



TTIPAB Policy on Impartiality

1. Purpose

The purpose of this policy is to outline the requirements for members of the Trans-Tasman IP Attorneys Board (the Board) to act, and to be perceived to be acting, impartially.

2. Objective

The policy aims to ensure that Board members understand their obligation to act, and to be perceived to be acting, impartially, and the steps they must take meet this obligation.

3. Scope

This policy applies to the Chair, ex-officio members, appointed members, and the Secretariat of the Board.

4. Definition of impartiality

In the context of judicial impartiality, the Australian Law Reform Commission (ALRC) has noted: “[I]mpartiality is usually defined in terms of something that it is *not* – such as an absence of bias or prejudice ... A threat to impartiality is anything that improperly and unacceptably influences a judicial decision” (ALRC Report 138, [25]).

The law adopts the “bias rule” to promote impartiality, and to provide a mechanism for accountability and correction when objective minimum standards of impartiality are not met. According to this rule, if there is a reasonable apprehension that the decision maker is biased (i.e. might not be impartial), that decision maker will be disqualified from hearing and deciding the matter.

In *Webb v The Queen* (1994) 181 CLR 41, 71 Deane J identified four distinct, though sometimes overlapping, main categories of case in which a reasonable apprehension of bias may arise:

- **Interest** – when the decision maker has a direct or indirect, pecuniary or otherwise, interest in the outcome of the matter (i.e. a conflict of interests).
- **Conduct** – when something the decision maker has previously said or done gives rise to an unacceptable risk of prejudgement of the matter.
- **Association** – when the decision maker has a direct or indirect relationship, experience or contact with a person interested or involved in the matter,
- **Extraneous information** – when the decision maker has knowledge of some prejudicial fact or circumstance that cannot be considered in the matter.

5. Policy

The Board will adhere to this policy and manage actual or apprehended bias by requiring Board members:

- to complete a Private Interests Declaration upon appointment;
- to complete a Conflict of Interests Declaration annually;
- to identify and disclose at the beginning of each Sub-Committee meeting and Board meeting any interest, conduct, association or knowledge (but not the content) of extraneous information that may give rise to a reasonable apprehension of bias in relation to a matter being considered in that meeting;
- to avoid any such interests, conduct, associations and knowledge where practicable; and
- to appropriately manage any such interests, conduct, associations and knowledge that cannot be avoided.

6. Action required to manage a reasonable apprehensions of bias

Once there has been disclosure of an interest, conduct, association or knowledge of extraneous information that may give rise to a reasonable apprehension of bias by a member, the Sub-Committee and/or the Board (excluding the member who has made the disclosure, and any other similarly affected member) must agree to one of the following actions to mitigate the risk associated with the situation disclosed:

- An affected member will abstain from discussion and decision on the matter, but may remain in the room.
- An affected member will abstain from discussion and decision on the matter, and will leave the room during the discussion and decision.

In deciding which approach to adopt, the non-affected members of Sub-Committee or the Board (whichever is applicable) will consider the possibility of creating an appearance of improper conduct that might impair confidence in, or the reputation of, the Board.

The name of the member that disclosed the interest, conduct, association or knowledge, and the Sub-Committee and/or Board action taken to manage the situation, will be recorded in the formal meeting minutes.

7. Compliance with this policy

If a person suspects that a Board member has failed to comply with this policy, they must notify the Secretary of the Board. The Secretary will investigate the matter and communicate the outcome in writing to that person.

Contacts

For questions about this policy, contact the Secretary of the Board on secretary.ttipab@ipaaustralia.gov.au