

The Senate

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Finance and Public  
Administration References  
Committee

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PwC: The Cover-up Worsens the Crime

March 2024

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# PwC: The Cover-up Worsens the Crime

## Introduction

- 1.1 In June 2023, the Senate Finance and Public Administration References Committee (the committee) released its first report for the inquiry into the management and assurance of integrity by consulting services, *PwC: A Calculated Breach of Trust*. That report addressed the breach of confidential government information in 2015–16 by PwC Australia partners, in particular, by Mr Peter Collins (referred to in this report as the PwC matter). It also examined PwC Australia's conduct, both at the time of the breach and subsequently in covering up and not reporting the breach, and PwC's public response to the fallout from the breach.
- 1.2 In examining the facts of the PwC matter, the committee considered evidence gathered as part of the inquiry, as well as other information that was in the public domain. The committee concluded that PwC Australia had not sufficiently addressed the issue either inside its firm or in terms of public accountability for its partners' transgressions and the firm's cover-up of their behaviour.
- 1.3 In light of this view, the committee made two recommendations in its June 2023 report: in essence, that PwC publish accurate and detailed information about the involvement of PwC partners and staff in the breach of confidential government information; and that PwC cooperate fully with any investigations.<sup>1</sup>
- 1.4 This report follows up on PwC Australia's progress in responding to these two recommendations, and examines other documents and events related to the PwC matter that have come to light since June 2023. These include the Switkowski Review, PwC Australia's response to this review and its 'statement of Facts', evidence given by former CEO of PwC Australia, Mr Luke Sayers, and by PwC Australia's new leadership, as well as answers to questions on notice from numerous witnesses to the inquiry.<sup>2</sup>
- 1.5 This report also sets out the committee's views on PwC's approach to the matter since June 2023.
- 1.6 The committee is cognisant of the investigation into these matters by the Australian Federal Police (AFP) and has taken care not to prejudice this or any other related ongoing investigations in presenting this report.

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<sup>1</sup> Senate Finance and Public Administration References Committee, *PwC: A Calculated Breach of Trust*, June 2023, pp. 18–19.

<sup>2</sup> Mr Kevin Burrowes was appointed CEO of PwC Australia on 25 June 2023, replacing interim CEO Ms Kristin Stubbins who has since left the firm.

- 1.7 The committee has also taken care to minimise the risk of creating a pool of evidence that cannot be used for most forensic purposes before the courts. This concern principally arises when primary documents are put before the parliament which do not exist in any other form.<sup>3</sup>
- 1.8 The committee's final report, due to be tabled at the end of May 2024, will deal with the wider range of matters arising from the inquiry's activities which extend to the larger consulting industry.

### **PwC's update on partners and individuals involved in the matter**

- 1.9 In June 2023, the committee had limited information as to the actual persons responsible for the misuse of confidential government information, beyond Mr Collins. This was due to the opaque nature of information that PwC Australia itself was willing to provide.
- 1.10 Indeed, PwC Australia provided the committee and the media with several names, but not with any related information about the nature or extent of these individuals' involvement in the PwC matter. At the time, PwC Australia indicated that this approach was intended to protect the reputation of other PwC employees. However, the Clerk of the Senate noted in his advice to Senator Deborah O'Neill on 6 June 2023 that:
- It seems to me that PwC is best placed to minimise the reputational damage likely to flow to staff it says were only peripherally involved, by publishing accurate information about their involvement, rather than leaving it to the committee or others to pick through available information.<sup>4</sup>
- 1.11 Indeed, Mr Jeremy Hirschhorn, Second Commissioner at the Australian Taxation Office (ATO), pointed out that PwC Australia 'has all the emails from itself to other countries involving partners [...] that is knowledge of PwC Australia directly'.<sup>5</sup>
- 1.12 As noted in the committee's June 2023 report, it was the publication of redacted emails in answer to a question on notice from Senator O'Neill which revealed the apparent involvement of numerous other individuals besides Mr Collins. In fact, despite being heavily redacted, the document shows emails being sent to

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<sup>3</sup> Mr Richard Pye, Clerk of the Senate, *Advice to the Senate Finance and Public Administration Legislation Committee*, 29 May 2023, p. 5.

<sup>4</sup> Mr Richard Pye, Clerk of the Senate, [Advice to Senator Deborah O'Neill](#), 6 June 2023, p. 2.

<sup>5</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, Senate Economics Legislation Committee, *Proof Estimates Hansard*, 14 February 2024, p. 89.

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email groups and partners with PwC email addresses in the United Kingdom, Asia Pacific, the United States and the Americas more broadly.<sup>6</sup>

1.13 This informed the committee's recommendation that PwC Australia publish accurate and detailed information about the involvement of PwC partners and staff in the breach of confidential government information in its June 2023 report.

1.14 In summary, the only information the committee has about who was involved is the following:

- On 8 May 2023, Mr Tom Seymour stood down from his position as CEO of PwC Australia after confirming that he had received emails from Mr Collins related to the confidential Treasury information. On 3 July 2023, PwC Australia announced that Mr Seymour's exit was earlier than his previously announced retirement date of September 2023.<sup>7</sup> However, no details of what Mr Seymour knew or did have been released.
- On 29 May 2023, PwC Australia released information that it had stood down nine partners,<sup>8</sup> but did not provide their names or details of their involvement.
- On 2 June 2023, PwC Australia identified four former partners who have all since left the firm as involved in the matter: Messrs Peter Collins, Michael Bersten, Neil Fuller, and Paul McNab.<sup>9</sup> However, no information about the extent of their involvement has been released.
- On 3 July 2023, PwC Australia announced that as a result of its investigations, eight partners have exited or are in the process of being removed from the partnership: Messrs Peter Konidaris, Eddy Moussa, Richard Gregg, Pete Calleja, Sean Gregory, Peter van Dongen, Wayne Plummer, and Tom Seymour.<sup>10</sup> However, the involvement of each of these individuals in the PwC matter is unclear. Indeed, Mr Gregg took PwC Australia to the NSW Supreme Court, which found that PwC Australia failed to follow the proper process in exiting him from the firm. Mr Gregg is

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<sup>6</sup> Tax Practitioners Board, Attachment to answer to question on notice AET243, Senate Economics Legislation Committee Supplementary Budget Estimates 2022-23, 17 February 2023, (received 2 May 2023).

<sup>7</sup> Edmund Tadros, ['PwC names eight partners it says were involved in tax leaks scandal'](#), *Australian Financial Review*, 3 July 2023 (accessed 15 March 2024).

<sup>8</sup> PwC Australia, [Open letter from PwC Australia acting chief executive Kristin Stubbins](#), 29 May 2023 (accessed 16 June 2023).

<sup>9</sup> PwC Australia, answers to questions on notice, 5 May 2023 (received 2 June 2023), p. 1.

<sup>10</sup> Edmund Tadros, ['PwC names eight partners it says were involved in tax leaks scandal'](#), *Australian Financial Review*, 3 July 2023 (accessed 15 March 2024).

due to commence a defamation case against PwC Australia for implying he was involved in the matter.<sup>11</sup>

1.15 This information is vague at best.

1.16 On 27 September 2023, PwC Australia attempted to provide more detailed information through the release of its Review of Tax Confidentiality Breaches and Related Questions—also referred to as PwC Australia's 'statement of facts'.

1.17 PwC Australia described the document in the following terms:

Since May 2023, PwC Australia has been investigating, with the assistance of external counsel, PwC Australia's handling of confidential Treasury information and related failures in professional, ethical or leadership responsibilities (2023 Investigation). The 2023 Investigation is now complete, and PwC Australia has identified the persons who engaged in wrongdoing, the confidential information that was improperly shared, and the governance failings that allowed the breaches to occur and go unaccounted for as long as they did.<sup>12</sup>

1.18 However, PwC Australia's 'statement of facts' also includes the following disclaimer:

In providing this information, PwC Australia is mindful of the ongoing inquiries being conducted by authorities and for which PwC Australia is fully cooperating. In deference to those inquiries, PwC Australia has de-identified certain PwC Australia personnel and provided the information in summary form.<sup>13</sup>

1.19 Below is a summary of the new information presented by PwC Australia in its 'statement of facts'.

#### **PwC Australia's account of what PwC and its partners did in 2013–16**

1.20 In November 2013, Mr Collins and Mr Bersten attended the first meeting of the Base Erosion and Profit Shifting Tax Advisory Group (BEPSTAG). In December 2013, Mr Collins, Mr Bersten, and Mr Calleja each signed confidentiality agreements with Treasury in relation to this work.<sup>14</sup>

1.21 Mr Collins and Mr Bersten both forwarded their unsigned confidentiality agreements to Mr Tom Seymour, then leader of PwC Australia's tax practice. Nobody in PwC Australia identified or reported the clear conflict of interest 'that

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<sup>11</sup> Max Mason, '[Forced-out PwC partner threatens defamation action over tax leaks link](#)', *Australian Financial Review*, 11 August 2023 (accessed 19 January 2024).

<sup>12</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 2.

<sup>13</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 5.

<sup>14</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 3.

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arose from having client-facing partners participating in confidential Government consultations'.<sup>15</sup>

1.22 In April 2015, Mr Collins sent emails to other PwC Australia personnel, whom PwC Australia has not identified, that referred to the Government considering introducing a UK-style Diverted Profits Tax (DPT).<sup>16</sup>

1.23 From May 2015, PwC marketed to potential and actual clients, structures considered responsive to the introduction of the multi-national anti-avoidance laws (MAAL). At this time, PwC Australia partner, Paul McNab, disclosed that Mr Collins had been:

'working behind the scenes with a small group in the Australian Treasury to design the options that Treasury will offer to Government ahead of the Federal Budget next Tuesday evening (Sydney time) 12<sup>th</sup> May. Unfortunately, confidentiality agreements prevent him discussing his work in detail at this time'.<sup>17</sup>

1.24 On 5 August 2015, Mr Collins sent an email to two internal email distribution lists confirming the 1 January 2016 start date of the MAAL.<sup>18</sup>

1.25 Also on 5 August 2015, Mr McNab sent an email to at least one multi-national corporation advising that:

January 2016 remains likely with Treasury pushing for October passage through Parliament to law. Various other updates we can chat about if you get a moment.<sup>19</sup>

1.26 PwC Australia confirmed that another client also received confirmation of the start date of the MAAL.<sup>20</sup> However, PwC Australia did not indicate which partner made the disclosure.

1.27 PwC Australia stressed that 'there was no indication given to these clients that the information was confidential'. However, PwC Australia did acknowledge that:

Since confirmation of the start date of the MAAL was confidential information provided to Mr Collins in his role as a BEPSTAG consultant, Mr Collins should not have disclosed that information internally. Further, the use of that information by Mr McNab to market tax services to clients was a conflict of interest and an additional breach of confidentiality.<sup>21</sup>

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<sup>15</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 3.

<sup>16</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 5.

<sup>17</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

<sup>18</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

<sup>19</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

<sup>20</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

<sup>21</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

- 1.28 PwC Australia detailed other instances in 2015 and 2017 where Mr Collins shared confidential information, including the following:
- 17 September 2015: Mr Collins attended a Board of Taxation consultation and sent an email to Mr Neil Fuller disclosing details of the meeting, advising: 'No need to share this because all supposed to be secret'.<sup>22</sup>
  - July 2017: Mr Collins shared a confidential Treasury paper related to the Organisation for Economic Co-operation and Development (OECD) multilateral instrument with other PwC personnel and one of its clients.<sup>23</sup>
- 1.29 In addition, following confidential BEPSTAG consultations in 2014 and 2015, Mr Collins, Mr Bersten, and Mr Calleja each forwarded confidential draft OECD reports to other PwC tax partners.<sup>24</sup>
- 1.30 Additional disclosures of confidential information by unnamed PwC partners are detailed on pages 7–8 of the 'statement of facts'.
- 1.31 PwC Australia also disclosed that in January 2016, Mr McNab sent an email to Mr Seymour, copying in Mr Fuller and one other unnamed PwC Australia partner, providing an update on the work PwC Australia performed for clients in relation to the MAAL. The email stated:
- 'we were aggressive in telling these relationships they needed to act early (**heavily** helped by the accuracy of the intelligence that Peter Collins was able to supply us...' [emphasis in original].<sup>25</sup>
- 1.32 Mr Seymour replied to the email the following day, copying in further PwC personnel, congratulating Mr McNab and Mr Fuller for the outcomes and 'strategic thinking and market hustle' outlined in Mr McNab's email.<sup>26</sup>

### **PwC partners and individuals held accountable**

- 1.33 In evidence to the committee on 12 October 2023, PwC Australia CEO Mr Kevin Burrowes<sup>27</sup> confirmed that the individuals who were exited from PwC Australia for not upholding their leadership and government responsibilities were Mr Calleja, Mr Gregory, Mr van Dongen, Mr Plummer and Mr Seymour.<sup>28</sup>

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<sup>22</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 6.

<sup>23</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 7.

<sup>24</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 7.

<sup>25</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 8.

<sup>26</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, pp. 8-9.

<sup>27</sup> Mr Kevin Burrowes was appointed CEO of PwC on 25 June 2023, replacing acting CEO Ms Kristin Stubbins, who in turn had replaced then-CEO Mr Tom Seymour in mid-May 2023.

<sup>28</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 11.

- 1.34 Mr Burrowes agreed that there had been a failure of leadership during the time that Mr Sayers and Mr Seymour were, respectively, CEO of PwC Australia.<sup>29</sup> Mr Burrowes was of the view that responsibility for PwC Australia's poor culture resides with the former CEOs:

Clearly, there are a lot of things went really badly wrong with our firm over many years. The responsibility for that has to sit with the CEO. It has to sit with the CEO. That is where the responsibility sits. So I would say there are many things that have gone wrong and that has been on the watch of Mr Sayers and Mr Seymour. Therefore, I would conclude that they did not adequately execute their duties.<sup>30</sup>

- 1.35 Mr Sayers, PwC Australia's CEO from April 2012 to March 2020, acknowledged he should be held accountable for his firm's conduct:

I was accountable for the firm and its 8000 employees and 700 partners. The breaches of confidence and the failure to properly identify and address them happened on my watch. I sincerely apologise. The sharing of government information clearly intended to be kept confidential, whether it is subject to a legal confidentiality agreement or not, is not something I would ever condone. It was a breach of trust. It was wrong and it simply should never have happened.<sup>31</sup>

- 1.36 When asked how he was held accountable for this failure of leadership, Mr Sayers could only point to his appearance in front of the committee.<sup>32</sup>

- 1.37 Mr Burrowes confirmed that as Mr Sayers is no longer with PwC Australia, he has no ability to take any action against him.<sup>33</sup>

- 1.38 PwC Australia also pointed to the lack of action by other senior PwC leaders, noting that certain recipients of emails should have questioned the provenance of the information they had received.<sup>34</sup>

- 1.39 Mr Burrowes confirmed that these individuals were reprimanded, principally through financial penalties:

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<sup>29</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 10.

<sup>30</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 20.

<sup>31</sup> Mr Luke Sayers AM, Executive Chairman, Sayers Group, *Proof Committee Hansard*, 12 October 2023, p. 27.

<sup>32</sup> Mr Luke Sayers AM, Executive Chairman, Sayers Group, *Proof Committee Hansard*, 12 October 2023, p. 34.

<sup>33</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 11.

<sup>34</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 14.

The individuals whose names you've read out<sup>35</sup> were not in any way associated with this unacceptable breach of confidential information. They were not closely involved in this matter at all. They remained in the firm because our view was that actually whilst they were not associated with the breach of confidentiality or knew a level of detail which meant they could act, they have allowed over a period perhaps some of our controls to weaken and didn't say something about that. Every one of those individuals I believe that you have read out has suffered a financial consequence in our firm, so I have held them to account. I haven't exited them from our firm, but they have taken significant financial penalties as a consequence of our process of assessing their performance over the last year. We are in the course of effectively reducing their income very significantly in some instances.<sup>36</sup>

1.40 PwC Australia concluded in its 'statement of facts' that 'having now completed its 2023 Investigation, PwC Australia is confident that those responsible for the confidentiality breaches have been identified'.<sup>37</sup>

1.41 PwC Australia has not made any further disclosures about the Australian partners involved in the breach of confidential government information.

### **The international dimension**

1.42 In addition to the lack of clarity around which Australian partners were involved in the sharing and monetising of confidential government information, there is very little information about which overseas PwC partners were also involved. It is clear, even from the redacted emails provided to the Senate Economics Legislation Committee on 2 May 2023, that numerous email addresses of PwC staff overseas were included.

### **The Dirty Six**

1.43 At the committee's public hearing on 12 October 2023, Mr Burrowes stated that PwC International Limited (PwC International), headquartered in the United Kingdom, 'commissioned Linklaters to do a detailed investigation into the flow of emails from Australia to various countries around the world'.<sup>38</sup> Mr Burrowes confirmed that the Linklaters report indicated six PwC partners overseas should have questioned the origin and potential confidentiality of the information they

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<sup>35</sup> The individuals referred to are Kristin Stubbins, Sue Horlin, Tracey Kennair, Juston Carroll, Clara Cutajar, Sumanth Prakash, and Paul Abbey.

<sup>36</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 18.

<sup>37</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 13.

<sup>38</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 15.

received. At the time, Mr Burrowes was unable to advise where those partners were located, nor whether they had been disciplined or penalised.<sup>39</sup>

- 1.44 In answers to questions on notice, PwC Australia advised that it had sought a copy of the legal advice. However, that it had not received the document. PwC Australia also noted that 'advice received by PwC International is privileged and confidential and PwC International does not intend to release that advice'.<sup>40</sup> PwC Australia directed the committee to a scant press release by PwC Global in relation to the matter.<sup>41</sup>
- 1.45 The Tax Practitioners Board (TPB) also requested the Linklaters report. However, neither the TPB nor the ATO have received a copy.<sup>42</sup>
- 1.46 Despite not having seen the Linklaters report, Mr Peter de Cure, Chair of the TPB, noted that, from reading the unredacted version of the emails released on 2 May 2023 to the Senate Economics Legislation Committee, 'you can clearly identify PwC US personnel who were in receipt of information and in discussion with the Australian firm about Project America'. Mr de Cure also suggested that these individuals were located in New York and California.<sup>43</sup>
- 1.47 Mr de Cure also confirmed that the TPB currently has nine investigations underway. He explained:

Three of those investigations are well advanced. We have a basis of operation that those three investigations, we think, will be leaders in terms of the next six, so the facts and circumstances identified through those three will be significant informants of the next six as to what role the next six play. Those investigations are advancing well. We have compiled a lot of information, and our team is working through that. We intend to pursue those investigations in the ordinary course of this year. I don't want to talk about the exact time frames of that, for the purposes of protecting the probity of the investigations.<sup>44</sup>

- 1.48 Mr Michael O'Neill, Secretary and CEO of the TPB, commented at a Senate Estimates hearing the following week that the TPB understood that the

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<sup>39</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 15.

<sup>40</sup> PwC Australia, answers to questions on notice from a public hearing on 12 October 2023, and to written questions from Senator Barbara Pocock (16 and 18 October 2023) (received 2 November 2023), p. 2.

<sup>41</sup> PwC Global, '[Statement on Linklaters' PwC Network review](#)', London, 27 September 2023 (accessed 15 March 2024).

<sup>42</sup> See *Proof Committee Hansard*, 9 February 2024, p. 3, p. 15.

<sup>43</sup> Mr Peter de Cure, Chair, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, p. 15.

<sup>44</sup> Mr Peter de Cure, Chair, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, pp. 15-16.

involvement of PwC partners overseas may go beyond the six individuals referred to in the Linklaters report:

...without prejudicing the scope of our investigation into the individuals of the firms, the suggestion that the Linklaters report lands on six people in the international firm is not consistent with our analysis of the documents... Our understanding is much broader than that.<sup>45</sup>

1.49 Further, Mr O'Neill commented that in sharing the information so broadly, PwC was aiming not only to gain an advantage for its Australian clients, but to influence international policy development around these matters:

It does appear to us that the communications from PwC Australia to PwC internationally blended issues around the private and the public consultation so that the firm could internationally have a significant influence on the shape and size of the base erosion and profit-shifting reforms that were being led by the G20 and the OECD.<sup>46</sup>

1.50 The AFP also confirmed that its investigation into the PwC matter, referred by Treasury in May 2023 and known as Operation Alesia, was both domestic and international.<sup>47</sup>

1.51 On 21 March 2024, PwC Australia CEO, Mr Kevin Burrowes, wrote to the committee to provide further information about the international investigation, provided to it by PwC International.<sup>48</sup>

1.52 The additional information was limited in nature and simply noted that the Linklaters report:

...focused on PwC member firms whose personnel were identified as having received confidential or potentially confidential information from personnel at PwC Australia. The investigation by Linklaters and counsel in multiple jurisdictions included forensic searches for documents as well as interviews. Linklaters analysed the evidence across territories, made additional inquiries where necessary and provided legal advice to PwC International.<sup>49</sup>

1.53 The additional information also noted that while many overseas partners did receive the confidential information, it was not clear that the information was in

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<sup>45</sup> Mr Michael O'Neill, Secretary and CEO, Tax Practitioners Board, Senate Economics Legislation Committee, *Proof Estimates Hansard*, 14 February 2024, p. 90.

<sup>46</sup> Mr Michael O'Neill, Secretary and CEO, Tax Practitioners Board, Senate Economics Legislation Committee, *Proof Estimates Hansard*, 14 February 2024, p. 90.

<sup>47</sup> Mr Ian McCartney APM, Deputy Commissioner, National Security, Senate Legal and Constitutional Affairs Legislation Committee, *Proof Estimates Hansard*, 13 February 2024, p. 120.

<sup>48</sup> PwC Australia, Letter to Senator the Hon Richard Colbeck, Chair, Senate Finance and Public Administration References Committee, 21 March 2024, pp. 5–6.

<sup>49</sup> PwC Australia, Letter to Senator the Hon Richard Colbeck, Chair, Senate Finance and Public Administration References Committee, 21 March 2024, p. 5.

fact confidential. Therefore, the Linklaters report is said to have concluded that most of these overseas partners would not have known that they were in receipt of confidential information. According to the information provided by PwC International, only six individuals overseas should have raised questions about whether the information they had received was confidential.<sup>50</sup>

- 1.54 The extent of the involvement of the 'Dirty Six' and others overseas in the misuse and attempted monetisation of confidential government information remains a crucial and glaringly absent piece of the puzzle.

### **The relationship between PwC Australia and PwC International**

- 1.55 PwC International Limited is incorporated as a private company limited by guarantee and not having share capital, situated in England and Wales. Its financial statements simply state that 'after reimbursement, the Company received no income, and bore no costs. Consequently, it made neither profit nor loss'. It has 'no employees', and 'costs associated with PwC International's operations are paid for and reimbursed by the member firms'.<sup>51</sup>
- 1.56 PwC International's Memorandum of Association gives it considerable power over the network firms.<sup>52</sup> And one Australian PwC partner is also a director of PwC International.<sup>53</sup>
- 1.57 On 17 March 2024, the *Australian Financial Review* (AFR) reported that the PwC Global network wrote to PwC Australia in June 2023, stating that it was a 'defaulting firm' under the Global regulations, placed PwC Australia under 'supervised remediation', and required PwC Australia to appoint Kevin Burrowes as the CEO.<sup>54</sup> Mr Burrowes was appointed CEO of PwC Australia on 25 June 2023, and took over the role on 18 July 2023. He will remain in the role until 2026.

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<sup>50</sup> PwC Australia, Letter to Senator the Hon Richard Colbeck, Chair, Senate Finance and Public Administration References Committee, 21 March 2024, pp. 5–6.

<sup>51</sup> PricewaterhouseCoopers International Limited, Certificate of Incorporation of a Private Limited Company, Company No. 3590073, 24 June 1998; PricewaterhouseCoopers International Limited, Financial Statements for the Year ended 30 June 2023 (unaudited).

<sup>52</sup> PricewaterhouseCoopers International Limited, Memorandum of Association (as amended by special resolution passed on 22 September 2008 and taking effect on 1 October 2008); PricewaterhouseCoopers International Limited, Memorandum of Association (as amended by special resolution passed on 4 April 2001 and taking effect on 30 June 2001); see also Tom Ravlic, '[PwC global power lies in foundation documents](#)', *The Mandarin*, 21 March 2024 (accessed 24 March 2024).

<sup>53</sup> The PwC Australia partner who is also a Global Board Member is Ms Paddy Carney. For more information on Ms Carney, see [Paddy Carney \(pwc.com.au\)](#).

<sup>54</sup> Edmund Tadros, '[PwC global's secret path to control in Australia](#)', *Australian Financial Review*, 17 March 2024 (accessed 18 March 2024).

- 1.58 The letter referred to in the AFR article also revealed that PwC International used secretive network rules to put PwC Australia under its control. This followed PwC Australia causing 'ongoing reputational and global damage' after the firm's misuse of government information.<sup>55</sup> The committee is yet to receive information on who from PwC International is making decisions for the Australian firm and what avenues of power and control are available to PwC International, via the legal agreement, over PwC Australia.
- 1.59 Australian regulators, including the ATO, TPB, and the Australian Securities and Investments Commission (ASIC) all face jurisdictional limitations in pursuing wrongdoing by international firms. If PwC International is calling the shots, other avenues for holding the global firm accountable should be considered.
- 1.60 At the committee's public hearing on 9 February 2024, Mr Jeremy Hirschhorn, Second Commissioner of the ATO, said 'we have no power to compel the production of documents from overseas'.<sup>56</sup>
- 1.61 Ms Kristin Stubbins, the interim CEO of PwC Australia from 9 May to 17 July 2023, confirmed that she received a phone call from Mr Bob Moritz, the Chair of PwC Global, in which he indicated he would recommend that the Board of PwC Australia appoint Mr Burrowes.<sup>57</sup>
- 1.62 In evidence to the Parliamentary Joint Committee on Corporations and Financial Services, Ms Stubbins stated that she would have preferred to remain as CEO of PwC Australia:
- I did want to continue. I wanted to own the outcomes of what had happened, and I felt that I could lead the Australian firm. I guess I wouldn't say 'surprised'; I was very disappointed.<sup>58</sup>
- 1.63 Although Mr Burrows reports to the Board of PwC Australia, the firm remains under the 'supervised remediation' of PwC Global.

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<sup>55</sup> Edmund Tadros, ['PwC global's secret path to control in Australia'](#), *Australian Financial Review*, 17 March 2024 (accessed 18 March 2024).

<sup>56</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, *Proof Committee Hansard*, 9 February 2024, p. 3.

<sup>57</sup> Ms Kristin Stubbins, private capacity, Parliamentary Joint Committee on Corporations and Financial Services, Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry, *Proof Committee Hansard*, 5 March 2024, p. 24.

<sup>58</sup> Ms Kristin Stubbins, private capacity, Parliamentary Joint Committee on Corporations and Financial Services, Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry, *Proof Committee Hansard*, 5 March 2024, p. 25.

## **PwC's failure to investigate the matter at the time and subsequently**

- 1.64 PwC Australia identified numerous occasions between 2015 and 2023 which should have triggered an investigation into the breach of confidential government information.
- 1.65 In January 2016, Mr Seymour received an email from Mr McNab which referred to the information that Mr Collins supplied to his PwC colleagues. This is the email to which Mr Seymour replied the following day, copying in further PwC personnel, congratulating Mr McNab and Mr Fuller for the outcomes and 'strategic thinking and market hustle'.<sup>59</sup>
- 1.66 In 2017, PwC Australia identified the email sent by Mr Collins on 17 September 2015 relating to a Board of Taxation consultation meeting. PwC Australia states that representatives of its Office of General Counsel (OGC) and Risk teams questioned Mr Collins about the email. However, as there was no confidentiality agreement in place relating to this meeting, no action was taken. Nonetheless, PwC acknowledged that the Board of Taxation had advised Mr Collins by email that it would appreciate it if Mr Collins kept his participation in the targeted consultation session confidential at that stage.<sup>60</sup>
- 1.67 In 2019 and 2020, officers from the ATO met with PwC partners, including then-CEO, Mr Luke Sayers on several occasions.
- 1.68 Details of these meetings are set out in a timeline of events related to the PwC matter provided by the ATO in August 2023 to the Senate Economics Legislation Committee in response to a question on notice by Senator O'Neill. This timeline details three occasions when ATO officials met with Mr Sayers:
- 29 August 2019: Jeremy Hirschhorn (ATO) meets with Luke Sayers to discuss a range of concerns related to PwC conduct and the formal notice process. Mr Hirschhorn suggested that Mr Sayers personally review PwC's internal emails.
  - 20 February 2020: Jeremy Hirschhorn (ATO) meets with Luke Sayers. Mr Hirschhorn advises that PwC Board should be fully abreast of the range of concerns that the ATO has had with PwC Tax Group's behaviour.
  - 23 April 2020: Jeremy Hirschhorn (ATO) meets with Luke Sayers and David McKeering (PwC). Mr McKeering was put forward as a direct point of contact with PwC Board following the election of Tom Seymour as CEO of PwC Australia.<sup>61</sup>
- 1.69 Following the release of the ATO's timeline of events, Mr Sayers commented:

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<sup>59</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 9.

<sup>60</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 9.

<sup>61</sup> Australian Taxation Office, Answer to question on notice BET044, Senate Economics Legislation Committee Budget Estimates 2023-24, 30 May 2023, (received 4 August 2023), pp. 8–10.

During my tenure as CEO it was public knowledge, and I knew, that the ATO was engaging with the big four in relation to multinational tax laws.

I and other representatives of PwC met with the ATO to discuss a number of issues relating to aggressive tax practices, promoter penalties and claims of legal professional privilege on behalf of clients of PwC.

I was involved in and oversaw a number of steps as a result of those discussions, seeking to address the ATO's concerns.<sup>62</sup>

1.70 Mr Sayers also commented that he did not personally review the tens of thousands of documents and emails which PwC Australia provided to the ATO as part of these processes, 'nor do I recall that being suggested to me by the ATO'.<sup>63</sup>

1.71 In evidence to the committee, Mr Sayers, stated that he did not believe that the ATO had advised him to review certain emails in relation to a breach of confidential government information:

Let me clearly say that if the ATO had directly and formally advised me as the CEO of PwC Australia that Peter Collins had breached obligations of confidence, I would have sought details and ensured a full and thorough investigation. They did not.<sup>64</sup>

1.72 In following up on this issue with the ATO, Mr Hirschhorn advised the committee that his recollection of his meeting with Mr Sayers was clear: he did suggest to Mr Sayers that he personally review the internal PwC emails.<sup>65</sup> Further, Mr Hirschhorn drew the committee's attention to PwC's 'statement of facts' which sets out that:

Notes prepared in advance of the Governance Board meeting by the person providing the update referred to 'a recent discussion that Luke had with the ATO in relation to its concerns about the firm' and included, as part of a list of several issues, **a reference to a PwC Australia partner (not identified) who sat in on confidential Treasury discussions and also disclosed confidential information in a commercial way** [emphasis added].<sup>66</sup>

1.73 In relation to the confidentiality breach, Mr Sayers stated in the media:

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<sup>62</sup> Edmund Tadros and Gus McCubbing, ['Former PwC Chief Luke Sayers 'does not recall' being told to review firm emails'](#), *Australian Financial Review*, 8 August 2023, (accessed 4 October 2023).

<sup>63</sup> Edmund Tadros and Gus McCubbing, ['Former PwC Chief Luke Sayers 'does not recall' being told to review firm emails'](#), *Australian Financial Review*, 8 August 2023, (accessed 4 October 2023).

<sup>64</sup> Mr Luke Sayers AM, Executive Chairman, Sayers Group, *Proof Committee Hansard*, 12 October 2023, p. 27.

<sup>65</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, Senate Economics Legislation Committee, *Senate Estimates Hansard*, 25 October 2023, p. 118.

<sup>66</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 9.

I was not aware of the existence of a confidentiality agreement signed by Peter Collins until I read about it in the media this year. I regret that I did not know about the breach of it earlier as I would have taken firm action.<sup>67</sup>

1.74 However, at the committee's public hearing on 12 October 2023, Mr Sayers admitted that 'the initial investigation into confidentiality breaches which took place during my time was flawed'.<sup>68</sup>

1.75 PwC Australia stated that in 2021 its OGC team identified the relevant emails indicating that Peter Collins had signed BEPSTAG confidentiality acknowledgments. This was at the time when the Tax Practitioners Board informed PwC that it had commenced its investigation.<sup>69</sup> PwC also noted:

Between March and June 2021, PwC Australia (with the assistance of external legal counsel) conducted additional document searches and reviews, culminating in the preparation of privileged legal advice concerning the confidentiality breaches. The legal advice was addressed to PwC Australia's then-CEO, Mr Seymour, and then-Strategy, Risk and Reputation Leader, Sean Gregory.<sup>70</sup>

1.76 PwC Australia acknowledged that after the TPB initiated its investigation in 2021 and the evidence of confidentiality breaches was uncovered, a rigorous internal investigation and consequence management process should have commenced.<sup>71</sup>

1.77 No investigation took place. PwC Australia provided the following justification for this lack of action:

It appears that this failure was due at least in part to the fact that the firm's then-CEO, Tom Seymour, who had leadership responsibility for the tax group at the relevant times, was directly involved in decision-making regarding the handling of the matter and did not take steps to remove himself from the process nor to ensure that the underlying facts were fully reported to those charged with governance.<sup>72</sup>

1.78 It was not until May 2023, over 2 years since PwC Australia was made aware of the breach of confidential government information, that it commenced investigating what had occurred 8 years earlier.

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<sup>67</sup> Edmund Tadros and Gus McCubbing, ['Former PwC Chief Luke Sayers 'does not recall' being told to review firm emails'](#), *Australian Financial Review*, 8 August 2023, (accessed 4 October 2023).

<sup>68</sup> Mr Luke Sayers AM, Executive Chairman, Sayers Group, *Proof Committee Hansard*, 12 October 2023, p. 27.

<sup>69</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 10.

<sup>70</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 10.

<sup>71</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 12.

<sup>72</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 13.

## **ATO and TPB investigations**

- 1.79 As noted in the committee's June 2023 report, the ATO became aware of companies working to avoid the newly introduced MAAL as early as April 2016.<sup>73</sup>
- 1.80 The ATO sent notices to the big four accounting and audit firms, including PwC Australia, in relation to alerts about schemes for tax avoidance towards the end of 2016.<sup>74</sup>
- 1.81 According to PwC Australia, the ATO objected to PwC's 'foreign partnership' structure, which PwC considered 'met the requirement of creating a taxable presence in Australia, but also minimised the size of the presence and corresponding amount of tax due'.<sup>75</sup>
- 1.82 On 15 September 2016, the ATO issued a Taxpayer Alert addressing the ATO's position with respect to the foreign partnership structure. Following consultation with the ATO, the two multi-national corporations that had implemented this structure based on PwC Australia's advice unwound it and replaced it with a structure acceptable to the ATO.<sup>76</sup>
- 1.83 PwC Australia acknowledged in its statement of facts that 'the conduct of the PwC Australia partners responsible for proposing and implementing the foreign partnership structure was inconsistent with PwC's Global Tax Code of Conduct'.<sup>77</sup>

## **Claims of legal professional privilege**

- 1.84 In its first report, the committee noted that PwC Australia had used thousands of claims of legal professional privilege to conceal its internal documents from the ATO.<sup>78</sup>
- 1.85 Indeed, the committee concluded in its first report that PwC sought to protect its reputation by effectively stonewalling the ATO in its pursuit of

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<sup>73</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, Senate Economics Legislation Committee, *Proof Committee Hansard*, 30 May 2023, p. 109.

<sup>74</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, Senate Economics Legislation Committee, *Proof Committee Hansard*, 30 May 2023, p. 109.

<sup>75</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 4.

<sup>76</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 4.

<sup>77</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 4.

<sup>78</sup> Senate Finance and Public Administration References Committee, *PwC: A Calculated Breach of Trust*, June 2023, pp. 3–4.

documentation related to the misuse of confidential information by Mr Collins and other PwC partners.<sup>79</sup>

1.86 The committee also noted in its first report that the ATO had already gathered sufficient evidence to challenge PwC on what the ATO viewed as the inappropriate and incorrect application of legal professional privilege to tens of thousands of PwC documents. In *Commissioner of Taxation versus PricewaterhouseCoopers* [2022] FCA 278, Justice Moshinsky ruled that PwC had incorrectly applied legal professional privilege to more than half of approximately 15 500 documents requested by the ATO.<sup>80</sup>

1.87 PwC Australia has belatedly acknowledged that it withheld certain documents from production on the basis of legal professional privilege (LPP) in response to the ATO's notices. PwC claimed that:

It did so with respect to engagements that were described as being directed by legal practitioners in PwC's engagement letters, which would have permitted clients to claim LPP over their communications. The ATO challenged many of the LPP claims, including by issuing further s353-10 notices.<sup>81</sup>

1.88 Subsequently, PwC Australia reviewed its use of LPP claims and 'identified certain engagements that were not being directed by legal practitioners as described in the engagement letters'. PwC noted that this conduct was contrary to its values and policies.<sup>82</sup>

### **Roadblocks in the ATO investigation**

1.89 As noted in the committee's June 2023 report, the ATO initially referred the PwC matter to the AFP in March 2018. However, after 12 months, the AFP concluded it had insufficient evidence to pursue an investigation.

1.90 The ATO then referred the matter to the TPB in July 2020. The TPB conducted two separate investigations; one into Mr Collins, the other into PwC.<sup>83</sup>

1.91 The conduct of the above investigations into the PwC matter by the ATO and TPB has been a significant focus of the committee's discussions with these two Commonwealth agencies.

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<sup>79</sup> Senate Finance and Public Administration References Committee, *PwC: A Calculated Breach of Trust*, June 2023, p. 14.

<sup>80</sup> Gagens, [Federal Court cracks down on legal privilege claims – An operational hazard for the multi-disciplinary firms?](#), 13 May 2022 (accessed 23 March 2024).

<sup>81</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 5.

<sup>82</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 5.

<sup>83</sup> For details of the TPB's investigations and sanctions applied to Peter Collins and PwC, see the committee's June 2023 report.

- 1.92 The slow progress of the investigations, particularly by the ATO in 2017 and 2018, was attributed in part to the limits placed on the ATO by secrecy provisions in the *Tax Administration Act 1953* (TAA). These provisions prevent the ATO from sharing certain information with any organisation, with only a few exceptions. The ATO is only able to share certain information with the AFP, the TPB, and the Commonwealth Director of Public Prosecutions. Notably, the ATO cannot share information with Treasury or with its minister.<sup>84</sup>
- 1.93 At the inquiry hearing on 9 February 2024, Mr Peter de Cure, Chair of the TPB, confirmed that Mr Peter Hogan and Ms Judy Sullivan, both former PwC partners and still in receipt of income from the firm, attended the meeting between the ATO and TPB on 1 September 2021 and did not disclose a conflict of interest. This meeting involved the TPB investigation of the PwC matter.
- 1.94 When asked whether he saw a conflict of interest in Mr Hogan and Ms Sullivan sitting on the TPB board, Mr de Cure responded, 'I've always thought it's an unusual arrangement for people to be on the government board when they're remunerated in that way'.<sup>85</sup>
- 1.95 That Big Four partners are and have been sitting on boards that also regulate consulting firms is an issue the committee will continue to investigate.

### **New legislation introduced**

- 1.96 To address this issue, the Treasurer, the Hon Dr Jim Chalmers MP, announced that the government was developing new legislation in response to the tax advisor misconduct brought to light through the PwC scandal.
- 1.97 In a media release on 6 August 2023, the Treasurer commented:
- By increasing penalties, giving regulators stronger teeth to investigate and prosecute perpetrators and boosting transparency, collaboration and coordination within government, we are acting to restore public confidence and help prevent this from happening again.<sup>86</sup>
- 1.98 Four pieces of exposure draft legislation were released for comment, with some building on the *Review of the Tax Practitioners Board – Final Report* by Mr Keith James, released on 27 November 2020.<sup>87</sup>

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<sup>84</sup> Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, Senate Economics Legislation Committee, *Senate Estimates Hansard*, 30 May 2023, p. 100.

<sup>85</sup> Mr Peter de Cure, Chair, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, p. 20.

<sup>86</sup> The Hon Dr Jim Chalmers MP, Treasurer, *Media release*, '[Government taking decisive action in response to PwC tax leaks scandal](#)', 6 August 2023.

<sup>87</sup> The reforms addressed: [Tax Practitioners Board reforms](#); [Information Sharing](#); [Whistleblower protections](#); and [Reform of promoter penalty laws](#).

- 1.99 On 16 November 2023, the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (the bill), which included these reforms, was introduced in the House of Representatives.<sup>88</sup>
- 1.100 Of relevance to this aspect of the PwC matters is Schedule 4 of the bill which relates to information sharing. The bill proposes to allow the ATO and the TPB to share information with Treasury about 'misconduct arising out of breaches or suspected breaches of confidence by intermediaries engaging with the Commonwealth for the purpose of the Commonwealth appropriately responding to the breach or suspected breach'. Treasury would then in turn be permitted to advise the minister of any such information.<sup>89</sup>
- 1.101 In addition, the bill proposes to allow the ATO and TPB to share protected information with a professional association in relation to suspected misconduct.<sup>90</sup>
- 1.102 The bill is currently being considered by the Senate Economics Legislation Committee which is due to report by 10 May 2024.

### **Cooperation between the ATO and TPB**

- 1.103 In June 2023, it was reported that there were tensions between the ATO and TPB in 2021, which arose when the TPB accessed ATO information as part of its investigation into PwC Australia. Specifically, the TPB wanted to examine the extent to which PwC's clients had changed their tax arrangements based on the confidential information supplied by Mr Collins to his PwC partners.<sup>91</sup>
- 1.104 Tensions reportedly peaked at a TPB Board meeting in September 2021 attended by Mr Chris Jordan, Commissioner, and Mr Jeremy Hirschhorn, Second Commissioner of the ATO.
- 1.105 In evidence to the committee Mr Hirschhorn and Mr de Cure each advised the committee that the discussion between their two agencies was forthright and robust, but nothing more. Mr Hirschhorn explained:

We did have a forthright discussion at that meeting and it was not about whether they conducted a review on Mr Collins or PwC. In fact, we were very keen that they did a review on Mr Collins and PwC. [...] What we were

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<sup>88</sup> House of Representatives, *Votes and Proceedings*, No. 92, 16 November 2023, p. 1142.

<sup>89</sup> Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023, Explanatory memorandum, pp. 40-41.

<sup>90</sup> Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023, Explanatory memorandum, p. 40.

<sup>91</sup> Neil Chenoweth and Edmund Tadros, ['Two US tech giants called ATO over PwC leaks probe'](#), *Australian Financial Review*, 7 June 2023 (accessed 24 January 2024).

concerned about and we discussed at that meeting—it was a forthright meeting—was how they were going about it.<sup>92</sup>

1.106 Mr Hirschhorn clarified that the ATO's concerns centred around the agency's ability to undertake confidential settlements, noting that it is a 'really important part of the conduct of the tax system' and that [the TPB] 'seeking confidential settlements from taxpayers could put at risk, in a sense, the confidence of taxpayers that when they settle with the Tax Office that it would remain confidential'.<sup>93</sup>

1.107 Mr de Cure also advised the committee of the TPB's recollection of this discussion:

The ATO representatives definitely expressed in clear and unmistakable terms their views in relation to how we were investigating the matter. We listened. [...] There wasn't a shouting match by any way shape or form. To suggest that there was a shouting match or any sort of vigorous style of debate is not what happened.<sup>94</sup>

1.108 Both the ATO and TPB suggested that they had a good working relationship. The TPB confirmed that it has a Memorandum of Understanding and a data protocol with the ATO which ensures appropriate access to relevant information in a timely fashion.<sup>95</sup>

1.109 However, on 8 February 2024, the day before this committee's public hearing on 9 February 2024, new information was reported in the AFR that the tensions between the ATO and TPB were more serious than represented to the committee in September 2023.<sup>96</sup> The article stated that:

...documents obtained under freedom of information from Senate inquiries and other sources show the Tax Office made multiple attempts to sideline or to engineer the dismissal of board chief executive Michael O'Neill because of his team's actions in investigating PwC, which the ATO saw as overreach.<sup>97</sup>

1.110 In addition to the TPB Board meeting in September 2021 at which ATO representatives expressed concern that Mr O'Neill and TPB staff had

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<sup>92</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, *Proof Committee Hansard*, 7 June 2023, p. 33.

<sup>93</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, *Proof Committee Hansard*, 7 June 2023, p. 33.

<sup>94</sup> Mr Peter de Cure, Chair, Tax Practitioners Board, *Proof Committee Hansard*, 7 June 2023, p. 37.

<sup>95</sup> Mr Michael O'Neill, CEO and Secretary, Tax Practitioners Board, *Proof Committee Hansard*, 26 September 2023, pp. 7-8.

<sup>96</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>97</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

overreached, the AFR article described the following four instances which were reported as amounting to significant personal and professional pressure being placed on Mr O'Neill.

- 1.111 First, shortly after the September 2021 meeting, the TPB Board had a confidential meeting without Mr O'Neill present to discuss the ATO Commissioner's concerns. It was reported that 'several [TPB board] members pressed for O'Neill to be sacked or to be "performance managed" out of the job'.<sup>98</sup>
- 1.112 This meeting was followed up by a letter from Mr Jordan, ATO Commissioner, to the then-Chair of the TPB Board, Mr Ian Klug AM, 'accusing the board's team of misleading the ATO, accessing confidential settlement agreements with PwC's multinational clients, and sending production orders to the US multinationals'. In response to the Commissioner's complaints, the TPB Board ordered an internal review of its investigators by two board members, Ms Debra Anderson and Mr Greg Lewis. This investigation found that TPB investigators had acted legally and consistently with TPB policies.<sup>99</sup>
- 1.113 Second, the ATO lodged a complaint claiming that Mr O'Neill had been 'bullying ATO staff with unreasonable demands for documents for board investigations'. A second review was then initiated. However, it was reported that 'no substantiation was offered, and no tax officer was identified as the victim of bullying'.<sup>100</sup>
- 1.114 Third, the ATO requested an additional review of the TPB Board's investigation of PwC, by independent mediator and former public servant Richard Oliver. Mr Oliver conducted a workplace assessment over several months. However, no findings were made against the TPB.<sup>101</sup>
- 1.115 Fourth, and finally, the AFR reported that Mr O'Neill was given a draft contract which reportedly included a 'no-return' policy. Currently, TPB employees are seconded from the ATO. This means that upon leaving the TPB, they would return to employment at the ATO. The apparent intent of the 'no-return' policy was to allow the TPB to hire and fire its CEO, leaving that individual without the security of being able to return to the ATO.<sup>102</sup>

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<sup>98</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>99</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>100</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>101</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>102</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

1.116 The so-called 'no-return' policy appears to be based on one of the 28 recommendations from a 2019 review of the TPB by independent expert Keith James (the James Review).<sup>103</sup> However, it was reported that the proposal was abandoned after the change of government in May 2022.<sup>104</sup>

1.117 At the committee's public hearing on 9 February 2024, Mr O'Neill confirmed that 'my assessment of the article in the AFR is essentially true'.<sup>105</sup>

1.118 Mr O'Neill agreed that the inquiries made into him, and his work, affected his and his team's ability to investigate the PwC matter:

As a person, those things sometimes impact, and sometimes they were not simply about me; they were about the team as well. Some of those issues were wellbeing issues. Some of those issues were dealing with the governance issues or raised an opportunity cost around dealing with the operation or investigative issues.<sup>106</sup>

1.119 Mr O'Neill also advised the committee that:

For point of clarification, as to whether I was subject to a fraud investigation within the ATO, I asked the ATO whether I was, and they told me I was not. So I was grateful for that clarification. But I was told by ATO people that it was proposed that there should be an internal investigation by the fraud team into me.<sup>107</sup>

1.120 In a Senate Estimates hearing the following week, Mr O'Neill further clarified that the draft contract he received did not include the no-return clause. However, he also noted that it was made clear that the proposal would apply to him:

What was told to me was this: that the proposal that was to be announced by Mr Sukkar—as the then assistant Treasurer—was contingent on a few things. The first was a delegation from the Commissioner to the Chair of the Board, the second was a new contract, and the third was legal advice to ensure that the no returns policy would be lawful. It was made clear to me that that proposal would apply to me.<sup>108</sup>

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<sup>103</sup> The Treasury, ['Review of the Tax Practitioners Board - Final Report'](#), 31 October 2019, (accessed 22 March 2024)

<sup>104</sup> Neil Chenoweth, ['Inside the Tax Office's bitter feud over PwC'](#), *Australian Financial Review*, 8 February 2024 (accessed 19 March 2024).

<sup>105</sup> Mr Michael O'Neill, CEO and Secretary, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, p. 25.

<sup>106</sup> Mr Michael O'Neill, CEO and Secretary, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, p. 25.

<sup>107</sup> Mr Michael O'Neill, CEO and Secretary, Tax Practitioners Board, *Proof Committee Hansard*, 9 February 2024, p. 25.

<sup>108</sup> Mr Michael O'Neill, Secretary and CEO, Tax Practitioners Board, Senate Economics Legislation Committee, *Proof Estimates Hansard*, 14 February 2024, p. 77.

1.121 To the contrary, Mr Hirschhorn denied that such processes had occurred, and considered that the 'article pulls together some things which happened and distorts some other things which happened into a picture which is fundamentally misleading, at best'.<sup>109</sup>

1.122 In relation to the no return policy, Mr Hirschhorn was adamant that it did not and would not apply to Mr O'Neill:

That proposal did not affect the incumbent CEO at all. That proposal was about if there was a future CEO. If the TPB employed a future CEO, with no recourse to the Tax Office and with no input from the Tax Office, and then decided that they didn't like that person, we did not want to be in a position where we had to find a spot for a very senior official where we had nothing to do with bringing them into the Public Service.

This had nothing to do with Mr O'Neill. He was an ATO employee already, and so, of course, if the TPB had decided that they wanted to move to a different CEO, or indeed Mr O'Neill was satisfied with the job he had done at the TPB and wanted a change in career, he would come back to the Tax Office.<sup>110</sup>

1.123 Mr Jordan, the then Commissioner of Taxation, agreed that the policy did not apply to Mr O'Neill, noting that if it had, he would have been responsible for approving the measure. However, no such approval was given.<sup>111</sup>

## **The Switkowski review**

1.124 On 15 May 2023, as part of its response to the PwC matter, PwC Australia announced a review to be led by Dr Ziggy Switkowski AO (the Review).<sup>112</sup>

1.125 Dr Switkowski made it clear that PwC Australia had not tasked him with assessing how the confidentiality breaches occurred and persisted uncorrected for such an extended period, or whether appropriate disciplinary actions had been taken. Rather, PwC directed him to focus on frameworks and practices relating to governance, culture and accountability that currently operate within the firm.<sup>113</sup>

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<sup>109</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, *Proof Committee Hansard*, 9 February 2024, p. 6.

<sup>110</sup> Mr Jeremy Hirschhorn, Second Commissioner, Australian Taxation Office, *Proof Committee Hansard*, 9 February 2024, p. 6.

<sup>111</sup> Mr Chris Jordan, Commissioner of Taxation, Australian Taxation Office, Senate Economics Legislation Committee, *Proof Estimates Hansard*, 14 February 2024, p. 76.

<sup>112</sup> PwC Australia, ['Ziggy Switkowski AO to lead independent review of PwC Australia'](#), *Media Release*, 15 May 2023 (accessed 16 June 2023).

<sup>113</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. ii.

1.126 PwC Australia initially advised that it would release a summary of the Review. However, PwC subsequently undertook to publish the report and any recommendations in full.

1.127 PwC Australia released the Review, including its 23 recommendations, on 27 September 2023. The Review presented an unflattering assessment of PwC, its practices and processes, and identified seven key shortcomings of the firm:

- (1) Lack of independence and external 'voices' within the ultimate governing body.
- (2) Excessive power conferred on the CEO.
- (3) Disproportionate focus on revenue growth and market leadership as the strategic imperatives.
- (4) Decentralised business model without sufficient visibility of the enterprise view.
- (5) Complexity and fragmentation contributing to ineffective structures and processes.
- (6) Unclear responsibilities and accountabilities creating gaps and risks.
- (7) Overly collegial culture inhibiting constructive challenge.<sup>114</sup>

1.128 Mr Burrowes, the newly appointed CEO of PwC Australia described the Review as 'very difficult for us to read' and commented:

The independent review revealed how repeated failure of leadership contributed to an erosion of good governance and weakened our focus on our professional and ethical standards.<sup>115</sup>

### **The breach of confidential government information**

1.129 As noted above, PwC did not intend the Review to address the unauthorised sharing of confidential tax policy information by PwC partners. Indeed, the Review only mentions the PwC matter (or what the Review refers to as the TPB matters) in one or two sections, referred to hereafter as the PwC/TPB matter.

1.130 However, in discussing the circumstances surrounding the PwC/TPB matter, the Review emphasised the firm's failure to take quick action once the events had come to light. Notably, the Review observed that while PwC was aware of the breaches of confidentiality from March 2021, no internal investigations into what occurred were commenced until May 2023.<sup>116</sup>

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<sup>114</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 3.

<sup>115</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 2.

<sup>116</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 59.

1.131 While very little information or analysis about details of the PwC/TPB matter appears in the Review, the matter was discussed with individuals as part of the Review's investigation. The Review briefly reports that individuals were concerned at PwC's lack of action in relation to the breach:

Interviewees consistently reflected regret and even dismay that this did not occur considerably sooner, as "surely you would dig around if you were being asked questions". Others alluded to what is commonly referred to as the 'boiling frog' phenomenon, inferring that perhaps the conduct was so close to what had been endorsed or tolerated that it did not get noticed, or actioned.<sup>117</sup>

1.132 Although the Review did not address the specifics of the PwC/TPB matter and the breach of confidential government information, it examined PwC's practices and processes. In doing so, the Review identified numerous shortcomings which undoubtedly led to the breach occurring, and created circumstances where the breach was not formally recorded or investigated and, subsequently, was covered up. These circumstances are set out below.

### **Inadequacy of PwC's risk management**

1.133 The Review reflected critically on PwC's risk management systems and concluded that they were not adequate and should have picked up and dealt with the PwC matter more quickly and efficiently.

1.134 The Review found that 'the firm's risk and policy framework is overly complicated, with overlapping and rigid implementation of Network Standards, professional standards and local policies'.<sup>118</sup>

1.135 In particular, the Review noted that PwC 'does not have an issues management framework of the type that would be expected in an organisation with higher risk maturity, or in an organisation of PwC Australia's size and complexity'.<sup>119</sup> The Review commented that issues are therefore 'managed in a "piecemeal" fashion and there is a lack of consistency, rigour or clarity to this process'.<sup>120</sup>

1.136 Further, the Review observed that although risk reports were prepared on a quarterly basis for the Board Risk Committee, they were not fulsome documents

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<sup>117</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 59.

<sup>118</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 29.

<sup>119</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 39.

<sup>120</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 39.

and lacked sufficient detail for the appropriate management of risks to the firm.<sup>121</sup>

1.137 In relation to the risk brought about by the breach of confidential government information, the Review noted that:

...some of these quarterly reports included high-level references to risks relating to engagement with the Australian Taxation Office (ATO), but there were few references to the 'TPB matters' at a time that would have been expected. It is now clear that past CRO [Chief Risk Officer] reports did not adequately capture or describe the issue or risk relating to the 'TPB matters', did not highlight the escalating risk, and did not accurately reflect the impact on the enterprise risk profile at the time.<sup>122</sup>

1.138 The Review attributed this poor risk management, in part, to what it referred to as the 'dual hatting' of partners, which refers to certain partners with senior enterprise risk roles simultaneously having market facing responsibilities. The Review noted that some partners spent up to 60 per cent of their time on client-facing work, at the expense of their risk responsibilities.<sup>123</sup>

1.139 The Review stressed that:

This 'dual hatting' has the potential to impact the capacity of a partner to dedicate focus to risk responsibilities, which can weaken risk management capability. In addition, 'dual hatting' raises potential for tensions, or conflicts of interest, in the identification and management of risks that may arise in the client-facing aspects of a partner's role.<sup>124</sup>

### **Conflicts of interest**

1.140 As noted above, dual hatting increased the potential for conflicts of interest to arise for partners within PwC. Like its assessment of PwC's risk management, the Review found PwC's processes around conflicts of interest management significantly lacking:

There has not been, and does not yet appear to be, an overarching framework providing clear instructions to partners and staff as to how to identify or manage the various types of actual, potential, or perceived

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<sup>121</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 31.

<sup>122</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 31.

<sup>123</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 32.

<sup>124</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 32.

conflicts. There is also insufficient guidance for how to differentiate between various types of conflicts of interest.<sup>125</sup>

1.141 Further, the Review considered that conflict risk awareness is not sufficiently embedded within the DNA of the firm to rely on 'risk muscle memory'.<sup>126</sup>

1.142 The Review also noted that PwC did not have a way of consolidating all conflicts of interest information, compromising its ability to manage conflicts across the firm.<sup>127</sup>

1.143 The Review also considered that PwC had not made conflicts of interest management a priority either before or since the PwC/TPB matters, noting that although PwC had 'taken some steps to address deficiencies in conflicts management', these steps had not been implemented across the firm with any sense of urgency.<sup>128</sup>

1.144 The Review concluded that 'effective management of conflicts of interest requires a whole of firm view, and this remains a work in progress' at PwC.<sup>129</sup>

## Culture

1.145 The Review reflected particularly negatively on the culture at PwC. Its scathing assessment centred around the thesis that, at PwC, the mindset was 'growth at all costs' with a spotlight on 'revenue, revenue, revenue'.<sup>130</sup>

1.146 Indeed, a comment was made in a 2021 survey that 'the AU partnership operates largely from a profit seeking perspective, sometimes at the expense of ethics and doing what's right'.<sup>131</sup> In particular, the Review disclosed that:

Interviewees and focus groups consistently reported that at PwC Australia 'revenue is king' and partners who exceed financial are celebrated as

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<sup>125</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 32.

<sup>126</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 32.

<sup>127</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 33.

<sup>128</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 33.

<sup>129</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 5.

<sup>130</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 46.

<sup>131</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 47.

'heroes'. Referred to as 'rainmakers', individuals that exceed targets have been rewarded by promotion into key leadership positions.<sup>132</sup>

1.147 Further, some partners reported pressure to make business decisions that were potentially unethical.<sup>133</sup>

1.148 More generally, when growth targets are discussed without reference to behavioural expectations and risk implications, the 'how' of achieving growth targets is left to individual interpretation and personal values. This creates the risk of unethical behaviour, or behaviour that exceeds the firm's risk appetite, making it more challenging to drive a culture of 'doing the right thing'.<sup>134</sup>

1.149 For this inquiry, the key explanation that the Review offers for what occurred inside PwC over several years, is succinctly expressed in the following statement by Dr Switkowski:

In recent years, there has been considerable emphasis on firm growth and revenue. Partners enjoyed prosperity over many years under this strategy. However, with the benefit of hindsight, few partners now defend the legitimacy of this focus.

The aggressive growth agenda overshadowed and occurred at the expense of the firm's values and purpose. The focus on 'whatever it takes' seems, at times, to have contributed to integrity failures – some partners did the wrong thing, while others failed to do the right thing by overlooking or minimising the significance of questionable behaviours.<sup>135</sup>

### **PwC's response to the Review**

1.150 On 27 September 2023, the same day that PwC Australia released the Review and its 'statement of facts', PwC also released its response to the Review, entitled *PwC Australia's Commitments to Change* (the Response).<sup>136</sup>

1.151 The Response includes a Foreword from Mr Burrowes and Mr Justin Carroll, PwC Australia's Governance Board Chair, which acknowledged how poorly the Review reflected on their firm. These sentiments were also conveyed by Mr Burrowes at the hearing on 12 October 2023. In particular, he stated that:

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<sup>132</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 48.

<sup>133</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 48.

<sup>134</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 47.

<sup>135</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 4.

<sup>136</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023.

This behaviour should have been adequately investigated and addressed under past leadership, but it wasn't. The failures identified should never have been allowed to take place. What happened is totally unacceptable.<sup>137</sup>

1.152 Ms Jan McCahey, PwC's new Chief Risk and Ethics Leader, also commented:

...we don't have sufficient external commentary and oversight in the governance of our firm to provide the sorts of checks and balances that would apply in a corporate environment where there are independent non-executives bringing management to account or challenging them for decisions being made and judgements being considered and initiatives.<sup>138</sup>

1.153 Ms Stubbins, former interim CEO of PwC, also reflected on the breach of confidential government information:

I think when it comes to thinking about what happened, there were clearly some individuals who not only breached their confidentiality agreements with government, which is a very serious thing, but also had a complete disregard for confidentiality more broadly.<sup>139</sup>

1.154 The Response acknowledged Dr Switkowski's findings and undertook to implement all the recommendations made in his Review.<sup>140</sup> To do this, the Response set out PwC Australia's Commitments to Change as well as an Action Plan to implement the Review's recommendations.

1.155 PwC Australia's Commitments to Change are as follows:

- (1) Put our purpose and values at the core of everything we do
- (2) Increase the independence and effectiveness of our Governance Board
- (3) Improve the discipline and rigour of decision making
- (4) Strengthen risk and conflict management and accountabilities
- (5) Embed a culture of practice of constructive challenge<sup>141</sup>

1.156 In working towards these changes, PwC Australia has taken the following actions to date:

- installed a new CEO and management team;
- included its General Counsel and Chief Risk and Ethics Leader as members of the Management Leadership Team;

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<sup>137</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 1.

<sup>138</sup> Ms Jan McCahey, Chief Risk and Ethics Leader, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 14.

<sup>139</sup> Ms Kristin Stubbins, private capacity, Parliamentary Joint Committee on Corporations and Financial Services, Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry, *Proof Committee Hansard*, 5 March 2024, p. 15.

<sup>140</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, p. 2.

<sup>141</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, p. 7.

- initiated a search for independent non-executive Governance Board members;
- changed partner remuneration frameworks with a balanced scorecard emphasising non-financial measures;
- divested its government business to Allegro Funds; and
- begun work to build a more mature Enterprise Risk Management approach.<sup>142</sup>

1.157 PwC advised that it will publish its progress in meeting these commitments until changes are fully embedded. PwC also noted that its new Governance Board, to be led by an independent Chair, will oversee the progress and reporting, and ensure there is independent verification of PwC's progress.<sup>143</sup>

1.158 PwC's Action Plan for the implementation of the Review's 23 recommendations is set out in the Response and includes dates for implementation through to December 2025.<sup>144</sup>

1.159 One of PwC's key undertakings is to voluntarily adopt the ASX Corporate Governance Principles, where feasible:

The ASX Corporate Governance Principles and Recommendations provide a strong corporate governance framework and, to the extent feasible, we will apply them to PwC Australia. This will include the appointment of at least three independent non-executives to our Governance Board, including a non-executive Chair, and we will publish comprehensive, audited financial statements by September 2025.<sup>145</sup>

1.160 In evidence to the committee, Mr Burrowes commented that:

Many of these changes will be firsts for our industry. We strongly believe that when we implement them, they will provide a best practice model for a professional services firm in Australia.<sup>146</sup>

1.161 However, Mr Burrowes also acknowledged that PwC Australia understands that the committee's focus, as well as that of its stakeholders, is to the uncover how the breach 'was allowed to happen in the first place'. He also admitted:

The independent review revealed how repeated failure of leadership contributed to an erosion of good governance and weakened our focus on our professional and ethical standards. As a CEO, I, along with my management team, am committed to leading efforts to transform our firm.

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<sup>142</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, p. 8.

<sup>143</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, p. 8.

<sup>144</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, pp. 9–18.

<sup>145</sup> PwC Australia, *PwC Australia's Commitments to Change*, September 2023, p. 10.

<sup>146</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 2.

We do not underestimate the scale of the task ahead, and we recognise that ultimately we will be judged not by our words but by our deeds.<sup>147</sup>

- 1.162 In addition to PwC Australia's response to the Switkowski Review, PwC included a section in its 'statement of facts' which described the processes that PwC has put in place to 'minimise the possibility of any repeat of this experience'.<sup>148</sup>
- 1.163 In this section of the document, PwC noted that it had been making changes within its tax practice to improve its 'culture, governance, controls, and training' since 2016. These changes included PwC's Tax Policy Panel.
- 1.164 PwC also pointed to updated policies and training requirements, the recent sale of its government consulting work to Scyne Advisory, and a central confidentiality agreement register (introduced in 2021) as measures designed to avoid a repeat of the breach of confidential government information. PwC has also commenced expanding its Confidentiality Agreement Register to include identification and retention of all confidentiality undertakings.<sup>149</sup>
- 1.165 Many of the measures intended to address these issues were initially implemented in response to the findings of the Quigley review, which PwC commissioned in 2020.<sup>150</sup>
- 1.166 Finally, the Switkowski Review was clear that it was looking at the practices within the firm that had developed over several years, which led to a culture and ingrained practice of valuing profit over ethics which allowed the breach of confidential government information to occur and go unreported.<sup>151</sup>
- 1.167 However, this did not prevent Mr Sayers, PwC's former CEO, from telling this committee that the Review was done at a point in time, that is July 2023, and therefore did not reflect on his time as CEO of the firm.<sup>152</sup>

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<sup>147</sup> Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Proof Committee Hansard*, 12 October 2023, p. 2.

<sup>148</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 14.

<sup>149</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, pp. 14–16.

<sup>150</sup> PwC Australia, *Review of Tax Confidentiality Breaches and Related Questions*, 27 September 2023, p. 14.

<sup>151</sup> Dr Ziggy Switkowski AO, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023, p. 4.

<sup>152</sup> Mr Luke Sayers AM, Executive Chairman, Sayers Group, *Proof Committee Hansard*, 12 October 2023, p. 33.

## Scyne Advisory

- 1.168 Noted briefly above, the sale of PwC's government consulting work to Allegro Funds<sup>153</sup>, now established as Scyne Advisory, is one of the key measures it has put in place to minimise the possibility of conflicts of interest compromising PwC's future work.
- 1.169 On 4 July 2023, Allegro Funds announced that PwC Australia's Public Sector advisory business would become an independent government-specialist company. Allegro purchased PwC's government advisory business for \$1 and intended to take on approximately 1750 staff under the new banner Scyne Advisory.<sup>154</sup>
- 1.170 Scyne Advisory will be established under the *Corporations Act 2001* and regulated by the ASIC, with obligations to produce audited financial statements. Consistent with companies of this size, Scyne will file annual (audited) returns with ASIC that will be publicly available.<sup>155</sup>
- 1.171 A significant element of Scyne Advisory's establishment was the work undertaken by the Hon Andrew Greenwood, who conducted an investigatory review of governance and probity for the business.<sup>156</sup>
- 1.172 Mr John Mullen, Chair of Scyne Advisory, contended that 'this review provided an authoritative assurance that no partner or employee implicated in PwC's tax confidentiality matters or in other matters that raise questions of ethical management would join Scyne'.<sup>157</sup>
- 1.173 Mr Greenwood detailed the process he had undertaken at the committee's public hearing on 9 February 2024:

I interviewed 157 people, one on one, and I took a lot of statements from all of those people. I wanted to test whether they had been the subject of any ethical challenge within the PwC organisation, whether they'd received a disciplinary letter or whether they'd been the subject of an external professional regulatory body challenging them. I went through all of those processes. I spoke extensively with the whole of the Scyne leadership team and I spoke extensively with the PwC leadership team. I looked at the famous 144 pages of emails, unredacted. I looked at the 63 names. I spent a lot of time going through that. I developed a spreadsheet of all those names

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<sup>153</sup> Allegro is an independently owned Australian fund manager investing in businesses headquartered in Australia and New Zealand and provides a broad range of investment and risk management services to institutional and wholesale clients.

<sup>154</sup> Allegro, '[Allegro Funds acquires PwC Australia's public sector business](#)', *Media Release*, 4 July 2023 (accessed 22 March 2024).

<sup>155</sup> Allegro, '[Allegro Funds acquires PwC Australia's public sector business](#)', *Media Release*, 4 July 2023 (accessed 22 March 2024).

<sup>156</sup> Mr John Mullen, Chairman, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 46.

<sup>157</sup> Mr John Mullen, Chairman, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 46.

and then I reconciled that against the cohort transitioning to Scyne Advisory.<sup>158</sup>

1.174 Mr Greenwood emphasised that he 'was able to say with total confidence that not one person who was involved in any of those emails or any aspect of the multinational anti-avoidance law breach of confidentiality transitioned to Scyne'.<sup>159</sup>

1.175 Prior to the finalisation of the establishment of Scyne Advisory, the Department of Finance (Finance) undertook a review of Scyne's proposed structure and also reviewed the work of Mr Greenwood on Scyne's prospective employees. Finance's review of the ethical soundness of Scyne Advisory<sup>160</sup> allowed Scyne Advisory to join the Department of Finance's Management Advisory Services (MAS) Panel allowing it to take on future government work, as well as to determine whether it could take on the work of its predecessor, PwC, through the novation of contractions to Scyne Advisory.

1.176 For Scyne Advisory to take on the government work of PwC, the Department of Finance also undertook a series of assessments to ensure that Scyne was an appropriate business for the government to contract to. As part of its assessment, Finance considered:

- assurances from legal firms, PwC Australia, and Scyne on staff to be transferred to Scyne;
- the findings of the review undertaken by Dr Ziggy Switkowski AO regarding PwC's governance, culture and accountability, and Scyne's response to the review;
- the policies and frameworks that Scyne is implementing to strengthen ethics, governance and accountability;
- any identified, real or potential conflicts of interest for those staff (including senior leadership) moving from PwC to Scyne;
- the outcome and methodology of the probity review of Scyne staff, as undertaken by the Chair of Scyne's Probity, Conflicts and Ethics Committee and former Federal Court of Australia Judge, the Hon Andrew Greenwood; and
- advice from Dr Simon Longstaff AO from The Ethics Centre, including advice on any potential or perceived gaps between what is proposed by Scyne and what would be considered to be 'better practice'.<sup>161</sup>

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<sup>158</sup> The Hon Andrew Greenwood, Chair, Probity, Conflicts and Ethics Sub-committee, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 47.

<sup>159</sup> The Hon Andrew Greenwood, Chair, Probity, Conflicts and Ethics Sub-committee, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 47.

<sup>160</sup> Department of Finance, [Finance's review of the ethical soundness of Scyne Advisory](#), (accessed 22 March 2024).

<sup>161</sup> Department of Finance, [Finance's review of the ethical soundness of Scyne Advisory](#), pp. 1-2 (accessed 22 March 2024).

1.177 In the conclusion of its assessment, Finance acknowledged the frameworks and steps taken by Scyne to establish an organisation that is distinct from the issues prevalent in PwC. As part of this approval, Scyne committed to meeting on a monthly basis, until October 2024, with the department to provide assurance of their practices. Finance also recommended that it monitor Scyne's implementation of its ethical and accountability frameworks.<sup>162</sup>

1.178 On 13 November 2023, Scyne was established as an ASIC-registered company. Mr Mullen highlighted:

We have implemented a public company standard of governance and control based on the ASX corporate governance principles. This includes a board of directors with me as independent chair, Mr Greenwood as an independent non-executive director and one further non-executive director to join in the near future.<sup>163</sup>

1.179 Mr Mullen also emphasised that Scyne is immune from the inherent conflicts of interest of other firms given that it will only undertake work for the public sector, not the private sector:

At the moment Scyne is in a category of its own in being able to say to government that we are unconflicted with the private sector. We also believe that this specialised approach delivers better advice for our clients. Our people concentrate on supporting governments and their increasingly complex policy challenges. But we're clear that our role is to support the Public Service over the long-term, not replace it. We started from scratch and designed the structure to support these goals.<sup>164</sup>

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<sup>162</sup> Mr John Mullen, Chairman, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 46.

<sup>163</sup> Mr John Mullen, Chairman, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 46.

<sup>164</sup> Mr John Mullen, Chairman, Scyne Advisory, *Proof Committee Hansard*, 9 February 2023, p. 46.

## **Committee view**

1.180 There are two main aspects to this committee view. First, the nature of the investigations into Mr Peter Collins and PwC Australia by Commonwealth agencies. And second, the committee's views on PwC and various PwC partners and officials.

## **Background**

1.181 As noted in the committee's first report, despite his having signed confidentiality agreements, PwC tax partner Mr Collins intentionally shared confidential government information with PwC partners and others both in Australia and overseas. This was done to assist existing and potential new clients of PwC to get around the Commonwealth anti-avoidance tax laws to be introduced in 2016, putting at risk \$180 million per year of tax to be paid in Australia.

1.182 The breach of confidentiality by Mr Collins and the associated attempt by PwC to use that information for financial gain necessarily raises institutional and inter-agency issues in terms of the detection and prosecution of misconduct in tax practitioner practice, particularly as it relates to the actions of partners in one of the Big 4 firms.

1.183 In this case, Mr Jeremy Hirschhorn, Second Commissioner at the Australian Taxation Office (ATO), stated that the ATO became aware something was wrong when several multinational entities attempted to use new schemes to avoid paying their fair share of tax on profits earned in Australia shortly after the introduction of Australia's multinational anti-avoidance tax laws.

1.184 Therefore, the detection of some form of wrongdoing worked relatively quickly. Further, the swift response from the ATO ensured that potentially very large sums of tax owed to the Australian community were not lost.

1.185 The committee acknowledges the work of the ATO for their prompt action in ensuring that the tax avoidance schemes, developed in PwC's tax unit and based on their own inside knowledge, did not result in the loss of tax for the Australian people.

1.186 However, there was a failure in progressing the matter beyond the detection of something being wrong and the protection of that part of Australia's tax base.

1.187 This raises questions around what should occur when an agency such as the ATO finds out something is wrong: what should the agency do, what can the agency do, and who should it talk to? For example, was (and is) the ATO able to provide another agency, such as the Tax Practitioners Board (TPB) or the Australian Federal Police (AFP), with sufficient information to enable the second agency to properly investigate a matter?

**Process issues with the investigation**

- 1.188 In the case of PwC and Mr Collins, the investigation took too long.
- 1.189 The secrecy provisions in the tax legislation under which agencies and departments operate would appear to impose constraints on the agencies and their ability to provide sufficient detailed information to each other to adequately progress an investigation.
- 1.190 In this regard, the committee notes the government's proposed legislation currently before the Parliament that aims to address some of these matters by allowing the ATO or the TPB to share certain information with the Treasury, its Minister, or the Finance Minister. However, while the inquiry into that legislation is ongoing at the time of drafting this report, the committee understands the legislative amendments would not address a key issue which slowed the initial investigation referred by the ATO in 2018: information sharing with the AFP.
- 1.191 A related matter is the issue of better information sharing and cooperation between agencies. The committee notes the views put on the public record at the committee's hearing on 26 September 2023 by Mr Hirschhorn, Second Commissioner, ATO, and Mr Peter de Cure, Chair, TPB. In their evidence, both officials stated there was a robust but appropriate exchange of views with respect to the ATO's concerns about the way the TPB was accessing information on the ATO database.
- 1.192 The ATO is a very large organisation compared to the TPB. Further, the ATO has a vast database of information. The committee notes the view of the ATO that access to its database is, and appropriately should be, on a need-to-know basis. The committee is also aware of the Memorandum of Understanding (MOU) between the ATO and the TPB that covers matters such as the protocols around the TPB's access to the ATO database. The committee notes that the ATO asserted that there were constraints imposed on what the ATO can share with other agencies and what it can allow other agencies to access.

**Relationship between the ATO and the TPB**

- 1.193 Various concerns have been raised at public hearings and in the media about the relationship between the ATO and the TPB.
- 1.194 These concerns include the ATO cautioning the TPB about the way it, including Mr Michael O'Neill, the Chair and members of the TPB Board, were pursuing the investigation of PwC. The ATO was concerned that the TPB had accessed the ATO database for information it considered necessary for the investigation but which the ATO considered unnecessary and out-of-scope.
- 1.195 There are a few points to be made here.
- 1.196 First, while acknowledging the legislative constraints imposed on the ATO, the committee considers the ATO has a responsibility to allow appropriate access to

other agencies that are tasked with pursuing investigations. And the committee reiterates the general point that it is incumbent on all Commonwealth agencies to set aside differences of size, scope, and culture, and to cooperate in good faith and share sufficient information to ensure the best outcomes for the broader public interest. This cannot be over-emphasised.

- 1.197 Second, the TPB uncovered the source of the confidentiality breach within PwC. And the sanction imposed on Mr Collins by the TPB effectively cancelled his ability to operate as a tax practitioner. Beyond Mr Collins, however, the TPB identified other persons involved.
- 1.198 The committee recognises that but for the persistence of the TPB under the leadership of CEO Mr O'Neill, the Chair, and members of the Board, it is quite likely that PwC would have successfully buried the matter forever and the public of Australia would be no wiser as to the identity of the culprits and the complicity of senior personnel in PwC.
- 1.199 To that extent, it bears reiterating what various committee members, including the Chair of this committee, have put on the record at public hearings of this committee and at Senate estimates. First, the committee is of the view that pressure was placed on Mr O'Neill, the Chair, and members of the Board. And second, the committee expects that Mr O'Neill and the TPB team be able to continue unencumbered in their work to get to the bottom of the matter and to bring PwC to account and be provided with all necessary access to information that he deems relevant in pursuit of that goal.
- 1.200 These matters remain under committee consideration. There are a range of important factors involved, and the committee needs time to carefully consider and weigh them all up. The committee will report further on the matter.

### **PwC Australia**

- 1.201 The second part of this committee view considers matters relevant to the PwC tax scandal, PwC's response, or the lack thereof, including its ongoing failure to fully acknowledge what occurred.

### ***Growth at all costs***

- 1.202 The main finding of the internally commissioned Switkowski review was that the PwC scandal arose because PwC pursued revenue at any cost, put revenue and profit above ethics, and adopted a 'whatever-it-takes' culture.
- 1.203 Under its management at that time, success in PwC was defined by the ability to increase revenues in its business units. The evidence indicates that boosting financial performance was the first order of business at PwC. Consequently, regulatory compliance and ethical behaviour were second or third order considerations if they were considerations at all.

- 1.204 Given PwC's focus was geared to promote revenue over ethics and integrity, it is hardly surprising that compliance failures and misconduct manifested in PwC.
- 1.205 It seems clear that certain PwC partners demonstrated an appetite for non-compliance with confidentiality agreements because it appears that the reward was greater fees and revenue. If any cost-benefit calculations were made in terms of the costs associated with the discovery of non-compliance, they were presumably outweighed by the potential financial rewards.
- 1.206 Added to this, the relatively widespread distribution of the PwC emails indicates certain partners felt immune from internal censure. Indeed, based on the self-congratulation on display in the PwC emails, it seems reasonable to infer that these persons believed they were so untouchable that they would never be reprimanded or brought to account.
- 1.207 The self-congratulation and apparent ethical failures raise questions about PwC's leadership, internal culture, and risk management. It appears the internal management and audit controls either failed or were broken. That said, even good risk managers are only as powerful as the internal culture and leadership of a firm allows them to be. For example, if revenue always comes first, then risk management is relegated. Further, an internal culture can only be as strong as the leadership and governance which must be committed on a thorough and consistent basis to a robust culture of doing the right thing.

***Failure of PwC Australia's leadership and management to properly manage risk***

- 1.208 Given PwC Australia's compliance failures, questions remain about the extent to which senior management and leadership within PwC recognised the extent of regulatory risk and the need to manage it effectively.
- 1.209 The current PwC CEO, Mr Kevin Burrowes, acknowledged PwC has found itself in an unenviable position through a failure of leadership.
- 1.210 This brings us to the testimony of the former CEO of PwC, Mr Luke Sayers. It must be said at the outset that Mr Sayers' testimony at the public hearing on 12 October 2023 did not give senators any confidence in his period of leadership, his sense of responsibility, or his recognition of the scale and nature of the events that unfolded during his 8-year tenure as CEO.
- 1.211 Mr Sayers stated that he knew nothing about what was occurring in PwC's tax unit and that, for all intents and purposes, the behaviour could be attributed to a few bad actor tax partners who made the wrong choices.
- 1.212 When asked about the views of Mr Burrowes that the breach of tax confidentiality was the result of leadership and cultural failure, Mr Sayers responded that he had built a strong set of values for PwC Australia.
- 1.213 Further, Mr Sayers rejected Dr Switkowski's key finding that PwC had a 'growth at all costs' mindset with a predominant focus on revenue. Mr Sayers also

asserted that the Switkowski Review reflected a point in time, that is July 2023, and therefore it did not reflect on his time as CEO of the firm.

- 1.214 Yet the Switkowski Review made clear that it was looking at the practices within PwC that had developed over several years and which led to the poor culture. Mr Sayers' position is therefore inconsistent, and indeed irreconcilable, with the Switkowski Review.
- 1.215 Further, it is of note to the committee that senior representatives of the ATO were so concerned about the culture and practices at the tax consultancy arm of PwC, and its impact on Australia's tax system, that they spoke directly to Mr Sayers about these matters.
- 1.216 It is implausible to the committee that Mr Sayers could not recall these matters being raised with him.
- 1.217 And given the clear evidence from Mr Hirschhorn, Second Commissioner at the ATO, as well as the corroborating evidence set out in PwC's statement of facts, it seems highly irregular and scarcely credible that the PwC executive and the board would not have been aware of the extent of the issues within PwC.
- 1.218 The committee has found it impossible to reconcile the different versions and recollections of events provided by the witnesses. The committee is concerned about the truthfulness of some of the evidence it has received and is left questioning the credibility of Mr Sayers' evidence.
- 1.219 Taken together, the evidence points to the unethical behaviour in PwC being ignored by senior leadership during Mr Sayers term as CEO and subsequently.

#### *PwC's engagement with the committee's inquiry*

- 1.220 As noted above, PwC Australia's leadership has consistently failed to take responsibility for the problems within the organisation that led to this situation occurring.
- 1.221 Further, as noted earlier in the report, the committee is concerned that more recent evidence suggests PwC planned to use the confidential information to an even greater extent, such as trying to influence or possibly even undermine the MAAL process itself.
- 1.222 While the committee appreciates that senior PwC management have come to hearings, the committee is disappointed at the lack of substantive answers to questions, a failure to fully disclose important operational matters, and the failure to provide important documents such as the Linklaters report.
- 1.223 In terms of operational disclosure, the committee notes that at the time of his appearance before the committee on 12 October 2023, Mr Burrowes had been CEO of PwC Australia for close to three months. There was no disclosure by Mr Burrowes or other senior PwC management at that time about PwC

Australia's defaulting firm status nor about the relationship between PwC International and PwC Australia.

1.224 This is important. PwC International Limited is a non-trading entity with no employees and no financial commitments, and therefore all actions it undertakes must be paid for by the network firms. And in that case, pertinent questions arise:

- Who paid for the Linklaters report?
- Was PwC Australia required to contribute to the cost of the Linklaters report, either in part or in whole?
- And if that is the case, who ultimately owns the report?
- Does the PwC Australia partner who is also a director of PwC International have a copy of the report?
- What powers does PwC International have in relation to PwC Australia?
- Under what circumstances can they use them?
- How often do they use them?

1.225 In terms of failing to provide important documents, Mr Burrowes recently wrote to the committee to provide information on the conclusions of the Linklaters report which suggested that only six individuals overseas were involved in Project North America—PwC's plan to monetise the confidential information disclosed by Peter Collins. The committee notes this conclusion is inconsistent with preliminary findings from the TPB.

1.226 PwC has attempted to reassure the committee that it has already taken the appropriate actions in relation to Project North America. And yet, PwC continues to use legal professional privilege as a reason not to provide the Linklaters report to the committee. In this regard, the committee reminds PwC that PwC consistently hid behind the incorrect application of thousands of legal professional privilege claims to prevent the ATO from accessing potentially incriminating evidence.

1.227 In its first report, the committee recommended PwC be open and honest with the Australian Parliament and people, and with the international community, by promptly publishing accurate and detailed information about the involvement of PwC partners and staff in the breach of confidential government information. This includes the involvement of PwC personnel involved in Project North America. PwC have failed to do this.

1.228 PwC's continued refusal to provide the Linklaters report is symptomatic of its problematic engagement with the committee. A first step to restoring trust with the Australian Parliament would be for PwC to provide the committee with the full Linklaters report at the first opportunity and to be open and honest with the Australian Parliament and people.

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### *The changes needed at PwC Australia*

- 1.229 Current PwC management has recognised that PwC needs change across the firm including its culture, leadership, and governance. This represents a significant shift in position from previous PwC leadership.
- 1.230 A key question that remains for the committee is the nature of that change and the timeframe over which this change will be accomplished and how that change would be monitored and evaluated.
- 1.231 The adoption of the written statement of ethical values and principles is unlikely to effect the required reform. Rather, the ethical change must be introduced into practice, governance, and structure, and embedded, and maintained through appropriate audit, public reporting, and remedial mechanisms.
- 1.232 PwC should be under no illusion that this is a major undertaking. It will require ongoing commitment by key leaders and managers, and it will require significant resources to monitor and evaluate compliance with ethical practice and appropriate public reporting and governance to assure it.
- 1.233 That said, the committee has concerns about the extent to which PwC can change its structure, practices, and culture. The committee is not convinced on the evidence provided to it at this point that such substantive change is forthcoming.
- 1.234 For example, the committee remains concerned that PwC has recently made much of the changes in its tax practice since 2016 as well as its responses to the Quigley review in 2020. Yet they appear to have had no genuine and lasting effect given the findings of the Switkowski Review and the fact that PwC decided to keep everything covered up until it was exposed by the TPB investigation.
- 1.235 To that end, it is worth reflecting on what PwC has promised to do, and what it has failed to do.
- 1.236 PwC has advised that it will publish its progress in meeting its commitments until the changes are fully embedded. In this regard, the committee notes PwC's undertaking to voluntarily adopt the ASX Corporate Governance Principles where feasible. However, the committee notes there is no obligation for PwC to meet these Principles and there are no penalties for their failure to do so.
- 1.237 PwC also noted that its new Governance Board, to be led by an independent Chair, will oversee the progress and reporting, and ensure there is independent verification of PwC's progress.
- 1.238 The committee acknowledges a recent letter from Mr Burrowes outlining progress on important upcoming changes to PwC's governance structure.
- 1.239 However, beyond superficial commitments to change, the committee has seen nothing of real substance yet. PwC have still made no genuine effort to fully

investigate and address the issues. Rather their ongoing approach appears to be to hide behind legal professional privilege and hope it will all go away.

1.240 The failure of PwC to be completely open and honest as per the committee's recommendations in its first report is reflective of PwC's failure to genuinely change. The committee does not see how PwC can recover their reputation while it continues to cover up because the two are incompatible. Indeed, the cover-up worsens the crime.

**Senator the Hon Richard Colbeck  
Chair**