessment of interests adequately recorded ^d
ASC	17	5	■	■	■
FSANZ	22	16	◆	▲	■
IA	14	14	◆	◆	▲
NPGA	13	2	■	▲	▲

Key: ◆ No exceptions identified ▲ One instance where the process did not operate effectively
 ■ More than one instance where the process did not operate effectively

Note a: Count based on board meetings where at least one declaration of interest was made by a board member.

Note b: Assessment of whether declarations of interest were obtained from newly appointment board members prior to attending a board meeting.

Note c: Assessment of whether declarations of interests occurred as a standing agenda item during board meetings.

Note d: Assessment of whether board members' declarations and/or the boards' subsequent assessments of declared interests were adequately recorded in meeting minutes.

Source: ANAO analysis of processes for declaring and managing conflicts of interests.

Australian Sports Commission

3.5 There were three instances across the 17 board meetings where the ASC board did not have a standing agenda item for declarations of interest. The absence of a standing agenda item presents a risk that a board member is not provided an opportunity to declare an interest prior a board's deliberation on a related matter. In one of the three instances, at a board meeting held in 2021, interests were declared following a presentation from a national sporting organisation:

- One board member declared an interest of having been involved in a commercial negotiation with the organisation. There was no information recorded in the meeting minutes on the board member's role in the commercial negotiation to support an assessment on the nature and extent of the interest, and how it relates to the ASC's affairs.
- One board member declared an interest that an immediate family member was employed by the organisation. There was no information recorded in the meeting minutes on the family member's position at the organisation to support an assessment on the nature and extent of the interest, and how it relates to the ASC's affairs.

The meeting minutes recorded that both members 'believed there was no direct conflict'.

3.6 There were an additional three instances of board meetings held between 1 July 2021 and 31 December 2023 where the meeting minutes did not record information to indicate whether interests declared at the meetings were material personal interests. In these instances, the interests were declared by board members in relation to board agenda items and recorded in meeting minutes as potential or perceived conflicts of interest. For two of the three board meetings, the meeting minutes did not explicitly or clearly record the consequences of disclosure. It was unclear when board members were unable to be present, able to be present but not vote, or able to be present and vote.

- For one meeting, the minutes recorded that two board members made disclosures relating to an agenda item. The two board members disclosed interests for two separate national sporting organisations. The consequence of the disclosures that were recorded in the meeting minutes state that the board members were to 'remain tacit should any decision-making be required'. The minutes of this meeting also include an action involving one of the board members to attend a subsequent meeting of board members to 'discuss potential next steps' arising from the agenda item.
- For the other meeting, the minutes recorded that two board members made disclosures relating to an agenda item. The minutes stated a potential or perceived conflict of interest for both board members. There were no consequences of disclosure recorded in the meeting minutes.⁵³

3.7 There were two instances where declarations of interests were not provided in a timely manner following appointment of new board members during the period 1 July 2021 to 31 December 2023. In these instances, the new board members attended board meetings prior to providing declarations of interests to the ASC.

Food Standards Australia New Zealand

3.8 The FSANZ board ordinarily has a standing agenda item for declarations of interest at the commencement of each board meeting. There was one instance where the FSANZ board did not have a standing agenda item for declarations of interest in 2023. The minutes of this meeting do not record declarations being made by board members or mitigations implemented for potential conflicts of interest (if required). Declarations of interests made by board members at prior

53 ASC advised the ANAO in July 2024 that the consequence of the disclosures made by the two board members for this meeting did not require the board members with declared interests to recuse themselves or abstain from voting. ASC noted that 'more detailed record keeping would have better reflected the board's decisions and discussion at the time'.

meetings may have related to the matters deliberated on by the board at the meeting in 2023. The absence of a standing agenda item presents a risk that a board member is not provided an opportunity to declare an interest prior a board's deliberation on a related matter. There would be merit in FSANZ including declaration processes in its unscheduled or extraordinary meetings. FSANZ advised the ANAO in May 2024 that:

The work ... that led to the ... decision had a long history, with updates provided to the board on numerous occasions prior to the [2023] meeting. At each previous update, conflicts of interest were sought in the agenda and captured in the minutes (as required in the Charter). At no stage did any Board member register a conflict with [this matter]. We note that no new updates (or conflicts) were registered at the meeting immediately prior to the extraordinary meeting; this allowed FSANZ to progress to the extraordinary meeting for decision. It is exceptional for our board agenda not to include a call for conflicts of interests, it is usually applied consistently at every meeting.

3.9 One board member declared an interest in relation to a prior role (which ceased in January 2020) on six occasions during the period 1 July 2021 to 31 December 2023. The declared interest was not recorded in FSANZ's Standing Interests Register during this period in accordance with FSANZ's policy requiring disclosures to be made for four years following cessation of the interest.⁵⁴

3.10 There was no record in meeting minutes to indicate whether interests declared at FSANZ board meetings were determined by the board to be material personal interests. In these instances, interests were declared by board members in relation to agenda items and recorded in meeting minutes as actual, potential or perceived conflicts of interest.

- In eight of the 22 board meetings, the board meeting minutes did not record either the nature and extent of an interest, or how an interest relates to FSANZ's affairs. The eight meetings included a total of 23 declarations relating to specific agenda items and one declaration of a perceived entity-level conflict of interest made by board members.
- In another seven of the 22 board meetings, the board meeting minutes recorded declared interests but did not document the extent of the interests and how they related to the affairs of FSANZ. The minutes recorded that board members had stated employment and connections to industries discussed in the agenda items.
- The consequences of disclosures by board members were not explicitly recorded in board meeting minutes. In most instances, there were no records on the basis for the decisions made by the FSANZ board to allow members who made declarations of interests to participate in discussion and/or vote.

3.11 FSANZ advised the ANAO in August 2024 that it did not consider these declared interests to be material personal interests.

3.12 The ANAO observed a FSANZ board meeting that occurred on 24 April 2024. During this board meeting, there was an instance of a board member that did not declare an interest until after

54 This interest was recorded on an internal interests register maintained as part of board papers. The interest was incorrectly removed from the board papers in November 2023, two months prior to FSANZ's policy on when the cessation of the interest was to occur.

discussion had occurred on the related matter. This board meeting included the standing agenda item on declaration of interests at the commencement of the meeting.⁵⁵

Infrastructure Australia

3.13 A standing agenda for the declaration of interests was included in all board meetings held during the period 1 July 2021 to 31 December 2023. IA board members that were appointed during this period provided declarations of interest prior attending board meetings.

3.14 There was one instance of a board meeting where the meeting minutes did not record whether a declared interest was determined by the board to be a material personal interest. A board member noted interests in relation to two separate agenda items. The meeting minutes state there were no 'direct' conflicts but recorded no mitigations or consequences for the disclosure.

3.15 In June 2024, IA changed its governance structure to transition from a board to a commission as the accountable authority (refer to paragraphs 1.23 and 1.24). The Chief Commissioner role is expected to be a full-time position⁵⁶ as opposed to the part-time positions held by the prior board members. IA advised the ANAO in June 2024:

With the onboarding of IA permanent Commissioners each person will be asked to declare all interests which will be recorded in the register of interests in accordance with our usual practice.

From this IA will also document the risk and conflicts management practices and procedure for future Commission operations.

National Portrait Gallery of Australia

3.16 There was one instance of a board meeting where the NPGA board did not maintain records to demonstrate if an apparent interest had been declared and managed (see Case study 1).

Case study 1. NPGA board meeting in 2021

There was a board meeting held in 2021 where the board considered acquisitions for the NPGA. The acquisitions considered by the board at this meeting included a portrait of a board member. The standing agenda item on declaration of interests was included in the agenda for this board meeting.

Board meeting minutes recorded that the board approved the list of proposed works for acquisition. There was no record in the meeting minutes as to whether the board member who was the subject of the portrait had declared an interest (perceived or actual), or if the board member participated in discussion or voted on the acquisition.

The NPGA advised the ANAO in July 2024 that:

Given the clear link between the Board member and the work of art, the NPGA feels that it is likely that [the board member] would have abstained from voting in accordance with the charter and induction material. In 2022, the Collection Development Policy was updated to explicitly

55 The board member indicated at the end of the board meeting, when the declaration was made, that they had realised their email in response to declarations of interest sought in advance of the board meeting had not been sent.

56 *Infrastructure Australia Amendment (Independent Review) Act 2023*, Division 2 — Constitution and appointment, 8 — Appointment of Commissioners (subsection 8(2)), available from <https://www.legislation.gov.au/C2023A00117/asmade/text> [accessed 11 March 2024].

outline the process for managing board members' potential or perceived conflicts of interest related to acquisitions.

... acquisitions are viewed and approved in the basement storage facility. In the past, the minute-taker did not always join the Board in the Basement to view the acquisitions. The work would have been ratified downstairs and final status of approved/not approved reported back to the minute-taker in the Boardroom as a final decision. This meant that discussion was not always captured. With the reestablishment of a dedicated Governance function in the past year, the Gallery is now better resourced to ensure a more comprehensive record going forward.

There were no other records maintained by the NPGA of a disclosure in relation to the acquisition or the consequences of such a disclosure if it occurred.

3.17 There was one instance of a board meeting in 2022 where the NPGA did not have a standing agenda item on declarations of interest. The minutes of this meeting did not record consideration of declarations of interest.

3.18 There were two instances where declarations of interests were not provided in a timely manner following appointment of new board members during the period 1 July 2021 to 31 December 2023. In these instances, the new board members attended board meetings prior to providing declarations of interests to the NPGA.

Opportunity for improvement

3.19 Boards could implement arrangements to obtain declarations of interest from new board members as a priority following appointment. This can support the timely assessment of interests and mitigate risks relating to a board member's involvement in the affairs of an entity where mitigations may be required for undeclared interests.

Recordkeeping requirements for disclosed interests

3.20 Under subsection 15(3) of the PGPA Rule, meeting minutes for CCE boards need to record any decisions to allow board members with disclosed material personal interests to be present or vote for items related to those interests. All boards did not sufficiently document interests and the boards' assessment of whether declared interests were considered to be material personal interests. There were instances of board meetings where meeting minutes did not explicitly or clearly record the consequences of disclosed interests. As a result of these recordkeeping deficiencies, the boards cannot demonstrate whether the disclosure and consequence requirements of the PGPA Rule (outlined Appendix 3) were met (if applicable).

Recommendation no. 4

3.21 The Australian Sports Commission, Food Standards Australia New Zealand, Infrastructure Australia and National Portrait Gallery of Australia implement arrangements to record the board's assessment of whether a declaration made by a board member is determined to be a material personal interest. Where the interest is determined to be a material personal interest, boards should record the disclosure and consequence in accordance with the Public Governance, Performance and Accountability Rule 2014.

Australian Sports Commission response: *Agreed.*

3.22 *The ASC will work to improve its recording keeping processes around the assessment and recording of conflicts of interest.*

Food Standards Australia New Zealand response: *Agreed.*

Infrastructure Australia response: *Agreed.*

3.23 *On 15 April 2024 the Board was replaced by 3 Commissioners as the Accountable Authority of Infrastructure Australia. The Commissioners will have regard to the recommendation and the requirements of the Public Governance, Performance and Accountability Rule 2014 in their management of Conflicts of Interest.*

National Portrait Gallery of Australia response: *Agreed.*

3.24 *The NPGA accepts this recommendation and has already taken steps to ensure that this is included in its revised Conflict of Interest policy. Further review will be undertaken to ensure appropriate tracking and documentation is implemented to align with the revised policy.*



Are the boards' training and education arrangements operating effectively?

All boards had implemented induction processes for their board members that covered conflict of interest. The ASC's board induction processes were updated to provide coverage of conflicts of interest for board members commencing from March 2022, but not all current members had received the guidance. The FSANZ, IA and NPGA boards had implemented additional training and education arrangements on conflict of interest obligations for board members.

3.25 The effectiveness of the boards' training and education arrangements for board conflicts of interest during the period 1 July 2021 to 31 December 2023 is summarised in Table 3.2.

Table 3.2: Overview of the effectiveness of training and education arrangements

	Board induction ^a	Online training ^b	External training ^c
ASC	▲	N/A	N/A
FSANZ	◆	▲	N/A
IA	◆	N/A	◆

	Board induction ^a	Online training ^b	External training ^c
NPGA		N/A	

Key:  Effective  Partially effective  Not effective **N/A** Not applicable

Note a: Assessment of conflict of interest obligations outlined in board induction materials and whether they were provided to board members upon appointment.

Note b: Assessment of online training related to conflicts of interest provided to board members and whether board members had completed the training.

Note c: Assessment of external training presentations related to conflicts of interest for the board that was coordinated by the entity.

Source: ANAO analysis of training and education arrangements.

Australian Sports Commission

3.26 The ASC board members appointed between 1 July 2021 to 31 December 2023 had not all received board induction packs which outlined conflict of interest obligations consistent with requirements in the PGPA Act and PGPA Rule. The most recent version of the ASC board induction pack (dated January 2022) was updated to include information on conflict of interest obligations. This had been provided to two board members that commenced in March 2022.

3.27 A prior version of the ASC's Conflicts of Interest Guide for Board Members (dated April 2019) was sent to board members on 18 August 2021. As at May 2024, four of the eight current board members had not received the guidance. These four board members commenced after the guidance was sent on 18 August 2021. Two of these four board members had also not received a version of the induction pack that included information on conflict of interest obligations.

3.28 No arrangements for online training or external training relating to conflicts of interest were made by the board during the period 1 July 2021 to 31 December 2023.

Food Standards Australia New Zealand

3.29 The FSANZ board had developed board induction packs which outlined conflict of interest obligations consistent with requirements in the PGPA Act and PGPA Rule. The board induction packs were updated during the period 1 July 2021 to 31 December 2023 with all iterations outlining conflict of interest obligations.

3.30 Training is offered to FSANZ board members via FSANZ's learning management system (LMS), LearnHub (refer to paragraph 2.69 and Table 2.5). As at May 2024, 11 of the 12 board members had access to LearnHub to complete training related to conflicts of interest:

- six of the 11 board members that had access to LearnHub had completed one or two of the three related training modules; and
- five of the 11 board members that had access to LearnHub had not completed any of the related training modules. This included the Chief Executive Officer who is a full-time official of FSANZ.

3.31 The FSANZ board does not have arrangements to monitor training completion of its board members. FSANZ advised the ANAO in August 2024 that:

Board members who comprise the [Finance Audit and Risk Management Committee (FARMC)] noted the fraud awareness and Introduction to the National Anti-corruption Commission training

is available for all members to complete via [the LMS]. This item was noted on the FARMC actions register and raised at each subsequent face-to-face meeting – reminding Board members of all [LMS] learning modules available. FSANZ staff provided instruction on how to access the learning material and offered assistance when requested.

Infrastructure Australia

3.32 The IA board had developed board induction packs which outlined conflict of interest obligations consistent with requirements in the PGPA Act and PGPA Rule. The board induction packs were updated during the period 1 July 2021 to 31 December 2023 with all iterations outlining conflict of interest obligations.

3.33 The IA board engaged an external training provider, BoardFocus, to provide training and education to its board in addition to its board induction process. The training provided by BoardFocus, relating to conflicts of interest, occurred in April 2021 and April 2022 (refer to paragraph 2.72).

3.34 IA's transition from a board governance model to a commission model has included reviewing its induction processes to ensure that they are fit-for-purpose under the new governance arrangements (refer to paragraph 2.71).

National Portrait Gallery of Australia

3.35 The NPGA board had developed board induction packs which outlined conflict of interest obligations consistent with requirements in the PGPA Act and PGPA Rule. The board induction packs were updated during the period 1 July 2021 to 31 December 2023 with all iterations outlining conflict of interest obligations.

3.36 There were two instances of PGPA training provided to board members by the Department of Finance in April 2022 and April 2024 (refer to paragraph 2.74). ANAO observed a NPGA board meeting in April 2024 that included a PGPA training presentation by the Department of Finance. The presentation was not specific to conflicts of interest.



Rona Mellor PSM
Acting Auditor-General

Canberra ACT
28 October 2024

Appendices

Appendix 1 Entity responses

Australian Sports Commission



Department of Finance

**Australian Government**
Department of Finance**Jenny Wilkinson PSM**
Secretary

Our Ref: EC24-001414

Ms Rona Mellor PSM
Acting Auditor-General
Australian National Audit Office
PO Box 707
CANBERRA ACT 2601

Dear Ms Mellor

Thank you for your letter of 9 September 2024 providing an extract relating to the Department of Finance (Finance) from your draft report on the *Management of conflicts of interest by corporate Commonwealth entity boards*, which examined the operation of four Corporate Commonwealth entities' (CCE) boards: the Australian Sports Commission; Food Standards Australia New Zealand; Infrastructure Australia; and the National Portrait Gallery of Australia.

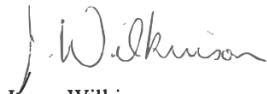
The Department of Finance (Finance) agrees to the recommendation that, in consultation with portfolio departments, we improve training and education for corporate Commonwealth entities to raise awareness for entities and their board members in how to implement arrangements to meet conflict of interest obligations.

As noted in the report, Finance provides a range of supports to Commonwealth entities and companies to assist them to meet the requirements and policy intent of the Commonwealth Resource Management Framework. The report also notes that the eLearning program and Resource Management Guides addressing conflict of interest management are not specific to boards of CCEs. Finance will review these existing supports to address the identified gap.

Further, Finance is undertaking a whole of government review into the management of conflicts of interest. As part of this review, Finance will deliver core principles and guidance to support the management of conflicts of interest in a range of contexts, including those relevant to CCEs and boards. The principles support the identification, assessment and management of conflicts of interests, including the regular review and assessment of interests and management strategies. Finance will be working with key stakeholders, including the Australian Public Service Commission and portfolio departments, to develop training material to support the application of the principles in the different operating contexts of the Commonwealth.

One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Yours sincerely

A handwritten signature in cursive script that reads "J. Wilkinson".

Jenny Wilkinson
Secretary

| October 2024

Food Standards Australia New Zealand



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Office of the Chair

Ms Rona Mellor PSM
Acting Auditor-General
Australian National Audit Office

(sent by email to: Daniel.Whyte@anao.gov.au)

Dear Ms Mellor

Proposed Audit Report on Management of conflicts of interest by corporate Commonwealth entity boards

Thank you for your letter of 9 September on the proposed audit report on Management of Conflicts of Interests by Corporate Commonwealth Entity (CCE) Boards. I am responding on behalf of the Board of Food Standards Australia New Zealand (FSANZ) pursuant to section 19 of the *Auditor-General Act 1997*.

FSANZ acknowledges the importance of this audit to provide assurance to Parliament that the operations of Boards effectively manage conflicts of interest. In this context it is noted FSANZ is one of four entities (out of 74 CCE's) assessed over the period July 2021 to December 2023.

The Board notes the audit's findings that our arrangements for managing conflicts of interest align with the relevant legislation and are largely effective. As the independent agency responsible for the development of draft food standards for Australia and New Zealand, trust and confidence of decision-makers and stakeholders is important. The FSANZ Board takes a very conservative approach to managing conflicts of interest and, for transparency, we maintain and manage a register of all interests of Board members, regardless of whether they are classified as a material personal interest or not.

FSANZ agrees with the ANAO's two recommendations that relate to FSANZ. FSANZ notes that while potential conflicts of interest are assessed and action taken prior to and at each board meeting, there is room for improving our formal records and we will always look to improving arrangements to uphold the integrity, accountability and transparency of our operations and decisions.

We understand from your audit team there is a need for greater guidance and examples of best practice from the Department of Finance to support Australian Government boards in managing conflicts. The Board welcomes a whole of government approach in relation to training and suggested management plans and mitigation measures for members of the Australian Public Service who are also ex-officio Board members.

Thank you again for your team's engagement with the FSANZ Board on this important audit.

Yours sincerely

A handwritten signature in black ink, appearing to read "G.A. Beauchamp".

Glenys Beauchamp AO PSM
FSANZ Board Chair

9 October 2024



30 September 2024

Ms Rona Mellor PSM
Acting Auditor-General for Australia
Australian National Audit Office

By email to: OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Ms Mellor

Re: ANAO Proposed Audit Report on Management of conflicts of interest by corporate Commonwealth entity boards

We refer to the s19 Proposed Audit Report on Management of conflicts of interest by corporate Commonwealth entity boards and thank you for the opportunity to respond to this.

As the Australian Government's independent adviser on nationally significant infrastructure investment planning and project prioritisation we value accountability, acting with integrity and upholding the highest ethical standards.

We appreciate the work of the ANAO which found that the boards of the four CCEs were largely effective in their management of conflicts of interest.

Infrastructure Australia accepts the recommendation that we strengthen our recording of the assessment and consequences of declared conflicts of interest. We have also commenced work to reflect the ANAO feedback on opportunities for improvement in administrative and management practices to strengthen our governance framework in relation to conflicts of interest.

Yours sincerely

Clare Gardiner-Barnes
Acting Chief Commissioner

cc Daniel.Whyte@anao.gov.au; Mark.Tsui@anao.gov.au; Corinne.Horton@anao.gov.au

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National Portrait Gallery of Australia

NATIONAL PORTRAIT GALLERY

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portrait.gov.au

Dear Ms Mellor

The National Portrait Gallery of Australia (the Gallery) thanks the Australian National Audit Office (ANAO) for its work in conducting the 2024 performance audit into management of conflicts of interest in Corporate Commonwealth Entity Boards.

We welcome the audit report and accept its recommendations. We are pleased that the report has found that the Gallery is largely effective in managing conflicts of interest in our Board. The Gallery is committed to ensuring integrity throughout its organisation and takes seriously its responsibilities under the *Public Governance, Performance and Accountability Act 2013* and *Public Governance, Performance and Accountability Rule 2014*.

The Gallery has already taken steps to implement the recommendations, including through the update of our Conflict of Interest Policy and Board Charter to ensure policy guidance for the Board on management of conflicts of interest, including material personal interests.

Further, the Gallery recognises the actions arising from this audit process as extending beyond the recommendations to include other areas of improvement to ensure that the Gallery meets best practice. This will include expansion of assurance practices, implementation of process to secure more timely declarations from new Board members, and review of Board training arrangements.

In closing, the Gallery is committed to continuously improving its corporate governance as both a government agency and a strong national cultural institution. The recommendations and findings of this audit assist us to undertake our important work, and we have valued this opportunity to participate in this audit.

Yours sincerely



Penny Fowler AM
Chair



Bree Pickering
Director

20 September 2024

THE NATIONAL PORTRAIT GALLERY ACKNOWLEDGES THE NGUNNAWAL AND NGAMBRI PEOPLES ON WHOSE COUNTRY THE GALLERY STANDS

National Portrait Gallery of Australia GPO Box 1400 Canberra ACT 2601 ABN 54 742 771 196

Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's corporate plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on identified matters during the course of an audit. Remedial actions entities may take during the audit include:
 - strengthening governance arrangements;
 - introducing or revising policies, strategies, guidelines or administrative processes; and
 - planning for internal audits and reviews.
4. During the course of the audit, the ANAO observed changes in some boards approaches to managing board conflicts of interest:
 - The Food Standards Australia New Zealand board is implementing arrangements for board members to be required to submit their conflict of interest declarations (including nil returns) prior to being provided access to the board papers in Diligent.
 - Infrastructure Australia is implementing a central register for recording training undertaken by members of its accountable authority and will seek declarations on compliance with conflict of interest obligations from its Interim Commissioners.

Appendix 3 Requirements for the disclosure and consequences of material personal interests

Legislative reference	Summary
PGPA Act — section 29	<p>Duty to disclose interests</p> <ol style="list-style-type: none"> 1. An official of a Commonwealth entity who has a material personal interest that relates to the affairs of the entity must disclose details of the interest. 2. The [PGPA Rule] may do the following: <ol style="list-style-type: none"> a) prescribe circumstances in which subsection (1) does not apply; b) prescribe how and when an interest must be disclosed; c) prescribe the consequences of disclosing an interest (for example, that the official must not participate at a meeting about a matter or vote on the matter).
PGPA Rule — section 14	<p>Officials who are members of the accountable authority—how and when to disclose interests</p> <ol style="list-style-type: none"> 1. An official of a Commonwealth entity who: <ol style="list-style-type: none"> a) is a member of the accountable authority of the entity; and b) has a material personal interest that relates to the affairs of the entity (other than an interest not required to be disclosed because of section 12); must disclose that interest, orally or in writing, to each other member of the accountable authority. 2. The disclosure must include details of: <ol style="list-style-type: none"> a) the nature and extent of the interest; and b) how the interest relates to the affairs of the entity. 3. The official must make the disclosure at a meeting of the members of the accountable authority: <ol style="list-style-type: none"> a) as soon as practicable after the official becomes aware of the interest; and b) if there is a change in the nature or extent of the interest after the official has disclosed the interest under this section—as soon as practicable after the official becomes aware of that change. 4. The official must ensure that the disclosure is recorded in the minutes of the meeting.
PGPA Rule — subsections 15(2) and 15(3)	<p><i>Consequences of disclosure</i></p> <ol style="list-style-type: none"> 1. If a matter in which the official has the disclosed interest is being considered at a meeting of the members of the accountable authority, the official must not: <ol style="list-style-type: none"> a) be present while the matter is being considered at the meeting; or b) vote on the matter. 2. However, if: <ol style="list-style-type: none"> a) the responsible Minister for the entity has declared, in writing, that the official may be present or vote (or both); or b) the members of the accountable authority who have not disclosed a material personal interest in the matter have decided that the official is not disqualified from being present or voting (or both), and the decision is recorded in the minutes of a meeting of the members; then the official may be present or vote (or both) in accordance with the declaration or decision.

Source: Public Governance, Performance and Accountability Rule 2014.