Parliamentary Joint Committee on Corporations and Financial Services

Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry

November 2024

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PO Box 6100
Parliament House
Canberra ACT 2600

Telephone: +61 2 6277 3583
Email: corporations.joint@aph.gov.au
Website: www.aph.gov.au/joint_corporations

Contents

Acronyms and abbreviations

AASB	Australian Accounting Standards Board
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AFP	Australian Federal Police
AI	Artificial Intelligence
AICD	Australian Institute of Company Directors
APES	Accounting Professional & Ethical Standards
APESB	Accounting Professional & Ethical Standards Board
APRA	Australian Prudential Regulation Authority
APS	Australian Public Service
ASA	Australian Shareholders' Association
AFSL	Australian financial services licence
ASIC	Australian Securities and Investments Commission
ASIC Act	Australian Securities and Investments Commission Act 2001
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
AUASB	Auditing and Assurance Standards Board
BAS	Business Activity Statement
BDO	BDO Group Holdings Limited
BEPS	Base erosion and profit shifting
Big Four firms	PwC, Deloitte, EY, KPMG
CAANZ	Chartered Accountants Australia & New Zealand

CADB	Companies Auditors Disciplinary Board
CDPP	Commonwealth Director of Public Prosecutions
Corporations Act	*Corporations Act 2001*
CPA Australia	Certified Practising Accountant Australia
CMA	Competition and Markets Authority
CPSU	Community and Public Sector Union
Defence	Department of Defence
EY	Ernest & Young
F&PA committee	Senate Finance and Public Administration References Committee
FRC	Financial Reporting Council
GIR	Governance Institute of Australia
GRI	Global Reporting Initiative
HHI	Herfindahl-Hirschman Indices
IAASB	International Auditing and Assurance Standards Board
IESBA	International Ethics Standards Board for Accountants
IIA	Institute of Internal Auditors
IPA	Institute of Public Accountants
KPMG	KPMG Australia
MAAL	Multinational Anti-Avoidance Law
NOCLAR	Non-Compliance with Laws and Regulations
NSW	New South Wales
NT	Northern Territory
OECD	Organisation for Economic Cooperation and Development
PAB	Professional Accounting Body

US PCAOB	United States Public Company Accounting Oversight Board
PID Act	*Public Interest Disclosures Act 2013 (Cth)*
PIEs	Public Interest Entities
PIF Code	Australian Public Interest Firm Governance Code
PJC CFS	Parliamentary Joint Committee on Corporations and Financial Services
PwC	PricewaterhouseCoopers
PwCIL/PwC Global	PricewaterhouseCoopers International Limited
Qld	Queensland
RCA	Registered Company Auditor
SCoLA	Society of Corporate Law Academics
SEC	United States Securities and Exchange Commission
TAA Act	*Taxation Administration Act 1953*
Tas	Tasmania
the Linklaters report	investigation by Linklaters into the movement of confidential information from PwC Australia to other countries
TPB	Tax Practitioners Board
UK	United Kingdom
UK CMA	United Kingdom Competition and Markets Authority
UK FRC	United Kingdom Financial Reporting Council
US	United States of America
Vic	Victoria
WA	Western Australia

List of recommendations

The recommendations made by the Committee have been put into two categories which reflects their respective importance. The priority recommendations (1 to 12, 18, 19, 22, and 29) are those which the Committee considers are of key importance for immediate action. The other recommendations are matters which should be the subject of government consideration and action.

Recommendation 1

2.67 **The committee recommends that the Australian Government not permit PwC or any of its related entities to tender for government work until the completion of all ongoing investigations including but not limited to those by the Tax Practitioners Board, Australian Federal Police and Australian Taxation Office. Prior to PwC being eligible to tender for government work, PwC must demonstrate it has taken all appropriate remedial action in response to the outcomes of the investigations.**

Recommendation 2

3.54 **The committee recommends that the Australian Government implement the recommendation of the Senate Finance and Public Administration Committee that the government commission an appropriate body to review and make recommendations on the long-term goal of regulation of large partnerships, including in relation to: the appropriate regulator and its powers, applicable governance principles, transparent reporting obligations, penalties for breach, and a roadmap for implementation given the complexities of overlapping jurisdictions.**

Recommendation 3

3.61 **The committee recommends that the Australian Government reduce the allowable size of partnerships for accountants to a maximum of 400 partners, to align with the limits of legal partnerships. The government should establish a suitable transition period of up to 5 years for this change to enable the implementation of this recommendation whilst minimising disruption to the sector. A review of progress to this end should be conducted after 2 years, if at that time the entity has not chosen to incorporate.**

Recommendation 4

3.62 **The committee recommends that the Australian Government consider increased accountability and response mechanisms, including a suitable**

penalty regime calibrated to the seriousness of the misconduct, for partnerships who have engaged in misconduct.

Recommendation 5

3.63 **The committee recommends that the audit, accounting, and consulting partnerships of firms with greater than 3000 staff be required to implement the *Corporations Act 2001* requirements for governance and accountability, if appropriate through the adoption of the Australian Securities Exchange Corporate Governance principles. This should include the requirement for multidisciplinary partnerships to prepare their own general purpose financial reports, including remuneration disclosures and other obligations which may be applicable to partnerships. The government should review the operation of this measure within 3 years, with a view to extending its scope to mid-size partnerships.**

Recommendation 6

3.64 **The committee recommends that the Australian Government enhance the transparency of large professional service firms by designating them as Public Interest Entities and requiring them to:**

- **subject them to audit if they are not already subject to these requirements, which would be filed with ASIC and be available for public inspection; and**
- **potentially be required to implement the Global Reporting Initiative Standards or the Public Interest Firm Code.**

Recommendation 7

3.65 **The committee recommends that the Australian Government ensure that the financial statements disclosure requirements cover all relevant fees (that may raise a conflict of interests) paid to the entity's auditor for audit and non-audit services. This should cover any single entity and their associated entities in Australia or overseas.**

Recommendation 8

3.112 **The committee recommends that multi-disciplinary large accounting firms (and their associated entities both in Australia and internationally) should not be permitted to supply both audit and non-audit/consultancy services to the same client (and their associated entities both in Australia and internationally).**

Recommendation 9

3.113 The committee recommends that multi-disciplinary large accounting firms (including those required to lodge annual transparency reports under section 332A of the *Corporations Act 2001*) should be required to implement operational separation of their audit practice from their non-audit practice. The principles of operational separation should be materially consistent with those applying in the United Kingdom or other global best practice.

Recommendation 10

3.114 The committee recommends that the Australian Government legislate to give further powers to the Australian Securities and Investments Commission to oversee audit to cover all partners within multidisciplinary firms regardless of which part of the firm they work in, as required in the UK Financial Reporting Council Audit Firm Governance Code.

Recommendation 11

4.53 The committee recommends that the Australian Securities and Investments Commission:

- **re-establish a program of random audit inspections;**
- **supplement its existing risk-based approach by also reviewing audit files where conflicts of interest arise from the Big Four firms providing other services to their audit clients (noting that such conflicts should not occur from the time of implementation of operational separation); and**
- **increase the level of resources that it devotes to financial report inspections and audit inspections until there is a significant improvement in audit quality.**

Recommendation 12

4.54 The committee recommends that the Australian Government implement a legislative requirement that the Australian Securities and Investments Commission publish all individual audit firm inspection reports.

Recommendation 13

4.55 The committee recommends that the Australian Government implement the Financial Reporting Council recommendations to the Minister to pursue legislative change on disclosure of auditor tenure and audit fees in directors' reports and going concern assessments in directors' declarations.

Recommendation 14

4.56 The committee recommends that the *Corporations Act 2001* be amended to expand the auditor's independence declaration to require the auditor to

specifically confirm that no prohibited non-audit services have been provided.

Recommendation 15

4.57 The committee recommends that the *Corporations Act 2001* be amended to implement a mandatory tendering regime such that Public Interest Entities (including listed companies and the large multidisciplinary partnerships, such as the Big Four) required to have their financial reports audited under the Act must undertake a public tender process every ten years.

Recommendation 16

4.58 The committee recommends that the *Corporations Act 2001* be amended (following consultation with relevant stakeholders) such that entities required to have their financial reports audited must establish and maintain an internal controls framework for financial reporting, including requirements that:

- **management evaluate and annually report on the effectiveness of the entity's internal control framework; and**
- **the external auditor report on management's assessment of the entity's internal control framework.**

Recommendation 17

4.63 The committee recommends that the Australian Government:

- **consider mandating digital financial reporting for listed companies and other public interest entities in Australia; and following such implementation and evaluation:**
- **consider options for resolving barriers to implementing digital financial reporting for privately owned companies, not-for-profits and charities in Australia.**

Recommendation 18

4.70 The committee recommends that the Australian Government legislate to enhance the Australian Security and Investments Commission's power to take enforcement action against audit firms, not just individuals, including for quality management standards.

Recommendation 19

4.71 The committee recommends that the Australian Government consider requiring audit firms, or the audit section of multidisciplinary firms, to incorporate.

Recommendation 20

5.67 The committee recommends that:

- **the Australian Government adopt a phased approach and proceed with its proposal to integrate the accounting and audit standards boards with the Financial Reporting Council; and**
- **the Australian Government then establish an organisation in Australia equivalent to the United States Public Company Accounting Oversight Board.**

Recommendation 21

5.75 The committee recommends that the Australian Government reform the Companies Auditors Disciplinary Board (CADB) to improve its efficiency and effectiveness by:

- **implementing improved, more stable and transparent arrangements for staffing and resourcing auditor disciplinary functions;**
- **providing more clarity around what cases trigger referral to CADB;**
- **removing the Australian Security and Investments Commission's (ASIC's) discretion over whether auditors can avoid a disciplinary process by resigning;**
- **compelling the findings of ASIC audit surveillance reports to be automatically referred to CADB; and**
- **giving CADB the power to make own-motion investigations, in addition to receiving referrals from ASIC or the Australian Prudential Regulation Authority.**

Recommendation 22

5.85 The committee recommends that the Australian Government consider additional mechanisms to ensure the Financial Reporting Council and any related standards boards, the Companies Auditors Disciplinary Board, the Australian Securities and Investments Commission, the Tax Practitioners Board, and the Australian Taxation Office and other government regulatory bodies are independent and are seen to be independent, including by ensuring that the bodies do not include individuals with a current financial interest in entities under the direct governance of the body. This may include revision of internal governance structures, independent review or audit of decision making and internal governance structures by an external third party, such as a government department or parliamentary committee or appropriate expert to ensure that the revolving door between the public and private sectors does not lead to perceived or actual conflicts of interest.

Recommendation 23

5.86 The committee recommends that the Australian Government ensure that the new Financial Reporting Council has structural, governance and administrative arrangements which are independent from Treasury, including by ensuring that the new Financial Reporting Council do not include individuals with a current financial interest in entities under the direct governance of the body.

Recommendation 24

5.91 The committee recommends that the Australian Government enhance and harmonise codes of conduct and requirements for disclosure of conflicts of interest for all bodies established under the Australian Securities and Investments *Commission Act 2001*, including the new Financial Reporting Council.

Recommendation 25

6.37 The committee recommends that the professional accounting bodies' reports to the Professional Standards Councils are published on the professional accounting bodies' websites.

Recommendation 26

6.39 The committee recommends that the Australian Government review the professional accounting bodies' investigatory and disciplinary processes and, if appropriate, establish a single, independent body to perform these functions. Such a body should incorporate a positive disclosure standard so that relevant entities would be required to disclose incidents that are flagged to the Australian Securities and Investments Commission and the new integrated Financial Reporting Council.

Recommendation 27

6.42 The committee recommends that the Australian Government bring forward legislation to make the term 'accountant' a protected term, so that only qualified accountants who are members of a professional body can use it.

Recommendation 28

6.44 The committee recommends that the Australian Government, as part of establishing the new integrated Financial Reporting Council (FRC), consider how ethical standards and professional matters are to be treated (including the FRC's role in creating standards, and the role of the Accounting Professional and Ethics Standards Board). Appropriate measures should be adopted to address the conflict of interest inherent in professional bodies

setting and enforcing their own standards whilst overseeing entities who are their own fee-paying members.

Recommendation 29

6.91 The committee recommends that the Australian Government consult with industry with a view to creating a consultancy code and associated consultancy code compliance body (with sufficient powers to ensure compliance with the code) within government that will register individual consultants and have graduated registration requirements for firms based on firm size. Government entities, including Corporate Commonwealth Entities, should be required to only engage consultancies who are members of this body. At a minimum the body should apply to persons providing consultancy services not subject to other mandatory obligations and membership requirements should include mandatory reporting of misconduct witnessed by other consultants. This should be reviewed three years after implementation.

Recommendation 30

6.92 The committee recommends that the Australian Government consider the creation of a voluntary industry code for public interest entities' engagement of consultancies, which includes the exclusive use of consultants subject to the code and/or registration body determined in recommendation 29. After three years, the government should review the capacity and effectiveness of the code becoming mandatory for public interest entities.

Recommendation 31

6.93 The committee recommends that consulting firms undertaking government work be required to make a declaration if subject to supervised remediation whilst undertaking government work, and the exact terms of such supervised remediation. Upon tendering for government work, consulting firms should also be required to provide specific information regarding the engagement of the firm with global leadership, including but not limited to the provision of information regarding what oversight, if any, exists with respect to that firm's engagement with Australian regulatory and legal bodies.

Recommendation 32

6.94 The committee recommends that the Australian Government explore options to enhance accountability for consultants, potentially including the establishment of a public register (maintained by the relevant registration body) to record for public view all instances of malpractice.

Recommendation 33

6.95 The committee recommends that the Australian Government and professional bodies develop mechanisms to enhance the transfer of misconduct information between regulators and all relevant professional bodies.

Recommendation 34

6.96 The committee recommends that the Department of Finance consider further mechanisms to increase usage of small and medium-sized consulting firms in government procurement, including firms which exclusively undertake government work.

Recommendation 35

6.97 The Committee recommends that the Australia Government consider options to improve the Australian Taxation Office's tax settlement procedures with a view to making their details more transparent to all taxpayers and setting out appropriate procedures and protocols for their use, negotiation and terms.

Recommendation 36

7.73 The committee recommends that the Australian Government take action to ensure greater alignment of whistleblower protection laws across the public and private sectors.

Recommendation 37

7.76 The committee recommends that whistleblowing protections be applied to large audit, accounting and consulting firms.

Recommendation 38

7.78 The committee recommends that the Australian Government consider options for greater practical support of whistleblowers such as a Whistleblower Protection Authority (covering both the public and private sectors), including access to civil remedies and financial compensation particularly in instances where disclosures result in the imposition of a penalty on the relevant entity or organisation.

Recommendation 39

7.79 The committee recommends that the Australian Government continue to monitor and review legal frameworks and regulations that have been implemented to protect workers from harmful internal cultures and unsafe working environments in the form of bullying, sexual harassment and exploitation.

Recommendation 40

8.52 The committee recommends that the Australian Government consider mechanisms to increase competition within the audit sector. This may include mandating tendering, mandating firm rotation for auditors, and mandating public interest entities be subject to joint audits which include smaller firms.

Chair's Foreword

It was at Senate Economics Estimates on the evening of the 15th of February 2023, in response to my question, that the CEO of the Tax Practitioners Board Michael O'Neill revealed that Peter John Collins – a partner at PwC – had conspired along with '20 or 30 people' to monetise confidential Australian Government information for the benefit of PwC and its clients.

Following this revelation, questions on notice to the Tax Practitioners Board led to the release of 144 pages of internal emails detailing the depth of the deceit, and a disturbing cultural failure within the major international accounting and consulting firm. The emails revealed the hidden inner workings of one of the most important entities in the architecture of the Australian financial sector.

The resulting scandal shook corporate Australia to its core, as PwC became synonymous with a profoundly disturbing breach of public trust.

The subsequent public outrage has ensured the strength of the largely non-partisan and deeply comprehensive parliamentary response, of which this report is a central component. So egregious and shocking were the PwC revelations that the Albanese Government has already implemented significant legislative change, as the Treasurer, Finance Minister, Attorney General and Assistant Treasurer introduced immediate reform. Still, there remains more to be done.

Illuminated on the skyline of major cities across the globe are the alphabet logos of the so-called 'Big Four' accounting and consulting firms: KPMG, Deloitte, EY and PwC. Their colourful banners might catch the eye, but most Australians know little of these massively influential entities that are so important to the proper function of our financial markets.

For those who use their services, it is almost impossible to think that there was a time when they didn't exist. These entities have entrenched themselves as the trusted and independent ethical providers of audit and assurance services that purportedly verify the truth and accuracy of financial statements of companies of all sizes.

Therefore, it is of paramount importance that there is trust in the auditing services provided by these firms, and that their function of providing independent truth is not marred by their own opaqueness. Given every working Australian has superannuation, we each have a stake in the investment decisions being made on our behalf, based upon audited financial statements.

The Big Four are all partnerships, and together audit 193 of the top 200 companies in Australia. What they do matters, and it matters to us all. In the course of this inquiry, we heard from many former senior members of the profession who understood their centrality in the financial ecosystem and they were deeply proud of that work. Many also bemoan the current state of their profession, and speak of an ethical decline, and an increase in risk, to everyone who relies on the integrity of audit.

The Committee's inquiry has been an extensive one, framed around the regulatory, cultural and legal issues which govern the conduct of multidisciplinary firms.

Concerningly, we have documented a broad and relentless pursuit of profit at any price, with the revelation of practices that jettisoned even the most basic principles of ethics and professional accountability. This culture thrives on conflicts of interest which are all too frequently ignored, ill managed, or even exploited.

With regards to the structure of these firms, the Committee has recommended that the proliferation of partners be recalibrated to match the numbers of the legal industry and to realign it to a more operable form of joint and severable liability.

Further, the make-up of multidisciplinary professional service firms should also be altered with the operational separation of the audit component of the firm to be utilised at the exclusion of other services to the client.

These recommendations will change the shape of the industry and implement evidence-based solutions that have proven successful in other sectors and jurisdictions. Such changes will return the focus back to providing objective and independent services and eliminate many of the current inherent conflicts of interest.

On the regulatory side of the equation, mechanisms to strengthen the standards, liability and independence of the bodies that actively monitor and enforce compliance should be considered by the Australian Government.

It is also essential to promote healthy competition within the audit and consulting sectors. The recommendations of this report have been framed by an explicit intention to protect the viability of smaller entities as we move to an increasingly robust regulatory framework. The committee also recommends increasing the use of small and medium-sized consultancies, particularly those that solely undertake government work, as a means of uplifting these businesses and reducing the potential for conflicts of interest among consultants undertaking government work.

Throughout the course of the inquiry the committee contended with varying levels of transparency and willingness among large firms with their respect to their engagement with the committee. In particular, engagement from PwC's past and present leadership proved to be extremely challenging and highlighted an absence of meaningful commitment to reform.

Evidence given verbally or in documents was far too often constructed in compromising half-truths and obfuscation, and far too often was provided only after protracted delays and resistance to requests from the committee.

This failed to meet the standards required by the Parliament and also fell short of public expectation. The inability of the firm's former CEOs Luke Sayers and Tom Seymour to robustly describe, evaluate and take sincere accountability for the culture they created is a failure of leadership by any measure.

Further, Mr Sayers and Mr Seymour's relationship with and treatment of Commonwealth officials of at regulatory bodies, especially the ATO and TPB, revealed that same practice of ignoring, avoiding and delaying proper scrutiny that this committee has had to confront and manage.

I also hold grave concerns about the leadership of the current PwC Australia CEO Kevin Burrowes. PwC International's secret side-payment to Mr Burrowes and the firm's continued refusal to hand over the Linklaters Report and related documents into the foreign PwC network partners involved in the scandal demonstrates a dismissive attitude towards the Australian Parliament and a failure to identify a glaring conflict of interest.

It is for these reasons the committee has taken the view that PwC and related entities should be excluded from tendering for government work until the completion of all ongoing investigations, and resolution of outstanding matters still at large in the public sphere.

We have also recommended that government consulting firms should be required to publicly declare if and when they are subject to international remediation and reveal the terms involved. Australia's national sovereignty should not ever be compromised by international franchise actions or contracts.

I am proud to have chaired this report into the structural challenges in the audit, assurance and consulting industry. It is my hope that our recommendations will clear a path forward for the sector, increasing the security of our government information, and the security of every Australian. Through our corporate entities and our superannuation we each have a stake in the health and stability of this sector.

The report documents a wide range of perspectives, and I would like to thank everyone, including academics, members of the industry, and concerned citizens for their submissions and verbal evidence throughout the course of the inquiry.

I also wish to extend my sincere thanks to the entirety of the committee for their diligent work. The multi-partisan collaboration involved with the inquiry and the delivery of a unanimous report reflects the capacity of our parliament to put the public interest first and achieve meaningful outcomes for the Australian people.

I would like to thank Deputy Chair the Hon Alex Hawke MP, Senator Paul Scarr, Senator Barbara Pocock, Senator Louise Pratt, Dr Daniel Mulino MP, the Hon Luke Howarth MP, Ms Zaneta Mascherenas MP, Mr Steve Georganas MP, along with their staff, and former member of the committee the Hon Keith Pitt MP, for their close attention to this inquiry and regular attendance.

Sincere thanks also go to the committee Secretariat staff who have so professionally and carefully facilitated the inquiry over the more than 12 months of its duration. Without them, this report would surely not be possible.

Since May of 2023, the Australian Financial Review, The Australian, The Sydney Morning Herald and The Age, ABC, The Guardian, Daily Telegraph, Bloomberg, Sky News, Reuters, The Canberra Times, The Saturday Paper, The Mandarin, The International Tax Review and the Financial Times, among many others, have provided ongoing and comprehensive coverage of developments in the sector. The work of many journalists for these outlets has ensured that misconduct within the sector was brought into public view, and these companies were accountable not just to the Parliament or regulators, but also to the Australian people.

Most of all, I wish to thank the countless decent Australians who have called my office and written to me, either by hand or through email, expressing their outrage at the tax leaks scandal, and in many instances sharing the personal experiences of misconduct and cultural and governance failures they have witnessed within the audit, accounting and consulting sector. Whistleblowers took their role seriously and provided Senators and members with important insights that enabled us to undertake informed scrutiny and we thank them for their service to their fellow Australians. This report is a testament to bravery of people who see something that is wrong, have the strength to call it out, and the perseverance to create lasting change.

Chapter 1
Introduction

Inquiry commencement and terms of reference

1.1 The Parliamentary Joint Committee on Corporations and Financial Services (the committee) is established by Part 14 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

1.2 On 22 June 2023, the committee commenced an inquiry into ethics and professional accountability pursuant to its duties under section 243 of the ASIC Act.

1.3 Section 243 of the ASIC Act sets out the committee's duties as follows:

(a) to inquire into, and report to both Houses on:

(i) activities of ASIC or the Takeovers Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or

(ii) the operation of the corporations legislation (other than the excluded provisions); or

(iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or

(iv) the operation of any foreign business law, or any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

(b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and

(c) to inquire into any question in connection with its duties that is referred to by a House, and to report to that House on that question.[1]

1.4 The terms of reference agreed upon by the committee call for an inquiry into recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit and consultancy firms (including but not exclusive to the 'Big Four', PwC, Deloitte, EY and KPMG), via a detailed

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1 *Australian Securities and Investments Commission Act 2001*, s. 234.

investigation and analysis of regulatory, technical, and legal settings, and broader cultural factors, including:

(a) the global and national firm structures, including:

(i) the legal basis for partnership, corporate, hybrid and other structures;
(ii) issues arising from cross border structures and operations; and
(iii) the impact of such structures on confidence in the advisory and audit assurance market for regulatory supervision and accountability to public and corporate sector clients;

(b) the extent to which governance obligations applying to a professional services firm may vary depending on the structure adopted, such as a partnership, a company, a trust, or other structure, and consideration of any gaps and international best practice in areas such as:

(i) entity reporting and transparency;
(ii) executive accountability and remuneration;
(iii) fit and proper person requirements;
(iv) the structure of contracts and the fiduciary responsibility to public and corporate sector clients;
(v) prevailing cultural practices;
(vi) consumer and client protection;
(vii) duties of care;
(viii) management of conflicts of interest; and
(ix) access to whistle-blower protections; and

(c) mechanisms available to government departments, statutory authorities, professional standards bodies, regulators and non-government clients and sanction misconduct and poor performance, including any gaps and overlaps across service and entity types for:

(i) accountability frameworks for governance obligations;
(ii) coverage of disciplinary bodies;
(iii) self-reporting policies and practice;
(iv) whistle-blower policies and established pathways to report;
(v) interaction with and self-referral to regulatory bodies;
(vi) .interaction between regulatory bodies; and
(vii) competition in the audit market; and
(viii) any other related matters.

Conduct of the inquiry

1.5 The committee called for submissions by advertising the inquiry on its webpage and wrote to relevant stakeholders and interested parties inviting written submissions by 31 August 2023. The committee continued to consider submissions and evidence provided after this date.

1.6 The committee received 83 submissions as well as supplementary submissions, additional information and answers to questions on notice, which are listed in Appendix 1.

1.7 The committee held the following public hearings:

- 6 October 2023 in Canberra;
- 3 November 2023 in Melbourne;
- 20 November 2023 in Canberra;
- 21 November 2023 in Canberra;
- 22 February 2024 in Canberra;
- 29 February 2024 in Canberra;
- 1 March 2024 in Canberra;
- 5 March 2024 in Canberra;
- 22 April 2024 in Canberra;
- 8 May 2024 in Sydney;
- 2 August 2024 in Canberra; and
- 20 September 2024 in Canberra.

1.8 A list of witnesses who gave evidence at the public hearings can be found in Appendix 2.

Reason for the inquiry and structure of the report

- Chapter 3: structural and governance challenges in the Big Four firms, including:
  - the impact of large partnership structures on effective governance and possible alternative approaches; and
  - the impact of multidisciplinary firm structures on conflicts of interest between the provision of audit and non-audit services.
- Chapter 4: progress on implementing the committee's recommendations following its previous inquiry into the regulation of auditing and new evidence received in this inquiry.
- Chapter 5: rationalising the regulators for audit and accounting.
- Chapter 6: professional bodies and standards including:
  - oversight of the professional accounting bodies;
  - legislative backing for professional and ethical standards; and
  - the lack of professional bodies and standards for consultants.
- Chapter 7: protection of whistleblowers.
- Chapter 8: competition in the audit sector.

The recommendations made by the Committee have been put into two categories which reflects their respective importance. The priority recommendations (1 to 12, 18, 19, 22, and 29) are those which the Committee

considers are of key importance for immediate action. The other recommendations are matters which should be the subject of government consideration and action.

Acknowledgements

1.9 The committee thanks all individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at the public hearings.

Chapter 2
The PwC breach of confidentiality obligations

Introduction

2.1 This chapter provides:

- a chronology of the PwC breach of confidentiality obligations, which triggered this inquiry; and
- issues arising from PwC's interactions with the committee.

Chronology of the PwC breach of confidentiality obligations and subsequent events

2.2 The PwC breach of confidentiality obligations was revealed when it was identified in January 2023 by Neil Chenoweth in the *Australian Financial Review* that a former PwC partner, Mr Peter-John Collins,[1] 'had breached confidentiality obligations by sharing Treasury information to assist PwC clients to avoid Australian anti-avoidance tax laws'.[2] This section identifies events leading up to January 2023, including regulators' actions, and subsequent inquiries and reviews.

2.3 From 2013 to 2016, the former partner 'received confidential information from Treasury consultations and through his engagement with the Board of Taxation in relation to Australia's forthcoming anti-avoidance tax laws'.[3]

2.4 The former partner 'intentionally shared this confidential information with PwC partners and others both in Australia and overseas' to help clients potentially avoid up to $180 million in annual tax to be paid in Australia under the Multinational Anti-Avoidance Law (MAAL), which commenced in January 2016.[4]

2.5 The 'Australian Taxation Office (ATO) became aware of companies working to avoid the newly introduced MAAL' in April 2016 and sent notices to the Big

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1 Neil Chenoweth, 'PwC partner leaked government tax plans to clients', *Australian Financial Review*, 23 January 2023.

2 Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into ethics and professional accountability: Structural challenges in the audit, assurance and consultancy industry, *Public hearing on 2 August 2024 and responsibility of witnesses*, Media release, 25 July 2024

3 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 1.

4 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, pp 1, 3.

Four firms (PwC, Deloitte, EY and KPMG) in late 2016 to alert them to the companies' actions.[5]

2.6 The ATO efforts to investigate PwC's plans to monetise the confidential MAAL information were impeded by thousands of legal professional privilege claims over internal documents.[6]

2.7 In late 2017, the ATO identified a potential breach by PwC of confidentiality for a Treasury consultation process.[7]

2.8 Secrecy provisions constrained the ATO's ability to share its concerns with Treasury. However, the ATO was advised in 2018 that it could share some information with the Australian Federal Police (AFP), the Commonwealth Director of Public Prosecutions (CDPP), and the Tax Practitioners Board (TPB).[8]

2.9 The ATO explored the potential referral of the PwC breach of confidentiality obligations to the AFP in March 2018. The AFP indicated that:

> In 2018, the ATO asked the AFP's then-Fraud and Anti-Corruption Centre for advice about the matter. This was standard practice for complex tax matters.
>
> Based on the documents provided to the AFP, and further engagement with the ATO, we advised the ATO there was not enough information for the AFP to make an assessment at that time. As such, a referral of a report of crime to the AFP was not progressed.
>
> …the AFP did not receive a report of crime for investigation until 24 May, 2023, almost five years later.[9]

2.10 In July 2020, the ATO referred the PwC breach of confidentiality obligations to the TPB, which commenced separate investigations in January 2021 and March 2021.[10]

2.11 The TPB published the outcomes of its investigations in December 2022 and January 2023, which included:

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5 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 3.

6 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, pp 3–4.

7 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 4.

8 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 5.

9 Australian Federal Police, 'AFP Commissioner Reece Kershaw: Opening Statement Budget Estimates', 4 August 2024, https://www.afp.gov.au/news-centre/speech/afp-commissioner-reece-kershaw-opening-statement-budget-estimates (accessed 21 October 2024).

10 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 5.

- finding that a PwC partner had breached confidentiality obligations on the MAAL and related topics;
- sanctions on the PwC partner who broke the confidentiality obligations, including termination and a two-year ban on the partner's tax agent registration;
- finding that PwC had breached 'the Code of Professional Conduct in that PwC had failed to have in place adequate arrangements to manage conflicts of interest that arose in relation to its activities as a registered tax agent';[11] and
- requiring PwC to implement reforms to governance, reporting and management of conflicts of interests.[12]

2.12 Senate estimates committees (including Economics and Finance & Public Administration) considered the PwC breach of confidentiality obligations on multiple occasions from February 2023 onwards. The Senate Economics Legislation Committee published 144 pages of PwC emails (provided by the TPB), which revealed that others in PwC may have been involved.[13]

2.13 The Senate referred an inquiry into the management and assurance of integrity by consulting services to the Senate Finance and Public Administration References Committee (F&PA committee) in March 2023. That inquiry was extended three times and published substantive reports in June 2023, March 2024, and June 2024.[14]

2.14 PwC announced a review of PwC Australia's culture, governance, and accountability to be led by Dr Ziggy Switkowski AO in May 2023.[15] Dr Switkowski completed his review in September 2023, and it is available on

11 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 5.

12 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, pp 5–7.

13 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, pp 7–12.

14 Senate Finance and Public Administration References Committee, *Inquiry into management and assurance of integrity by consulting services*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Consultingservices (accessed 15 October 2024). A fourth report, which was a progress report to extend the inquiry, was published in May 2024.

15 PwC, *Ziggy Switkowski AO to lead independent review of PwC Australia*, Media release, https://www.pwc.com.au/media/2023/ziggy-switkowski-leads-pwc-independent-review.html (accessed 15 October 2024).

the PwC website.[16] PwC issued a management response in September 2023, also published on the PwC website. PwC accepted the review's recommendations and indicated that it intended to implement them.[17]

2.15 The Treasury referred the PwC breach of confidentiality obligations to the AFP in May 2023.[18]

2.16 In May 2023, the NSW Public Accountability and Works Committee began an inquiry into the NSW Government's use and management of consulting services. In its report tabled in May 2024, the committee made 28 recommendations focused on improving transparency around the government's use of consultants.[19]

2.17 PwC indicated in late May 2023 that it had stood down nine partners but did not name them or reveal the nature of their involvement. In early June 2023, PwC named four former partners who had left, but the nature of their involvement was not indicated.[20] PwC and PwCIL have been unwilling to provide information on PwCIL's involvement in the decisions on exits of the nine individuals involved in the PwC breach of confidentiality obligations.[21]

2.18 The committee commenced its inquiry in June 2022 to address ethics, professional accountability and structural challenges in the audit, assurance and consultancy industry.

2.19 In July 2023, Allegro Funds announced that it was acquiring PwC Australia's Public Sector advisory business to create an independent consulting company for government clients.[22]

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16 Dr ZE Switkowski AO, *Review of governance, culture and accountability at PwC Australia*, September 2023, https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf (accessed 15 October 2024).

17 PwC, *PwC Australia's commitments to change – Response to the findings of Dr Ziggy Switkowski AO and recent events at PwC Australia*, September 2023, p. 2, pwc-australias-commitments-to-change.pdf (accessed 15 October 2024).

18 Senate Finance and Public Administration References Committee, *PwC: A calculated breach of trust*, June 2023, p. 9.

19 Public Accountability and Works Committee, Parliament of NSW, *NSW Government's use and management of consulting services*, 29 May 2024, pp xii–xv.

20 Senate Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, June 2023, p. 3.

21 PwC, answers to questions on notice 186, 2 October 2024 (received 15 October 2024); PwC, answers to questions on notice, 16 September 2024 (received 27 September 2024).

22 Senate Finance and Public Administration References Committee, PwC: The Cover-up Worsens the Crime, June 2023, p. 32; Allegro, 'Allegro Funds acquires PwC Australia's public sector business', *Media Release*, 4 July 2023 (accessed 15 October 2024).

2.20 In August 2023, the Treasurer announced legislation to address the barriers encountered by regulators investigating the breach of confidentiality obligations by PwC. The legislation was intended to increase penalties, give regulators stronger powers and enhance collaboration within government.[23] A bill to implement those reforms was introduced into the Parliament in November 2023, supported by the Senate Economics References Committee and passed in May 2024.[24]

2.21 PwC Australia released a statement of facts in September 2023, called the *Review of tax confidentiality breaches and related questions*, which indicated that PWC had completed its internal investigations and identified the wrongdoing, the people involved and associated governance failings.[25]

2.22 In September 2023, PwC International Limited (PwCIL) made a one page statement on the completion of the investigation by Linklaters (the Linklaters report) into the movement of confidential information from PwC Australia to other countries.[26]

2.23 The Australian Securities and Investments Commission (ASIC) banned the PwC partner from 'providing financial services or controlling an entity that carries on a financial services business for eight years' in October 2023.[27]

2.24 In November 2023, Chartered Accountants Australia & New Zealand (CAANZ) censured and fined PwC $50,000 (the maximum fine possible at the time) for breaching CAANZ By-Laws. CAANZ also ordered PwC to comply with new reporting obligations.[28] The effectiveness of CAANZ's processes in dealing with

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23 Senate Finance and Public Administration References Committee, *PwC: The Cover-up Worsens the Crime*, June 2023, p. 18; The Hon Dr Jim Chalmers MP, Treasurer, *Media release*, 'Government taking decisive action in response to PwC tax leaks scandal', 6 August 2023. This was a joint media release with Minister Gallagher, Minister Jones, and the Attorney-General Mr Dreyfus.

24 Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023; https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7107 (accessed 15 October 2024); Senate Economics Legislation Committee, *Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 [Provisions]*, May 2024, p. 72.

25 PwC Australia, *Review of tax confidentiality breaches and related questions*, 27 September 2023, p. 2.

26 PwC International Limited, *Statement on Linklaters' PwC Network review*, Media release, 27 September 2023.

27 Australian Securities and Investments Commission (ASIC), *ASIC bans former PwC partner from providing financial services for eight years*, 20 October 2023, https://asic.gov.au/about-asic/news-centre/find-a-media-release/2023-releases/23-280mr-asic-bans-former-pwc-partner-from-providing-financial-services-for-eight-years/ (accessed 15 October 2024).

28 Chartered Accountants Australia and New Zealand, *PricewaterhouseCoopers Australia censured and fined by CA ANZ Disciplinary Tribunal*, Media release, 28 November 2023, https://www.charteredaccountantsanz.com/news-and-analysis/media-centre/press-releases/pwc-australia-censured-and-fined-by-ca-anz-disciplinary-tribunal (accessed 18 October 2024).

the PwC breach of confidentiality obligations is discussed further at the beginning of Chapter 6.

2.25 Further background information is available in the three substantive reports by the F&PA committee on its inquiry into the management and assurance of integrity by consulting services:

- *PwC: A calculated breach of trust* (June 2023);
- *PwC: The cover up worsens the crime* (March 2024); and
- *Final report* (June 2024).

Issues arising from PwC interactions with the committee

2.26 PwC has long represented itself as a leader in governance and advice in accounting, audit, law and other new branches of the consulting industry. There is a yawning chasm between the rhetoric of its public-facing promotional material and the reality the committee has encountered in its interactions with the various iterations of PwC and its leaders since 2012. The interactions that PwC and PwCIL have had with this committee have failed to meet the behaviours expected of a firm that has any respect for law and the parliament. This has greatly diminished the firm's standing in the eyes of the committee and should be a warning to all potential customers for the services they offer. At every turn, PwC has sought to avoid scrutiny and played for time, seeming to hope that the committee's interest would wane. Ultimately, the firm was forced through threat of summons to attend hearings and provide material—often with significant redactions— in a tardy manner. The firm's collective behaviour over the time since the tax matters became public reveal a general contempt for the democratic process. The committee will in due course consider a referral of relevant matters to the Privileges Committees of the Australian parliament.

2.27 The committee's inquiry has been impeded by PwC's unwillingness to provide information about the PwC breach of confidentiality obligations and subsequent events. PwC Australia and PwCIL have refused to comply with multiple requests from the committee and have been slow to provide incomplete and sometimes potentially inaccurate information. The committee identified these concerns publicly in its media release before the 2 August 2024 public hearing:

> In approaching the hearing, the committee highlights the importance of witnesses providing complete and accurate evidence to parliamentary committees, and the specific responsibility of witnesses to give evidence that is not false, incomplete or misleading. In this regard, the committee notes recent discrepancies needing to be corrected in evidence given to parliamentary committees inquiring into the PwC breaches of confidentiality.[29]

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[29] Parliamentary Joint Committee on Corporations and Financial Services, *Hearing on 2 August 2024 and the responsibilities of witnesses before parliamentary committees*, Media release, 25 July 2024.

2.28 This section addresses three issues of continuing concern to the committee:

- the failure to provide the Linklaters report;
- a lack of clarity on the involvement of PwCIL in the operations of PwC Australia; and
- the withholding of information about Mr Kevin Burrowes' services to and remuneration from PwCIL.

Failure to provide the Linklaters report

2.29 The PwC network appointed Linklaters in May 2023 to 'form an independent assessment of what happened in relation to the unacceptable sharing of confidential information by PwC Australia with PwC personnel outside of Australia'.[30] In September 2023, PwCIL made a statement on the completion of the investigation by Linklaters into the movement of confidential information from PwC Australia to other countries. The release stated that:

> With respect to those PwC people who did receive confidential information from PwC Australia, most did not know the information was confidential. However, the review found that six individuals should have raised questions as to whether the information was confidential. To the extent that they are still with PwC, their firms have taken appropriate action.[31]

2.30 This committee and many others interested in probity, ethics and professionalism do not consider these two short sentences to provide sufficient transparency and accountability for what happened to the confidential information and who was involved. Various bodies (including the ATO, the TPB, the F&PA committee and this committee) have unsuccessfully sought access to the Linklaters report.[32]

2.31 PwCIL provided some additional assertions to the F&PA committee, suggesting that the Linklaters report did not identify any breaches of professional standards and indicated that the confidential information had not been used for commercial gain by PwC firms or individuals outside Australia.[33] Given the record of misrepresentation and obfuscation by PwC and direction to do so by PwC IL revealed in the supervised remediation correspondence, the committee is not at all persuaded by such assertions. Nothing short of the opportunity to directly interview relevant individuals and PwC related entities will satisfy the committee at this point, in addition to sighting the Linklaters report, the notes

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30 PwC International Limited, Statement on Linklaters' PwC Network review, Media release, 27 September 2023.

31 PwC International Limited, Statement on Linklaters' PwC Network review, Media release, 27 September 2023.

32 Senate Finance and Public Administration References Committee, *PwC: The cover-up worsens the crime*, June 2023, pp 8–9.

33 PwC, answers to question on notice 162, 2 August 2024 (received 20 August 2024).

of the inquiry, and the terms of reference on which the report was commissioned.

2.32 The committee made several requests to PwC and PwCIL for a copy of the Linklaters report. The committee provided PwCIL with an opportunity to provide the Linklaters report on a confidential basis in March 2024. PwCIL declined to provide the Linklaters report, claiming that it is legally privileged.

2.33 The committee reiterated its request (including the option for confidential treatment by the committee) to PwCIL in April 2024, informing PwCIL that the committee did not accept legal professional privilege as an acceptable ground for refusing to provide the Linklaters report because '[i]t has never been accepted in the Senate, nor in any comparable representative assembly, that legal professional privilege provides grounds for a refusal of information in a parliamentary forum'.[34] PwCIL again declined claiming legal professional privilege.

2.34 The committee requested the Linklaters report again in September 2024, confirming for PwCIL that legal privilege vests in the client and, as such, a client is entitled to waive legal professional privilege to disclose confidential information or documents otherwise protected by legal professional privilege. PwCIL again declined without attempting to make a case for confidentiality by describing the harm that would arise from public release.

2.35 Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, asserted on 2 August 2024 that he had never seen a copy of the Linklaters report, he further claimed he had had asked PwCIL for a copy of the Linklaters report on several occasions and PwCIL had declined to provide a copy. Mr Burrowes stated that '[i]t was a document prepared for PwC International Ltd to provide them with legal advice, and they have chosen not to waive their right not to provide it to us'.[35]

2.36 Given the jurisdictional boundaries that exist, as the document is held by PwC International Ltd in London, the committee then requested assistance in this matter from the United Kingdom Financial Reporting Council (UK FRC). The UK FRC pursued the matter in their jurisdiction and indicated in May 2024 that it had asked PwC Global for a copy of the Linklaters report and that the request was declined. The UK FRC noted that it did not have the power to compel any United Kingdom PwC entity to provide a copy.[36] Given the challenges

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34 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th edition, Department of the Senate, 2016, pp 668–669.

35 Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Committee Hansard*, 2 August 2024, pp 14, 16.

36 UK Financial Reporting Council, answers to questions on notice 116, 22 April 2024 (received 20 May 2024); see also PwC, answers to question on notice 162, 2 August 2024 (received 20 August 2024).

documented here, the committee asserts that without sighting and properly interrogating the Linklaters report, the committee has no confidence at all that PwC or PwCIL have in fact identified or sanctioned the relevant individuals in any jurisdiction in any way.

The involvement of PwCIL in PwC Australia's operations

2.37 Evidence received by the committee indicates a substantial level of involvement in PwC Australia by PwCIL in addressing the issues arising from the PwC breach of confidentiality obligations. For example, Ms Meredith Beattie, the former Chief Counsel of PwC, indicated that:

> …direction was given to the Australian firm that effectively meant there had to be prior consultation with global in relation to matters. It was a supervisory role they had, or a direction to comply…They would be consulted, they would see draft letters, they would comment and they would drive strategy.
>
> …it was a different way of operating, and PwC International had the power to come in, under the regulations, and give the direction that they gave as a way of looking into things and being satisfied as to network issues and the brand.
>
> …Matters would all be run through Mr Oldfield concerning the media, the responses, how it might be dealt with—he was actively engaged. It certainly wasn't Ms Weiss's global general counsel running the Australian firm. There were many people who were involved. They were also there to work with the Australian firm.[37]

2.38 The committee also heard that there were a large number of visits by seven PwCIL staff between May 2023 and March 2024, including the Global Chair, at that time Mr Bob Moritz, and the Global General Counsel, Ms Diana Weiss.[38]

2.39 The committee issued several invitations to PwCIL staff to appear at a public hearing so that the committee could inquire further into their role in PwC Australia. None of those invitations have been accepted to date. The committee expects that should they travel to Australia, they will make themselves available for a public hearing.

2.40 The committee sought to better understand the relationship between PwC Australia and PwCIL by requesting copies of the agreement between PwC and PwCIL and other documents associated with the remediation of the PwC breach of confidentiality obligations. Both PwC and PwCIL declined to provide those documents, citing commercial confidentiality.[39]

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37 Ms Meredith Beattie, Private capacity, *Committee Hansard*, 20 September 2024, pp 11–12.

38 PwC, answers to questions on notice 174, 19 September 2024 (received 3 October 2024).

39 PwC, answers to questions on notice 88, 27 March 2024 (received 10 April 2024); PwC International Limited, answers to questions on notice 89, 27 March 2024 (received 10 April 2024).

2.41 In September 2024, the committee informed PwC that it did not accept PwC's claim to avoid the provision of the remediation documents due to commercial confidentiality. The committee reiterated its request for the remediation documents and reminded PwC of the committee's capacity to receive them on a confidential basis. PwC provided three remediation letters in October 2024 (with personal identifying information and direct quotes from the PwCIL Regulations redacted) and requested that the committee receive them confidentially. After further communications with PwC, unredacted copies of the remediation documents were provided in late October 2024. The committee made a determination that PwC's claims of commercial confidentiality regarding the documents were insufficient to justify receiving them confidentially. After notifying PwC of this outcome, the documents were published on 1 November 2024.

2.42 The remediation letters document the PwCIL assessment of the failures of PwC Australia and the rationale for the remediation determination, highlighting longstanding inadequacies. The 19 May 2023 document initiating supervised remediation processes, was addressed to PwC Australia Acting Senior Partner Kristin Stubbins and Tracey Kennair, as Chair of Board of Partners. It was signed by PwCIL General Counsel Diana Weiss and cc'd to Global CEO Bob Moritz, Global Chief Commercial Officer Carol Stubbings, then PwCIL Global Clients and Industries Leader Kevin Burrowes who following the subsequent June 2023 remediation determination was appointed by PwCIL as PwC Australia Interim Management to serve as Country Senior Partner (CEO), PwCIL Global Board Chair Lisa Sawicki. According to the 19 May correspondence the PwCIL Network Leadership Team (the "NLT") based the determination on the extract of the information from the remediation letters identified in Box 2.1.

Box 2.1 Extract from PwC remediation letters

- Historical behavior across a number of matters has caused an erosion of trust and confidence in the Firm and damage to PwC's reputation:
  - Over the course of the past several years, the Firm has been responding to various inquiries and claims relating to certain of the activities and practices of its TLS business, including inquiries from the Australian Tax Office (ATO), promoter penalty proceedings, claims of false statements relating to assertions of attorney-client privilege, findings of confidentiality breaches and inadequate identification of conflicts of interest by the Tax Practitioners Board (the "TPB") and other matters (collectively, the "Tax Matters");
  - In addition, a series of public hearings and disclosures have shed light on the Firm's involvement in consulting engagements that

have been beset by poor risk management practices, evidenced gaps in professional judgment and exposed the Firm to further public scrutiny and criticism (collectively, the "Consulting Matters"). These include, among others, a matter in which the Firm was engaged by a government agency to evaluate a tax recovery practice, determined that the agency had overstated the benefits of the practice and then allegedly acceded to the agency's request not to produce a critical report (while still collecting its engagement fees);

- The Consulting Matters and Tax Matters, in particular the TPB matter, have now become the focus of the Senate Inquiry and intense public criticism of the Firm;
- The Firm made public statements that improperly downplayed the severity of the TPB matter and minimized the significance of the underlying behaviors, which have given rise to significant adverse media, both domestically and globally;
- Evidence produced to the TPB and publicly released in the Senate Inquiry indicates that members of the Firm's leadership had information that should have caused them to question the conduct of the partners involved but that they did not do so. The publication of this evidence and the Firm's public response have further eroded trust and confidence in the Firm;
- The Firm's public response to recent disclosures also must be considered against the back-drop of earlier representations made by the Firm in response to notice of behavior and culture issues. In 2020, after a series of contentious reviews and a promoter penalty proceeding by the ATO, the Firm received findings from the ATO that the behaviors of its tax practice were concerning and that those behaviors indicated that "PwC was primarily concerned with expanding its market share and winning new work," with "no contemplation to engaging with our office around contentious structures being proposed in response to the introduction of the MAAL provisions". In response to these findings, the Firm commissioned a review and put in place a series of process changes. In connection with that review, (See March 2021 Quigley Report at 21), it was noted that the Firm would need to demonstrate that positive behavioral and cultural changes have been made. The Firm's public statements about the TPB matter, which relates to the same underlying period and conduct, reflect a failure to demonstrate the cultural change that it committed to two years ago; and
- In addition, in responding to media and other inquiries relating to these matters, the Firm failed to work collaboratively with and

keep Network leadership apprised of relevant facts and circumstances, thereby hampering the Network's ability to respond.

- Based on a review of the information available relating to these matters and the Firm's response to them, it is apparent that:
  - The Firm failed to undertake an appropriate root cause analysis to understand the reasons for the behaviors in these matters and identify meaningful remediation steps;
  - The Firm did not conduct adequate investigation of the underlying behaviors in order to assess accountability, nor did its Ethics leader or others in leadership or governance of the Firm identify the need to address behaviors that did not live up to our Code of Conduct or values where those behaviors arose in connection with practice matters;
  - As a result, there has been little to no accountability for the actions and inactions of those responsible for these matters, and the actions that have been taken were unduly delayed;
  - There has been inadequate focus on identifying and addressing actual or apparent conflicts of interest and sensitive situations and inadequate attention to building and maintaining an ethical culture; and
  - There has been inadequate disclosure to and consultation with the Network.

We believe that these matters also have materially prejudiced or are likely to materially prejudice the objectives of the PwC Network in Australia. In addition, the Firm's acts and omissions have exposed multiple member firms and clients across the network to potential risk and reputational harm.

The Firm has taken certain steps to respond to the above failures, including requesting that Tom Seymour step down as Senior Partner, appointing a new Acting Senior Partner, removing two other senior leaders from the Executive Board and appointing Tony O'Malley to serve as Chief Risk and Ethics leader. The Firm also has taken or committed to take various other steps in responding to legal and regulatory proceedings relating to the Tax Matters and in response to the TPB matter and Senate Inquiry, and it recently appointed Ziggy Switkowski AO to lead an independent review of the Firm's governance, accountability and culture and make recommendations. Given the ongoing reputational damage and the severity of the breakdown of trust and confidence in the Firm, as well as the acknowledged need for improvements in governance, accountability and

> culture, Network investigation, monitoring and supervision is deemed necessary.[40]

Withholding of information about Mr Burrowes' services to and remuneration from PwCIL.

2.43 Mr Kevin Burrowes was among the team within PwCIL engaged in the response to the unfolding events within PwC Australia over the Peter John Collins matter. His main role in 2023-24 was as a partner of PwC UK. He travelled to Australia and was part of the PwCIL response team including Mr Moritz, Ms Weiss and Mr Ryan Stanton.[41] The Remediation Letters and Mr Burrowes' contract reveal:

- that PwC Australia was a defaulting firm under the PwCIL regulations;
- the reasons for PwCIL's decision;
- remedial actions that PwC Australia must implement on governance, oversight, and cooperation;
- that PwC Australia had failed to comply with some of the PwCIL remediation requirements;
- the appointment of interim management selected by PwCIL; and
- Mr Burrowes duties and remuneration.

2.44 The committee has also been concerned about the inaccurate and incomplete evidence relating to Mr Burrowes' services to and remuneration from PwCIL. In a media release before the 2 August public hearing, the committee noted that:

> On 9 February 2024, at a hearing of the Senate Finance and Public Administration References Committee's inquiry into the Management and Assurance of Integrity by Consulting Services, PwC Australia CEO, Mr Kevin Burrowes, provided evidence that his salary was $2.4 million. A clarification to this evidence received on 13 February 2024 stated that 'Mr Burrowes incorrectly answered a question about his current remuneration. The correct answer is $2.8m'.
>
> On 13 June 2024, the Chair of the committee, Senator Deborah O'Neill, submitted questions on notice to PwC seeking further clarification regarding Mr Burrowes' salary package. On 1 July 2024, Mr Burrowes responded, stating that his remuneration package for the 2024 financial year would be $4 million in total, excluding a potential bonus.[42]

2.45 Subsequently, PwC continued to decline to provide information that may clarify what services Mr Burrowes provides to PwC Australia and PwCIL, how those are remunerated and whether there are conflicts of interest. In July 2024, PwC

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40 PwC, answers to questions on notice 188, 2 August 2024 (received 29 October 2024).

41 Ms Meredith Beattie, answers to question on notice 195, 20 September 2024 (received 23 October 2024).

42 Parliamentary Joint Committee on Corporations and Financial Service, *Hearing on 2 August 2024 and the responsibilities of witnesses before parliamentary committees*, Media release, 26 July 2024.

revealed a list of services provided by Mr Burrowes to PwCIL, but in August, it declined to provide a copy of Mr Burrowes' services agreement.[43] PwC subsequently provided a copy of Mr Burrowes' services agreement on 27 September 2024, requesting that it be received on a confidential basis.[44] Given the level of public interest in these matters, the material impact that PwC has on the public verification of key information vital to the proper functioning of the markets, and the lack of good faith by leaders of PwC over a number of years, the committee considers that it is in the public interest and material benefit to PwC Australia partners not aware of these arrangements to release all of the material that the committee have been able to prise from this secretive enterprise.

2.46 It boggles the mind that Mr Burrowes as CEO had not informed PwC Australia colleagues and staff about the remuneration from PwCIL. As leading partner, he is technically, severally and jointly liable with all of those hundreds of partner colleagues.

2.47 There was a small PwC Governance Board in place in June 2023. Those board members, including Australian partners, were advised of Mr Burrowes' remuneration: a payment of $2.8 million per year, plus bonuses from PwC for his CEO role and the PwCIL contract and associated salary, $1.2 million per year plus bonuses. Members of the 2023 PwC Governance board did not disclose that important information to their partners, other governance entities within PwC or to members of the public. If anyone on the board had any insight to see the dual payments to Mr Burrowes for his dual roles, as the assigned Australian CEO PwC and simultaneously contractor to PwCIL, as a conflict of interest they did not advise or report that conflict for disclosure, further consideration and proper management. [in June 2023 there were 10 elected members, plus the interim CEO (Ms Kristin Stubbins), Ms Patricia Carney was a member, Mr Richard Oldfield was not a member but attended as a PwCIL representative. The current Governance Board members are John M. Green (Chair), Ewan Barron, Emma Hardy, Rosalie Wilkie, Marcus Laithwaite, Lisa Chung AM, Ian Hockings, Kevin Burrowes, Michael Fung, Carmel Mulhern. Mr Burrowes was not a member in June 2023. Recently, John M. Green replaced Justin Carroll as Chair and Lisa Chung AM and Carmel Mulhern joined the board as independent board members][45]

43 PwC, answers to questions on notice 157, 2 August 2024 (received 20 August 2024); PwC, answers to questions on notice 144, 19 July 2024 (received 29 July 2024).

44 PwC, answers to questions on notice, 16 September 2024 (received 27 September 2024).

45 PwC, answers to questions on notice 168, 2 August 2024 (received 20 August 2024); Ms Patricia Carney, Partner, PwC, *Committee Hansard*, 2 August 2024, p. 6; PwC, *PwC's Governance Board*, https://www.pwc.com.au/about-us/pwc-governance-board.html (accessed 28 October 2024). Justin

2.48 Critically, PwC Australia's Chief Risk and Ethics Leader, Mrs Jan McCahey, was not informed that Mr Burrowes was receiving separate remuneration from providing services to PwCIL. This is despite Mrs McCahey's critical role in the public reporting on culture and governance change to comply with the remediation orders imposed on PwC by the TPB. In particular, Mrs McCahey carries the responsibility to prepare and sign off on reports to the TPB on matters relating to improved practices around conflicts of interest. She was unaware of the Burrowes conflict until the matter became public. That failure of ethical action at governance board level has compromised the capacity for accurate reporting by Ms McCahey regarding firm-wide conflicts of interest and demonstrates an inadequate effort on the part of Mr Burrowes to build and maintain a genuine culture of conflict-of-interest disclosure.

2.49 The reports on management of conflicts of interest by PwC were intended to drive cultural change with respect to identified failures of the firm in adequately disclosing conflicts of interest. The reports seemingly failed to comply with the spirit and intention of this request through their failure to identify Mr Burrowes' conflict in reports provided to the TPB in:

- July 2023;
- December 2023; and
- June 2024.[46]

2.50 It is unclear whether the TPB intends to maintain these reporting requirements in the future, particularly considering PwC's seeming failure to appropriately comply with these standards.

2.51 Mrs McCahey only became aware of conflict of interest regarding Mr Burrowes' additional payments from PwCIL on 20 June 2023 as PwC Australia was required to respond at that time to the committee's questions.[47] As a result of this deception by her own PwC CEO regarding payments from PwCIL, Mrs McCahey was not able to inform the TPB of Mr Burrowes' potential conflict of interest, as required by the TPB under the increased supervision imposed in the wake of the PwC breach of confidentiality obligations.[48] Her integrity was besmirched by this gross failure of ethics and professionalism by not only Mr Burrowes but by those on the Governance board who remained silent and failed

Carroll was Chair of the Board for 2023–24, PwC Australia, *Transparency report 1 July 2023 – 30 June 2024*, p. 4.

46 PwC, *PwC Compliance Report re TPB Order dated 25 November 2022, Report for six-monthly period ending 30 June 2023*, 14 July 2023; PwC, *PwC Compliance Report re TPB Order dated 25 November 2022, Report for six-monthly period ending 31 December 2023*, 18 December 2023; PwC, *PwC Compliance Report re TPB Order dated 25 November 2022, Report for six-monthly period ending 30 June 2024*, 1 July 2024.

47 Mrs Jan McCahey, Chief Risk and Ethics Leader, PwC Australia, *Committee Hansard*, 2 August 2024, pp 2–5.

48 *Committee Hansard*, 2 August 2024, pp 3–4.

to inform their colleagues in accordance with the most basic levels of professional accountability to one’s own partners.

2.52 Mrs McCahey and Ms Patricia Carney (a partner of PwC Australia, director of PwCIL and a member of the PwC Australia Governance Board) indicated that they had not been given access to a copy of Mr Burrowes’ services agreement with PwCIL.[49] Mrs McCahey acknowledged the potential for conflicts of interest with Mr Burrowes’ arrangements:

> I see that there's a potential for conflict. I guess, being in the midst of it, I see it very much as an aligned set of interests.[50]

2.53 Mr Burrowes acknowledged that he had not informed the PwC Australia Board about what and to whom in the global PwC Network he was providing services and information to as part of his agreement with PwCIL.[51] Although there were a small number of partners and the governance board at that time who were made aware of the existence of that contract and that Mr Burrowes was being remunerated for that contractual agreement.

2.54 The committee wrote to Mr Burrowes indicating that the above omissions and discrepancies in his evidence concealed a significant potential conflict of interest between his role with PwC Australia and the services for which PwCIL remunerated him. The committee advised Mr Burrowes that it considered that the concealment of that potential conflict of interest substantially obstructed the committee’s ability to properly interrogate and weigh his evidence about PwC Australia’s past breaches of confidentiality obligations and the steps it has since taken to address and prevent such unethical behaviour.

2.55 The committee further advised Mr Burrowes that in his evidence given at the hearing on 2 August 2024, the committee considered that he knowingly did not inform the committee of the remuneration derived from PwCIL, as he indicated that he understood the question to be restricted to his role with PwC Australia. The committee informed Mr Burrowes that considering the existence of the remuneration-based conflict of interest outlined above, the committee regards his apparent misunderstanding as revealing, at best, a profound lack of judgement and lack of appreciation of his obligations as a witness before a parliamentary committee.

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49 Mrs Jan McCahey, Chief Risk and Ethics Leader, PwC Australia, *Committee Hansard*, 2 August 2024, p. 9; Ms Patricia Carney, Partner, PwC Australia, *Committee Hansard*, 2 August 2024, p. 9.

50 Mrs Jan McCahey, Chief Risk and Ethics Leader, PwC Australia, *Committee Hansard*, 2 August 2024, p. 4.

51 Mr Kevin Burrowes, Chief Executive Officer, PwC Australia, *Committee Hansard*, 2 August 2024, pp 12–13.

Committee view

2.56 PwCIL's failure to provide the Linklaters report (even on a confidential basis) means that the committee remains concerned that PwC may be withholding information and is therefore not genuinely seeking to resolve all aspects of the PwC breach of confidentiality obligations.

2.57 The committee does not feel adequate evidence has been provided, either publicly or confidentially to the committee, to conclude that the nine individuals exited were in fact those within PwC most culpable for the breach of confidentiality obligations. It appears that PwC undertook this decision as a means of addressing negative publicity, potentially not appropriately sanctioning those who had engaged in misconduct. The committee expresses concern that some of those publicly named and exited may have been 'sacrificial offerings' to create the appearance of having conducted and completed inquiries regarding the Peter John Collins matter. There is every chance that some of those nine people identified were not the actual ones involved in the Collins matter; they may have been dismissed for some other reason but were grouped together to create an impression that the matters were concluded.

2.58 In this endeavour to media manage the Australian arm of PwC, PwC Intl were not just complicit but in fact directly responsible. The timing of the release of the supervised remediation documents and the timing of the publication of this report does not allow sufficient time for the committee to acquire or interrogate the documents referred to in Item 7, including talking points or documents prepared for Senate inquiries or significant decisions related to governance and leadership. We do consider them documents of public interest however.

2.59 See Box 2.2, whether the remediation documents clearly state:

Box 2.2 Further extract from PwC remediation letters

5. Accountability decisions: Individuals for the matters under review in the Senate Inquiry and related matters, the Network investigation or the governance, accountability and culture review, and the related consequences to be imposed, must be reviewed by and agreed with me and the Network Representative.

6. Substantive Decisions Affecting Firm Leadership, Partners or Governance: The Firm shall consult with the Network Representative regarding any substantive decisions that affect firm leadership, personnel or governance, including but not limited to the appointment or removal of leaders or governance representatives and the hiring of external parties to partner-level roles relating to the TLS or public sector businesses. The Firm shall not implement any such decisions until agreed by the Network Representative.

7. Communications and Media Inquiries: The Firm shall cooperate with PwC's Global Corporate Affairs and Communications group in preparing

> communications or talking points or conducting webcasts that relate or refer to the Tax Matters, the Consulting Matters, the Senate Inquiry and other related matters; the results of the independent review of governance, accountability and culture and resulting recommendations; and significant decisions relating to the leadership and governance of the Firm (the "Topics"). The Firm shall not issue or distribute any such communications until the Network Communications Leader and the Network Representative have reviewed and approved.[52]

2.60 The committee notes that legal action taken by a number of those individuals named by PwC in May 2023, and legal matters settled with the use of non-disclosure agreements, further raise the committee's concern that the sackings of PwC partners may well have lacked procedural fairness and integrity.

2.61 The committee is concerned about the lack of willingness of PwCIL staff to appear before the committee to enable inquiry into the PwC breach of confidentiality obligations and the subsequent role of PwCIL. That adds to the committee's concerns that PwC continues to withhold important information about the breach and its resolution.

2.62 The committee also remains concerned about the lack of transparency regarding Mr Burrowes' services to PwCIL and the associated remuneration. The committee considers that the lack of transparency within PwC Australia about this matter, including not informing partners and staff, fails to set a good example for everyone else in the firm at a time when leaders continue to assert that they are transforming PwC Australia, and must lead by example with the highest degree of integrity. The failure to inform PwC Australia's Chief Risk and Ethics Leader is a significant failure of process that impedes that person's role in monitoring risks associated with conflicts of interest.

2.63 Sadly, the above three issues leave everybody wondering what else remains hidden in PwC Australia and PwCIL. The reforms being put in place at PwC Australia and PwCIL should resolve transparency and accountability without needing the continuing intervention of parliamentary committees. The committee's concern remains that the articulation of changes to governance and culture in the marketplace is not at all matched by the internal processes of PwC, which remain under the direction and control of PwCIL and are compromised by the ethical and unprofessional failure of Mr Burrowes to disclose a $1.2 million per annum conflict of interest to the Australian Partners until this committee demanded that information.

2.64 As set out in Chapters 3 to 6, issues associated with conflicts of interest appear to be a widespread problem for the Big Four firms and mechanisms to manage

52 PwC, answers to questions on notice 188, 2 August 2024 (received 29 October 2024).

and resolve them are failing within the firms, in the professional bodies and in the regulators. Hence, the committee is making a range of recommendations to address those failings.

2.65 The committee is not yet convinced that PwC and the other Big Four firms are on an effective path to learning from their mistakes. Hence, further work by parliamentary committees may be necessary. The committee, therefore, suggests that parliamentary committees should carefully monitor and review the effectiveness of the reforms proposed by this committee and the F&PA committee.

2.66 The committee suggests that the government consider what sanctions it may impose on PwC and its leaders in the period 2012 – 2024 to address its ongoing lack of accountability. The committee notes that measures such as freezing government procurement contracts with PwC are unlikely to have a significant impact because, since the formation of Scyne, PwC no longer works under Commonwealth procurements.

Recommendation 1

2.67 The committee recommends that the Australian Government not permit PwC or any of its related entities to tender for government work until the completion of all ongoing investigations including but not limited to those by the Tax Practitioners Board, Australian Federal Police and Australian Taxation Office. Prior to PwC being eligible to tender for government work, PwC must demonstrate it has taken all appropriate remedial action in response to the outcomes of the investigations.

Chapter 3
Structural and governance challenges in the Big Four firms

Introduction

3.1 The structure of the large multidisciplinary professional services firms gives rise to two issues: firstly, the governance challenges that arise from the size of the partnership model of the Big Four firms (PwC, EY, Deloitte and KPMG), and, secondly, the conflicts of interest that arise from the provision of non-audit services to audit clients by the firms.

3.2 The governance of an organisation is the system by which it is 'controlled and operates, and the mechanisms by which it and its people are held accountable. Ethics, risk management, compliance and administration are all elements of governance'.[1]

3.3 Governance requirements may be externally mandated. For example, governments may require the disclosure of certain types of information to stakeholders, including regulators, shareholders and the public, to help those stakeholders make informed decisions, particularly where a market may not otherwise supply quality information.[2]

3.4 The Switkowski review of governance, culture and accountability at PwC Australia was a scathing indictment of governance and cultural failures at one Big Four firm.[3] Nevertheless, broader questions remain about whether the governance structures at Deloitte, EY, KPMG and PwC are suitable for, firstly, the size of such economically significant partnerships and, secondly, their multidisciplinary firm structure spanning multiple professional services including accounting, audit, assurance, tax advice and a wide range of consulting services.

3.5 Conflicts of interest may be viewed as both a governance and a structural issue. In terms of their impact on auditor independence and objectivity, they are necessarily serious given the central role that independent audit has in a capitalist economy.

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1 Governance Institute of Australia, *What is governance?*, https://www.governanceinstitute.com.au/resources/what-is-governance/, accessed 22 May 2024.

2 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 26.

3 Dr Z E Switkowski AO, *Review of governance, culture and accountability at PwC Australia*, August 2023.

3.6 The first part of this chapter discusses the partnership model and governance. The discussion is limited to the Big Four audit firms because other large consulting firms such as Accenture, Boston Consulting Group and McKinsey and Company operate through company structures and are not involved in providing audit services.

3.7 The second part of the chapter considers the conflict-of-interest issues arising from the current structure of the Big Four and then discusses the options put to the committee for reform.

What currently happens—Partnerships, their advantages and disadvantages, and issues arising from the current size and structures

3.8 Partnerships are governed by the Partnership Acts in each state and territory and the rules of common law and equity. Statutes such as the *Corporations Act 2001* (Corporations Act) regulate few aspects of partnerships. Hence, partnerships are not subject to the same transparency requirements and public scrutiny as corporations.[4]

3.9 Accordingly, the Australian Securities and Investments Commission (ASIC) does not have general jurisdiction over the activities of the Big Four firms. ASIC has some jurisdiction, such as where the Big Four firms have entities or individuals registered or licensed by ASIC within the accounting, audit, and consulting professions related to financial services.[5]

3.10 Partnerships are often established by a contract (sometimes called a partnership deed or agreement) defining the obligations and rights of partners. A partnership is not a separate legal entity, and partners may have unlimited or limited liability for the partnership's debts, depending on the type of partnership. Each partner is both a principal and an agent of the business. Hence, each partner may incur liabilities on behalf of the business, and all partners share joint liability for debts and obligations.[6]

3.11 Partnerships provide advantages such as informality, limited disclosure requirements, smaller establishment costs, pooling of capital and simpler tax arrangements.[7]

3.12 Further advantages of partnerships may include the shared obligations that incentivise partners to act in the business's best interests and the combined ownership and control of partners that creates an interest in overseeing each

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4 Dr Kelli Larson, Curtin Law School, Curtin University, *Submission 13*, p. 2.

5 Australian Securities and Investments Commission, *Submission 49*, p. 3.

6 Anil Hargovan, Michael Adams and Catherine Brown, *Australian Corporate Law*, LexisNexis, 2023, pp 59–60.

7 Anil Hargovan, Michael Adams and Catherine Brown, *Australian Corporate Law*, LexisNexis, 2023, p. 62.

other.[8] In this sense, 'traditional partnership arrangements with unlimited liability and where partners have fiduciary obligations to each other…may even appear to provide greater theoretical protection or advantage to clients than the limited liability form'.[9]

3.13 However, partnerships can have disadvantages such as unlimited liability, limits on the number of partners, and partners having to share control.[10]

3.14 Beyond these general observations, however, concerns were raised about whether the partnership structures in the Big Four firms hampered the effectiveness of their governance arrangements.

3.15 For example, the Society of Corporate Law Academics (SCoLA) indicated that 'the size and scope of the large audit firms and the existence of extensive insurance indemnities may mean that the personal liability of partners and their resultant incentives to monitor each other may not work as effectively as it might in smaller partnerships'.[11] These concerns were also echoed by Treasury.[12]

3.16 Treasury also noted that because the interests of owners and managers are aligned in a partnership, no regulator has the power to intervene in the operations of partnerships for accountability to stakeholders.[13]

Governance structure options for the Big Four firms

3.17 This section discusses options put to the committee on alternative governance structures for the Big Four firms, including:

- partnerships size limits;
- uniform regulation of partnerships;
- corporate structure and governance requirements;
- a Public Interest Entity designation of the Big Four firms;
- a Public Interest Firm Code suggested by PwC; and
- application of the Global Reporting Initiative Standards.

Partnership size limits

3.18 Section 115 of the Corporations Act limits the size of partnerships formed to gain a profit to a maximum of 20 partners. However, Regulation 2A.1.01 of the

8 Department of the Treasury, *Submission 50*, p. 17.

9 Society of Corporate Law Academics, *Submission 24.1*, pp 4, 8.

10 Anil Hargovan, Michael Adams and Catherine Brown, *Australian Corporate Law*, LexisNexis, 2023, p. 62.

11 Society of Corporate Law Academics, *Submission 24.1*, p. 8.

12 Department of the Treasury, *Submission 50*, pp 17–18.

13 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 12. For more detailed information on governance mechanisms for companies and partnerships see pages 10 to 12 of the Treasury consultation paper.

Corporations Regulations 2001 allows for greater numbers in professional partnerships: for example, up to 400 for legal practitioners and up to 1000 for accountants.[14] PwC Australia has approximately 800 partners. The PwC breach of confidentiality obligations focused attention on the problems associated with large partnerships and governance failures within such firms.

3.19 The Treasury consultation paper queried whether the current partnership limits are fit for purpose for accounting firms.[15]

3.20 Both Brent Fisse Lawyers and Professor Andy Schmulow suggested the number of partners in accounting firms be limited to 100.[16]

Uniform national regulation of large partnerships

3.21 There was general support amongst some members of the Big Four for a review of partnership regulation.

3.22 Deloitte supported the government considering the uniform regulation of professional partnerships, including 'consistency across all professional partnerships included in Corporations Regulations 2001, Regulation 2A.1.01'.[17]

3.23 KPMG supported a national review of the regulation of professional partnerships and suggested the review consider overseas approaches, such as the United Kingdom's Limited Liability Partnership model.[18]

3.24 EY submitted that the fragmented approach developed over past decades was a reason to support a single Commonwealth regulator to coordinate the regulatory framework for partnerships and professional services providers, along with the establishment of a partnership disciplinary board.[19]

Corporate structure and governance

3.25 Companies are incorporated in Australia under the Corporations Act. Relevant features of companies include the ability to:

- operate a business through the use of a legal entity separate from its owners (that can sue, own assets and contract in its own name and can exist in perpetuity);
- limit the liability of investors in a business enterprise for acts of the separate legal entity; and

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14 Corporations Regulations 2001, reg 2A.1.01

15 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 14.

16 Brent Fisse Lawyers, *Submission 11*, p. 2; Professor Andy Schmulow, *Submission 68*, p. 2.

17 Deloitte Touche Tohmatsu, *Submission 40*, p. 8.

18 KPMG Australia, *Submission 50.10*, response to Submission 50, p. 4.

19 EY Australia, *Submission 12.1*, p. 1.

- separate ownership and management of a business enterprise and define their respective powers.[20]

3.26 The Corporations Act regulates the duties of officers, the formation and operation of companies, takeovers, and fundraising.[21] The scope of regulation of companies depends on whether the company is listed on a stock exchange and the size of the company.[22]

3.27 The Corporations Act provides mechanisms to resolve differences in interests between management and stakeholders (such as shareholders) through:

- Requirements relating to the provision of a range of information by the company to shareholders and the regulator (ASIC), including audited financial reports and a director's report for public companies and large proprietary companies;
- Requirements for public companies to hold an annual general meeting for management to be accountable directly to shareholders and answer queries.
- Requirements to establish governance arrangements in the form of the appointment of director(s) to represent the interests of shareholders;
- Directors' duties which require directors to act in the best interests of the company.[23]

3.28 BDO, a mid-tier audit firm with a company structure, argued that companies have greater transparency and accountability obligations than partnerships. BDO noted that the obligations under the Corporations Act address entity reporting and transparency, executive accountability, whistle-blower policies and protections, and governance obligations.[24]

3.29 Chartered Accountants Australia & New Zealand (CAANZ) considered that the significance and scale of the Big Four firms means enhanced transparency through regulatory reporting requirements is appropriate, with due regard for the appropriate quantitative and qualitative reporting thresholds.[25]

3.30 The Community and Public Sector Union considered that partnerships have fewer reporting and transparency obligations than corporations, making it difficult to assess tax compliance.[26]

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20 Department of the Treasury, *Submission 50*, p. 13.

21 Department of the Treasury, *Submission 50*, p. 13.

22 Department of the Treasury, *Submission 50*, pp 13–14.

23 Department of the Treasury, *Submission 50*, pp 14–15.

24 BDO Group Holdings Limited, *Submission 38*, p. 1.

25 Chartered Accountants Australia & New Zealand, *Submission 30*, pp 4–5.

26 Community and Public Sector Union, answers to questions on notice 37, 7 December 2023 (received 19 January 2024).

3.31 The joint submission from the Tax Justice Network, Tax Justice Network Australia and the Centre for International Corporate Tax Accountability and Research suggested that partnership structures mean the Big Four firms are mostly not subject to existing Australian Tax Office (ATO) corporate tax data reporting.[27]

3.32 However, the ATO pointed out that the Big Four firms file tax returns, and tax is paid by the partners:

> Under Australia's tax law, a partnership, unlike a company, does not pay income tax on its taxable income. This is because it is not a separate legal entity. Instead, each partner pays tax on their share of the taxable income of the partnership and must return that income in their own personal individual income tax return. Even though the partnership does not pay income tax, it too must file an annual tax return with the ATO.
>
> Similarly, under Australia's tax law, a trust is also not a taxpayer. Again, this means that the service trust does not pay income tax as separate legal entity and generally the beneficiaries of the trust must include their share of the trust income in their own personal income tax return.[28]

3.33 The ATO provided further information on how some partners share their income through Everett assignments:

> It is a common practice for the partners in large professional firms to direct their share of income or profit from the partnership or a related service trust to taxpayers who are not partners of the firm through the assignment of all or part of their partnership interest 2 (commonly referred to as an Everett assignment), and the use of service trust arrangements 3. This assignment (or splitting) of income to other parties, will typically result in a portion of the income being taxed at a lower tax rate. Whether such arrangements are acceptable under the law or whether they constitute tax avoidance, will depend on the facts and circumstances of the case.
>
> Under an Everett assignment a portion of the partner's partnership asset is disposed of, and the disposal may be subject to capital gains tax. On 8 May 2018, the law was changed to limit access to the small business capital gains tax concessions relating to Everett assignments. The change may have discouraged some partners from entering into new Everett assignments.[29]

3.34 Dr Kelli Larson suggested imposing corporate governance principles on partnerships, such as disclosure of financial reporting and audit obligations.[30]

3.35 The Accounting Professional and Ethical Standards Board (APESB) noted that requiring the incorporation of the Big Four firms would result in significant

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[27] Tax Justice Network, Tax Justice Network Australia and Centre for International Corporate Tax Accountability and Research, *Submission 28*, p. 5.

[28] Australian Tax Office, *Submission 36*, pp 3–4.

[29] Australian Tax Office, *Submission 36*, pp 4–5.

[30] Dr Kelli Larson, *Submission 13*, p. 2.

taxation and operational costs and would require an appropriate transition period.[31]

3.36 SCoLA noted that while incorporation would put the Big Four firms under greater ASIC supervision, such a move should be accompanied by sufficient resources to conduct the supervision and enforcement.[32]

3.37 SCoLA also cautioned that if a problematic culture exists in an organisation, the corporate form alone cannot counteract it, as demonstrated by recent corporate governance failures seen in Australia.[33]

Designation as a Public Interest Entity

3.38 Evidence submitted to the committee suggested that an alternative to requiring structural change in the Big Four partnership model would be to classify those firms as Public Interest Entities (PIEs).[34]

3.39 PIEs are defined by the International Ethics Standards Board for Accountants (IESBA) as entities for which there is 'significant public interest in the financial condition of these entities due to the potential impact of their financial well-being on stakeholders'.[35]

3.40 In practical terms, the following entities in Australia will generally satisfy the conditions in APES 110 (Accounting Professional & Ethical Standards 110) as having a large number and wide range of stakeholders and thus are likely to be classified as PIEs:

- banks, such as authorised deposit-taking institutions and non-operating holding companies regulated by the Australian Prudential Regulation Authority (APRA);
- insurers (including life insurers and private health), as authorised insurers and authorised non-operating holding companies regulated by APRA;
- disclosing entities defined in Section 111AC of the Corporations Act ;
- superannuation entities and trustees regulated by APRA; and

31 Accounting Profession and Ethical Standards Board, *Submission 20*, p. 5.

32 Society of Corporate Law Academics, *Submission 24*, pp 4–5.

33 Society of Corporate Law Academics, *Submission 24*, pp 4–5.

34 Accounting Professional and Ethical Standards Board, *Submission 20*, pp 5–6.

35 International Ethics Standards Boards for Accountants (IESBA), *Revisions to the definitions of Listed Entity and Public Interest Entity in the Code*, Final Pronouncement, April 2022, p. 4. IESBA has a database identifying which types of entities are defined as PIEs in 78 jurisdictions: International Ethics Standards Board for Accountants, *Database of Public Interest Entities (PIE) definitions by jurisdiction*, 27 April 2023.

- other issuers of debt and equity instruments to the public.[36]

3.41 APESB suggested that the PIE approach would allow the Big Four firms to retain their partnership structures and yet be treated as reporting entities with greater transparency over their finances, operational practices and remuneration arrangements.[37]

3.42 APESB suggested this change could be implemented by:

- mandating the categorisation of large firms with substantial revenue, assets and workforces as PIEs;
- requiring large firms to prepare general purpose financial reports, including the disclosure of remuneration and information relating to their operations, and subject them to audit or alternatively adopting the disclosing entities disclosure requirements of the *Corporations Act 2001*; and
- adopting remuneration and accountability practices observed in APRA-regulated listed entities.[38]

3.43 APESB added that the proposed PIEs approach could be informed by the 'UK reporting requirements for partnership structures in the *Limited Liability Partnerships Act 2000*, the UK Audit Firm Governance Code and the Principles of Operational Separation'.[39]

3.44 PwC noted that when IESBA adopted the PIE concept, 'IESBA concluded that…determining which entities should be treated as PIEs should be largely left to local regulators or other authorities.'[40]

3.45 The Australian Shareholders Association (ASA) supported the suggestion to treat the Big Four firms like PIEs and noted that it benefited from being an existing framework for which the implementation challenges are known. The ASA agreed that a PIE approach could provide appropriate transparency while allowing the Big Four firms to retain the partnership structure. The ASA also supported applying the PIE approach to other large professional services firms.[41]

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36 Accounting Professional & Ethical Standards Boards, *Compiled APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, June 2023, p. 136.

37 Accounting Professional and Ethical Standards Board, *Submission 20*, pp 5–6.

38 Accounting Professional and Ethical Standards Board, *Submission 20*, p. 5.

39 Accounting Professional and Ethical Standards Board, *Submission 20*, p. 6.

40 PwC, *Submission 43*, p. 8.

41 Australian Shareholders Association, answers to question on notice 28, 6 October 2023 (received 20 December 2023).

Public Interest Firm Code

3.46 The idea of a Public Interest Firm was raised by PwC, who argued that the development of a mandatory Australian Public Interest Firm Governance Code (PIF Code) would provide more confidence in the professional services industry. PwC suggested that the PIF Code expand on overseas experience, such as the Audit Firm Governance Code implemented in the United Kingdom.[42]

The Global Reporting Initiative standards

3.47 The Global Reporting Initiative (GRI) provides businesses and other organisations with a global common language to communicate and take responsibility for their impacts. The GRI developed the GRI Standards which more than 14,000 organizations use in over 100 countries to implement sustainability reporting.[43]

3.48 KPMG supported the application of the GRI transparency standards in Australia for large government suppliers. KPMG suggested that participation on a government panel should be conditional on transparency, such as requiring participants to prepare an impact plan under the GRI Standards. KPMG noted that at the time of its submission, it was the only Australian Big Four firm that prepared its impact plan under the GRI Standards.[44]

3.49 The Community and Public Sector Union (CPSU) supported the use of the GRI Standards because they:

- are highly regarded internationally;
- are supported by global corporations and investors;
- include greater detail about tax practices and a company's workforce;
- mandate an explanation of a company's overall strategy on tax and differences between statutory versus effective tax rates;
- would remove barriers to addressing corporate tax avoidance; and
- are not expected to impose significant compliance costs as they are similar to what multinational corporations already do under the Organisation for Economic Co-operation Development's base erosion and profit-shifting initiative.[45]

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42 PwC, *Submission 43.1*, p. 5. The PwC submission details the features of a proposed PIF Code.

43 Global Reporting Initiative, *About GRI*, https://www.globalreporting.org/about-gri/ (accessed 25 September 2024).

44 KPMG Australia, *Submission 25*, pp 4, 6.

45 Community and Public Sector Union, *Submission 48*, p. 11.

Committee view on the appropriate governance requirements for large accounting partnerships

3.50 The committee acknowledges that the impetus for this inquiry was the manifest cultural and governance failures at PwC.

3.51 That said, much broader concerns were raised in evidence that the current governance mechanisms in the Big Four professional services firms are simply inadequate for firms that number several hundred partners and are allowed to have up to 1000 partners. Such large partnerships are too large for meaningful engagement with the concepts of joint liability, accountability and ethical oversight.

3.52 It is clear to the committee that in large partnership structures, even without the corrosive cultural issues that were manifest at PwC, it is not possible for a partner to exercise the necessary oversight of other partners. In terms of governance and accountability, this is clearly unacceptable.

3.53 The committee therefore notes and supports the recommendation by the Senate Finance and Public Administration Committee for the Australian Government to commission an appropriate body to review and make recommendations on the long-term goal of the regulation of large partnerships.

Recommendation 2

3.54 The committee recommends that the Australian Government implement the recommendation of the Senate Finance and Public Administration Committee that the government commission an appropriate body to review and make recommendations on the long-term goal of regulation of large partnerships, including in relation to: the appropriate regulator and its powers, applicable governance principles, transparent reporting obligations, penalties for breach, and a roadmap for implementation given the complexities of overlapping jurisdictions.

3.55 However, a review is a longer-term piece of work and other options may offer more immediate results for improving governance and accountability.

3.56 Therefore, the committee is of the view that requiring the large accounting partnerships to implement nationally consistent reporting and accountability requirements would be an effective means of improving governance, and rebuilding trust and credibility.

3.57 The committee considers the PIE obligations and the Corporations Act requirements for governance and accountability, especially in relation to the liability of the Chief Executive Officer, have merit. Further, they could be achieved without the disruption that could be caused by requiring a change in firm structure.

3.58 There is also the potential to augment these measures with a mandatory PIF Code and/or the Global Reporting Initiative Standards.

3.59 Designating the Big Four firms as PIEs through legislation or regulation (as foreshadowed in APES 110) would help achieve greater transparency and accountability within the current partnership models of the large professional services firms.

3.60 Ultimately, the principles of shared liability and joint profit incentive which are inherent to partnerships are not designed to accommodate partnerships in the size that currently exists within the Big Four firms. In partnerships comprised of 1000 individuals it is functionally impossible for partners to maintain an adequate knowledge of each other's ethical behaviours and professional accountability. This fundamental lack of visibility actively promotes a culture of plausible deniability in which partners have an ongoing profit incentive to remain unaware of questionable ethical practices which may drive profit, as all partners share in the profits won as a result of such work. Furthermore, the knowledge that potentially innocent partners would be adversely financially affected in the event of poor firm performance as a result of publicised partner misconduct disincentivises whistleblowing within the firm, further undercutting the capacity for accountability and transparency.

Recommendation 3

3.61 The committee recommends that the Australian Government reduce the allowable size of partnerships for accountants to a maximum of 400 partners, to align with the limits of legal partnerships. The government should establish a suitable transition period of up to 5 years for this change to enable the implementation of this recommendation whilst minimising disruption to the sector. A review of progress to this end should be conducted after 2 years, if at that time the entity has not chosen to incorporate.

Recommendation 4

3.62 The committee recommends that the Australian Government consider increased accountability and response mechanisms, including a suitable penalty regime calibrated to the seriousness of the misconduct, for partnerships who have engaged in misconduct.

Recommendation 5

3.63 The committee recommends that the audit, accounting, and consulting partnerships of firms with greater than 3000 staff be required to implement the *Corporations Act 2001* requirements for governance and accountability, if appropriate through the adoption of the Australian Securities Exchange Corporate Governance principles. This should include the requirement for multidisciplinary partnerships to prepare their own general purpose financial

reports, including remuneration disclosures and other obligations which may be applicable to partnerships. The government should review the operation of this measure within 3 years, with a view to extending its scope to mid-size partnerships.

Recommendation 6

3.64 The committee recommends that the Australian Government enhance the transparency of large professional service firms by designating them as Public Interest Entities and requiring them to:

- **subject them to audit if they are not already subject to these requirements, which would be filed with ASIC and be available for public inspection; and**
- **potentially be required to implement the Global Reporting Initiative Standards or the Public Interest Firm Code.**

Recommendation 7

3.65 The committee recommends that the Australian Government ensure that the financial statements disclosure requirements cover all relevant fees (that may raise a conflict of interests) paid to the entity's auditor for audit and non-audit services. This should cover any single entity and their associated entities in Australia or overseas.

The multidisciplinary structures of the Big Four firms

3.66 The first part of this chapter considered some of the governance issues arising from the size, scale and partnership model of the Big Four professional services firms. The remainder of the chapter considers the more discrete issue of the conflicts of interest arising from the provision of non-audit services to audit clients by these multidisciplinary firms.

3.67 The committee received evidence from the Big Four firms espousing the benefits of the multidisciplinary structure. By contrast, other inquiry participants argued for various forms of separation between the audit arm of the firms and the provision of other services to deal with conflicts of interest.

3.68 Existing regulatory and self-regulatory arrangements for addressing conflicts of interest arising from providing audit and non-audit services to the same client are discussed in chapters 4 and 5.

3.69 This section summarises the conflict-of-interest issues arising from the current structure of the Big Four. It then discusses the options put to the committee for reform, namely operational separation and structural separation, and finishes with the committee's views and recommendations.

Conflict of interest issues from a multidisciplinary structure

3.70 Treasury identified the conflict-of-interest issues inherent in the current multidisciplinary model:

- '[j]oint governance and sharing of profits between audit partners and non-audit partners may create conflicts of interest which pose risks to auditor independence';[46] and
- existing policies and regulations may not be effective in 'separating the provision of audit and non-audit services in multi-disciplinary firms, particularly in the context of managing conflicts of interest to maintain auditor independence and objectivity'.[47]

3.71 Mr Doug Niven, Chair and Chief Executive Officer, Auditing and Assurance Standards Board, drew attention to two complications arising from the multi-disciplinary firm model, both of which have been raised internationally:

- a focus on audit quality may be weakened as the size of the non-audit services grows and leadership of the firm comes from the non-audit areas; and
- if the non-audit business areas become larger and generate greater revenues and profits, there may be an incentive to focus greater attention on the non-audit areas and less on audit.[48]

3.72 By contrast, APESB noted that audit services appear to be profitable and, therefore, may not be used as loss leaders for non-audit services:

> In the December 2019 PJC inquiry into the regulation of auditing, it was noted from the firm leaders' statements that auditing is profitable. At the time, ASIC obtained information from the firms, indicating that audit services are profitable. An Australian Financial Review article in 2019 also revealed that the gross margins for auditing ASX 300 clients were up to 80%.[49]

Arguments for the current multidisciplinary firm model

3.73 Currently, the Big Four firms operate a multidisciplinary model under the self-regulatory independence standards set out in APES 110.

3.74 The APES 110 standard requires firms to identify threats to audit independence and:

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46 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 23.

47 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 25.

48 Mr Doug Niven, Chair and Chief Executive Officer, Auditing and Assurance Standards Board, *Committee Hansard*, 22 February 2024, p. 47.

49 Accounting Professional & Ethical Standards Board, *Submission 20*, pp 6–7.

- take actions such as making appropriate safeguards; and
- address situations where the threats cannot be eliminated, or there can be no safeguards to reduce them to an acceptable level.[50]

3.75 Deloitte, EY and KPMG all argued that the current multidisciplinary structure of their firms is vital in ensuring the cost-effective delivery of high-quality audits due to the availability of all the required specialists on demand at short notice when matters requiring their expertise arise while executing audits.[51]

3.76 BDO argued that multidisciplinary firms are needed to manage audit complexity, provide career opportunities for specialists, and maintain competition:

> Audits today are increasingly complex and require inputs in excess of traditional auditing skills. Given the specific knowledge and skill auditors require to perform their role, it is unrealistic to expect them to also be across all the legal, technical and organisational requirements of an audit without assistance from specialists. A multi-disciplinary approach is required to deliver a high-quality audit, as auditors must be able to draw on the deep expertise and skills of specialists in other areas, such as taxation, valuations, and complex financial reporting matters (such as International Financial Reporting Standards), to deliver what is required for each unique engagement. If audit-only firms were to engage the services of external experts in other disciplines to obtain the additional expertise they need to deliver an audit, this would come at an additional cost to the firm. This cost, by necessity, would be passed on to clients of audit-only firms, resulting in significant increases in audit engagement costs.[52]

3.77 The Institute of Public Accountants (IPA) supported retaining the multidisciplinary structure of the professional services firms because:

- requiring the separation of non-audit and audit functions of the Big Four firms would significantly impact the profession;
- isolated egregious behaviour does not justify government intervention to separate the firms; and
- without identifying a systemic issue to remediate, splitting audit and non-audit functions would be unnecessary, unproductive and costly.[53]

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50 Accounting Profession & Ethical Standards Board, *Compiled APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, June 2023, p. 135.

51 Deloitte Touche Tohmatsu, *Submission 40*, pp. 2–3; EY Australia, *Submission 12.1*, p. 12; KPMG Australia, *Submission 25*, pp. 3–5.

52 BDO Group Holdings Limited, *Submission 38*, p. 2.

53 Institute of Public Accountants, *Submission 15*, p. 3.

Operational separation of audit from other disciplines

3.78 The first reform proposal put to the committee was operational separation, which would implement a prohibition on firms providing audit and other consulting services to the same client.

3.79 Professor Graeme Samuel argued that an inherent conflict of interest exists when a firm supplies both audit and non-audit services to the same corporate organisation. Professor Samuel's view was that this 'cannot be satisfactorily overcome by the application of "Chinese walls"'.[54] He therefore proposed:

> …audit firms or their associated entities (Australian or international) should be prohibited from deriving income from non-audit services provided to the audited corporate organisation, including all associated entities both in Australia and internationally. This prohibition can be simply effected by ASIC in the conditions that it could impose on registration of auditors.[55]

3.80 The Australian Shareholder Association supported the approach proposed by Professor Samuel, submitting that a prohibition on a firm (and its associates) providing remunerated services to the same corporation (and its associates) that the firm is auditing could 'be achieved by defining the list of services which an auditor can provide'.[56]

3.81 Professor Samuel also noted that the financial impact of this operational separation should be minimal as 'it would simply result in the reallocation of non-audit services amongst consultancy firms'.[57]

3.82 This seems likely given that the APESB indicated that the provision of non-audit services to audit clients is already a small and declining portion of the revenue earned by the Big Four firms, with the evidence indicating:

- audit services make up about 15 per cent of a firm's revenue;
- non-audit services to audit clients lead to 5 to 7 per cent of revenue; and
- non-audit services to non-audit clients provide 75 per cent of revenue.[58]

3.83 APESB suggested that if operational separation is to be pursued, the government could consider the United Kingdom approach, 'where a virtual separation of the audit business and the firm's other businesses has been

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54 Professor Graeme Samuel AC, *Submission 1.1*, p. 4.

55 Professor Graeme Samuel AC, *Submission 1.1*, p. 4.

56 Australian Shareholder Association, answers to questions on notice 28, 6 October 2023 (received 20 December 2023).

57 Professor Graeme Samuel AC, *Submission 1.1*, p. 4.

58 Accounting Professional and Ethical Standards Board, *Submission 20*, p. 6; Auditing and Assurance Standards Board, *The provision of non-audit services by audit firms in Australia: 2012–2018*, Research report 4 by Professor Elizabeth Carson, University of New South Wales Sydney, 4 December 2019, pp 8–9.

achieved by the establishment of separate governance and operational structures'.[59]

3.84 Mr Mark Babington, Executive Director of the United Kingdom Financial Reporting Council (UK FRC), updated the committee on the implementation of operational separation in the United Kingdom:

> The firms have been implementing operational separation progressively from 2021. By the end of this year, the implementation period will be complete...The large firms are able to demonstrate that their audit business is viable and sustainable and pays its own way. We've also ensured we have a regime around the provision of non-audit services that mitigate threats to independence.[60]

3.85 In October 2024, the UK FRC announced that 'the four largest audit firms (Deloitte, EY, KPMG, PwC), have concluded the transition period of operational separation'.[61] The UK FRC identified the changes that the Big Four firms have made during the transition period:

> Throughout the three-year transitional period, all four firms have made significant improvements to their governance to prioritise the delivery of audit quality. This includes the creation of independent audit boards chaired by Audit Non-Executives, improved transparency on financial transactions between the audit and non-audit business, and greater accountability at firm level for the delivery of operational separation outcomes. The firms have also developed audit specific cultures, with behaviours focussed on challenge, openness and professional scepticism.[62]

3.86 The IPA submitted that if more restrictive controls are considered appropriate, a preferred solution would be the operational separation of audit services and non-audit clients. The IPA suggested that operational separation 'would avoid a perception that commercial pressure from non-auditing revenue might impact the provision of auditing services, without depriving each service of the benefits of co-location in the one firm'.[63]

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59 Accounting Professional and Ethical Standards Board, *Submission 20*, p. 7.

60 Mr Mark Babington, Executive Director, Regulatory Standards, United Kingdom Financial Reporting Council; Member, International Ethics Standards Board for Accountants, *Committee Hansard*, 8 May 2024, p. 46.

61 United Kingdom Financial Reporting Council, *Big Four audit firms conclude transition period of operational separation*, https://www.frc.org.uk/news-and-events/news/2024/10/big-four-audit-firms-conclude-transition-period-of-operational-separation/ (accessed 11 October 2024).

62 United Kingdom Financial Reporting Council, *Big Four audit firms conclude transition period of operational separation*, https://www.frc.org.uk/news-and-events/news/2024/10/big-four-audit-firms-conclude-transition-period-of-operational-separation/ (accessed 11 October 2024).

63 Institute of Public Accountants, *Submission 15*, p. 3.

3.87 The committee did receive some criticism of operational separation. Professor Allan Fels preferred structural separation (see next section) because he considered that operational separation had the following issues:

> …there are major complications, pitfalls, costs and inconveniences in all compromise measures that are sometimes proposed as an alternative such as internal separation of the functions within one firm. The conflicts can never be entirely resolved and where they go closer to being eliminated (or looking as if they are nearly eliminated) the rules and arrangements are costly to operate with considerable external oversight required to ensure compliance. A clean, clear, sensible solution is preferable.[64]

Structural separation of audit from other disciplines

3.88 Professor Fels noted that auditing is critical to the operation of a market system and that audit failure has substantial economic and social consequences. He pointed out that audit failure continues to be a factor in corporate crashes and that regulators consistently find problems in audit reviews'.[65]

3.89 Professor Fels argued that auditors should not have, nor appear to have, conflicts of interest, but that cannot be avoided when they provide auditing and consulting services to the same client.[66]

3.90 Consequently, Professor Fels supported the structural separation of audit from non-audit services within the Big Four firms. He also suggested that structural separation 'is far simpler and more effective than alternative methods of dealing with the conflicts of interest that inevitably arise when auditing and non-auditing work are offered by the same firm'.[67]

3.91 The CPSU supported structural separation to remove conflicts of interest. Noting that projects within some Big Four firms to structurally separate had failed, the CPSU suggested that structural separation may require government intervention. The CPSU indicated that the limited growth potential of audit functions may have been a contributing factor:

> Opposition to a separation is because audit functions have been relatively low growth compared to high growth non-audit functions like consulting. The financial incentive structure of the Big Four, such as payments to partners and eligible retired partners, underpinned by cross-subsidisation,

64 Professor Allan Fels, *Submission 52*, p. 7.

65 Professor Allan Fels AO, *Submission 52*, p. 1.

66 Professor Allan Fels AO, *Submission 52*, p. 1.

67 Professor Allan Fels AO, *Submission 52*, p. 1.

> means there will be significant resistance and the partner structure will make it difficult to get agreement.[68]

3.92 By contrast, Professor Samuel argued that ‘proposals to require structural separation of audit services and non-audit services into separate organisations are draconian overreach, impractical and ineffective’:

> They cannot properly be effected with Australian firms having global associations — the suggestion that Australia might ‘lead the world’ with a requirement of structural separation is unreal and a tacit acknowledgement that the proposal is impractical and ineffective.[69]

3.93 SCoLA noted that structural separation may give rise to ‘complicated issues about who owns and/or controls the separated bodies and whether there has actually been an effective separation and demerger or not’.[70]

3.94 Dr Simon Longstaff, Executive Director, The Ethics Centre, drew attention to a potential downside of structural separation in that the consulting side may be more market-driven because it would be detached from the professional integrity constraints of the professional accounting bodies:

> The other thing about the downside of structural separation could be that you lose that professional commitment. If you just say, ‘They’re going to be completely different,’ then you'd say, ‘One is going to professions and the other is going to be the market.’ That might be the right outcome, but I think we should also understand that that could be an unintended consequence of structural separations.[71]

3.95 The Public Interest Oversight Board, an international body that oversees standards setting to maintain confidence in financial markets, had concerns about structural separation because:

> …audit firms need lots of other skills and specialties. Firstly, for example, in the audit of mining, which you have a lot of in Australia and here in South Africa, in the audit of a mining company there are experts and specialists necessary—geologists and others. In the audit of an insurance company you need actuaries. The auditors have all those skills. They also use those skills or similar skills in their advisory side. They are already structured separately in legal entities.’[72]

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68 Community and Public Sector Union, *Submission 48*, pp 7–8, 10. See also answers to questions on notice 32, 21 November 2023 (received 19 January 2023); answers to questions on notice 37, 7 December 2023 (received 19 January 2024).

69 Professor Graeme Samuel AC, *Submission 1.1*, p. 4.

70 Society of Corporate Law Academics, *Submission 24.1*, p. 9.

71 Dr Simon Longstaff, Executive Director, The Ethics Centre, *Committee Hansard*, 20 November 2023, p. 12.

72 Ms Linda de Beer, Chair, Public Interest Oversight Board, *Committee Hansard*, 1 March 2024, pp 56–57.

3.96 Ms Kristin Stubbins, former acting CEO of PwC, suggested that the potential for market forces to drive separation without government intervention should also be considered.[73]

Committee view

3.97 The committee notes the ongoing concerns expressed about audit independence within the Big Four firms: firstly, the current situation where the Big Four firms can provide both audit and non-audit services to the same client; secondly, the dominance of consulting revenue in the Big Four firms, providing incentives for the consulting side of the firms to dominate decision-making; and thirdly, the tensions between the consulting side of the business operating as market actors driven by self-interest and the auditing side of the business, which must be driven by putting the client's needs first (discussed in Chapter 6).

3.98 The committee notes the arguments made by the Big Four firms for maintaining the multidisciplinary status firm model, particularly the benefits that audited companies derive by the auditors having access to a wide range of personnel with different skill sets within the multidisciplinary firms themselves.

3.99 The committee acknowledges the self-regulatory independence standards and mitigation actions set out in APES 110 cover a wide range of circumstances that might threaten audit independence.

3.100 However, the committee agrees with Professor Graeme Samuel, a former Chair of the Australian Competition and Consumer Commission (ACCC), that these conflicts and their impact on the integrity of the audit service cannot be satisfactorily overcome by the current internal application of 'glass walls' by the firms themselves.

3.101 The committee reiterates again the evidence from numerous inquiries over the years about the vital importance of auditing to the operation of a market system.

3.102 As another former ACCC Chair, Professor Alan Fels, noted, shareholders, investors, consumers, suppliers, the government and the community depend upon audit integrity. If audits fail or are compromised, billions of dollars can be lost, and trust in the economic system will be weakened.

3.103 The committee therefore considers it essential that auditors should not have, nor appear to have, conflicts of interest, whether actual or potential.

3.104 It is undeniable that an inherent conflict of interest exists when a firm supplies both audit and non-audit services to the same entity.

3.105 Professor Samuel AC commented in his Supplementary Submission to the Inquiry: 'The conflict of interest in a single firm providing both audit and non-audit services to the same organisation must inevitably impact on the integrity

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[73] Ms Kristin Stubbins, Private capacity, *Committee Hansard*, 5 March 2024, p. 22.

of the vital audit service'. He suggested that such built in conflicts of interest could be prevented by requiring that firms choose to provide either audit or non-audit/consulting services to any one client. This is a solution to the challenge of preventing structural conflicts of interest in multidisciplinary entities.

3.106 In this regard, the committee is mindful of the data provided by the APESB indicating that the provision of non-audit services to audit clients only represents about 5 to 7 per cent of revenue and appears to be declining. These figures support the proposal put forward by Professor Samuel AC because, as he argues, the financial impact of operational separation should be minimal as it would simply result in the reallocation of non-audit services amongst the multidisciplinary firms.

3.107 The practical application of operational separation would involve a prohibition on audit firms or their associated entities (Australian or international) deriving income from non-audit services provided to the audited corporate organisation, including all associated entities both in Australia and internationally.

3.108 The committee observes that the choice between structural and operational separation is challenging, and notes that submitters such as Professor Fels made persuasive arguments for structural separation. However, given the global nature of the multidisciplinary firms, it is unclear how such changes would be feasible.

3.109 Further, the committee is mindful of the need to ensure competition and productivity, and to maintain stability and reduce risks. The committee suggests further work is needed by an appropriate body to consider long-term options and potentially develop other approaches for government to consider as the sector continues to manage changes to the market.

3.110 Finally, the committee notes that operational separation has already been implemented in the United Kingdom. Further, the evidence from the regulator in the United Kingdom indicated that, during the implementation period, all four multidisciplinary firms made significant improvements to their governance arrangements to prioritise audit quality.

3.111 Given this encouraging precedent and noting the minimal financial disruption that it would entail, the committee therefore recommends the implementation of operational separation to prevent audit firms or their associated entities (Australian or international) deriving income from non-audit services provided to the audited corporate organisation, including all associated entities both in Australia and internationally.

Recommendation 8

3.112 The committee recommends that multi-disciplinary large accounting firms (and their associated entities both in Australia and internationally) should not

be permitted to supply both audit and non-audit/consultancy services to the same client (and their associated entities both in Australia and internationally).

Recommendation 9

3.113 **The committee recommends that multi-disciplinary large accounting firms (including those required to lodge annual transparency reports under section 332A of the *Corporations Act 2001*) should be required to implement operational separation of their audit practice from their non-audit practice. The principles of operational separation should be materially consistent with those applying in the United Kingdom or other global best practice.**

Recommendation 10

3.114 **The committee recommends that the Australian Government legislate to give further powers to the Australian Securities and Investments Commission to oversee audit to cover all partners within multidisciplinary firms regardless of which part of the firm they work in, as required in the UK Financial Reporting Council Audit Firm Governance Code.**

Chapter 4
Update on the regulation of auditing in Australia inquiry

Introduction

4.1 This committee has reported regularly on audit quality in Australia. In 2019, the committee noted that the function of an audit is to provide an independent review of the financial statements and compliance plans of the company or financial entity and certify that they are a true and fair view of the business. By rigorously examining corporate accounts, an audit should expose false accounting and detect business risks and potentially serious problems, thereby presenting an accurate picture of business fundamentals and reducing the asymmetry of information between the management of a company and investors.[1]

4.2 While audit quality has been of repeated domestic and international concern for more than a decade, the committee's long-standing interest in the topic has largely emanated from concerns raised by the Australian Securities and Investments Commission (ASIC).

4.3 On 1 August 2019, the Senate referred an inquiry into the regulation of auditing in Australia to this committee. The committee presented a substantive interim report to Parliament in February 2020 with ten recommendations.[2]

4.4 This chapter discusses responses to and developments since the committee's 2020 inquiry into the regulation of auditing in Australia, as well as further evidence received in the current inquiry on digital financial reporting.

4.5 The chapter finishes with an important issue that arose in this inquiry in relation to the regulation of auditing: whether the law should be amended to give ASIC the power to also act against an audit firm rather than the current situation where it is only able to act against an individual auditor.

Action taken following the committee's inquiry into the regulation of auditing in Australia

4.6 The previous government did not respond to the committee's 2020 report. On 5 July 2024, the current government's formal response to the ten

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1 See Parliamentary Joint Committee on Corporations and Financial Services, Statutory Oversight of the Australian Securities and Investments Commission, the Takeovers Panel and the Corporations Legislation, *Report No. 1 of the 45th Parliament*, February 2019, p. 7.

2 The committee's final report was tabled in November 2020, reaffirming the recommendations made in the interim report and adding the committee's concluding comments on the inquiry.

recommendations in the 2020 interim report and the two recommendations in the dissenting report by the Australian Greens noted the recommendations but stated:

> …given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.[3]

4.7 Meanwhile, ASIC, the Financial Reporting Council (FRC), and the Accounting Professional and Ethics Standards Board (APESB) have taken some action to progress recommendations 1, 2, 3, 5, 6 and 8.[4]

4.8 Some of these actions involved:

- the Australian Accounting Standards Board (AASB) reporting on audit fee remuneration;
- ASIC requesting that the six largest firms encourage listed clients to align audit fee disclosures with the AASB report;
- APESB increasing the independence requirements for fee disclosure and prohibitions of non-audit services in APES 110 with effect from 1 January 2023;[5]
- the FRC agreeing to make recommendations to the minister to pursue legislative change on disclosure of audit fees in directors' reports[6] and the disclosure of auditor tenure;[7]
- APESB amending APES 110 in December 2022[8] to prohibit audit partners from being incentivised to provide non-assurance services to audit clients of the firm;[9]
- the Auditing and Assurance Standards Board (AUASB) consultations on the International Auditing and Assurance Standards Board updating the

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3 Government response to the Joint Committee on Corporations and Financial Services' interim report, *Regulation of auditing in Australia*, 5 July 2024; Government response to the Joint Committee on Corporations and Financial Services' final report, *Regulation of auditing in Australia*, 5 July 2024.

4 The committee's recommendations from the interim report and the actions in response are summarised in Appendix 3.

5 EY Australia, *Submission 12.1*, Appendix 1, p. 3; Mr Channa Wijesinghe, Chief Executive Officer, Accounting Professional and Ethical Standards Board, *Committee Hansard*, 1 March 2024, pp 22–23. See also Accounting Professional and Ethical Standards Board, Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards), December 2022.

6 Financial Reporting Council, *Minutes*, 6 September 2023, Item 10.

7 Financial Reporting Council, *Minutes*, 6 September 2023, Item 10.

8 Accounting Professional and Ethical Standards Board, Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards), Section 600, December 2022.

9 EY Australia, *Submission 12.1*, Appendix 1, p. 4.

standards on fraud and going concern assessments,[10] and the FRC agreeing to make recommendations to the minister to pursue legislative change on these matters;[11]

- the AUASB engaging with the Australian Securities Exchange Corporate Governance Council about whether Chief Executive Officer and Chief Financial Officer declarations should be enhanced;[12] and
- EY agreeing to voluntarily adopt the committee's recommendation to specifically confirm that no prohibited non-audit services have been provided.[13]

4.9 In response to the committee's recommendation that ASIC review the way it publicly reports the periodic findings of its audit inspection program, with a focus on the transparency and relative severity of identified audit deficiencies, ASIC consulted the six largest firms on a severity categorisation framework for audit deficiencies. It then issued Regulatory Guide 260 explaining its approach to communicating audit quality findings to directors and audit committees,[14] and completed its first integrated report covering both audit and financial reporting findings in October 2023.

4.10 However, despite the committee recommending that the Australian Government introduce, by the end of the 2020–21 financial year, through appropriate legislation, a requirement that ASIC publish all future individual audit firm inspection reports on its website,[15] since June 2022, ASIC has not published the firms' audit results.[16] ASIC also noted that there is no legislative requirement for it to undertake audit reviews.[17]

4.11 Additionally, in May 2024, Treasury released a consultation paper on the regulation of the Big Four firms in Australia, which included questions on

10 EY Australia, *Submission 12.1*, Appendix 1, p. 6.

11 Financial Reporting Council, *Minutes*, 6 September 2023, Item 10.

12 EY Australia, *Submission 12.1*, Appendix 1, p. 6.

13 EY Australia, *Submission 12.1*, Appendix 1, p. 4.

14 EY Australia, *Submission 12.1*, Appendix 1, p. 2.

15 Parliamentary Joint Committee on Corporations and Financial Services, Regulation of Auditing in Australia, Interim Report, February 2020, p. ix.

16 Australian Securities and Investments Commission, *Annual financial reporting and audit surveillance report*, Report 774, October 2023, p. 21; BDO Group Holdings Limited, *Submission 38*, p. 5.

17 Australian Securities and Investments Commission response (received 8 April 2024) to Mr Doug Niven's answers to questions on notice 083 and 084, 22 February 2024 (received 26 March 2024). See also Mr Greg Yanco, Executive Director, Regulation and Supervision, Australian Securities and Investments Commission, *Committee Hansard*, 3 November 2023, pp. 30–32.

auditor independence,[18] auditor tenure,[19] governance,[20] and digital financial reporting.[21]

Evidence on the regulation of auditing to this inquiry

4.12 Submissions to the current inquiry raised concerns that many of the issues identified in the committee's 2021 interim report remain unresolved and their associated recommendations either partially addressed or not implemented at all, including:

- poor audit quality and insufficient audit inspections;[22]
- a need to publicly identify audit failures by firms;[23]
- independence between audit and non-audit services and the need to improve auditor independence disclosures; [24]
- insufficient incentives to appropriately limit auditor tenure;[25]
- the need to improve fraud detection and assessments of going concern;[26]
- internal control frameworks for financial reporting;[27] and
- poor uptake of digital financial reporting.

4.13 The Australian Shareholders' Association (ASA) submission called for the committee's ten recommendations to be enacted in 2024.[28]

4.14 The Treasury's May 2024 consultation paper indicated that recent events have called into question whether the regulatory framework for accounting, auditing and consulting firms appropriately balances policy objectives, such as

18 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 25.

19 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024.

20 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp 10–14.

21 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 38.

22 Australian Shareholders' Association, *Submission 29*, p. 1; BDO, *Submission 38*, p. 5.

23 BDO Group Holdings Limited, *Submission 38*, p. 5; Australian Shareholders' Association, *Submission 29*, p. 1.

24 See Submissions 1, 3, 8, 13, 25, 28, 29, 30, 32, 33, 38, 48, 68, 52, 56, 65, 66.

25 Australian Shareholders' Association, *Submission 29*, p. 2.

26 Australian Shareholders' Association, *Submission 29*, p. 2.

27 Australia Securities and Investments Commission, *Submission* 49, p. 6; Australian Shareholders' Association, *Submission 29*, p. 2.

28 Australian Shareholders' Association, *Submission 29*, p. 1.

supporting a competitive market, while fostering appropriate conduct in the provision of key services such as audit, insolvency and tax.[29]

4.15 The Treasury consultation paper identified several issues as warranting consideration that were addressed by the committee's 2020 recommendations, such as:

- auditor independence and management of conflicts of interest;
- audit quality and audit inspections;
- the adequacy of professional standards;
- resilience in the audit sector; and
- the adequacy of standards setting and enforcement.[30]

4.16 The Treasury consultation paper raised concerns that auditor firm tenure (as opposed to lead auditor rotation requirements) is unlimited, and that may compromise auditor objectivity and independence:

> APES 110 and the Corporations Act both contain rotation requirements for key auditors. The lead auditor for a listed company client must rotate to another…[Registered Company Auditor] (who can be from the same audit partnership or…[Authorised Audit Company]) after 5 years. Tenure limits also apply to 'review auditors' (also known as engagement quality reviewers).
>
> The auditor rotation requirements do not preclude the same firm from conducting the audits of the client on an ongoing basis, noting the average tenure of audit firms for the top 200 ASX-listed entities was 13.2 years in 2022 (and ranged from one year to 58 years).[31]

4.17 Treasury suggested that the benefits and impacts of audit rotation merit consideration and noted that the European Union and the United Kingdom either require auditor firm rotation or impose a cap on audit tenure. Audit tenure in those jurisdictions varies from 10 to 20 years.[32]

4.18 The FRC review of the oversight of audit quality in Australia made the following recommendation, which adds further weight to the issues identified in this section:

> ASIC's program of reviewing audit files only when financial reports are known or suspected to be misstated, should be augmented with a program

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29 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 7.

30 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp. 9, 36.

31 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 22.

32 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 23.

> that selects audit files on a risk and rotational basis for review, with the overall objective to review all auditors over an established time period.[33]

Digital financial reporting

4.19 Evidence to the committee's 2020 inquiry into the regulation of auditing in Australia indicated that the current format of financial reports presents substantial challenges for users, including regulators, standard-setters and professional bodies, in terms of being able to access information.

4.20 Not only is extracting financial information time-consuming, expensive and error prone,[34] even after the data has been extracted, additional work and expense is required to get the data into a suitable form for analysis.[35]

4.21 The committee noted that the voluntary approach to digital financial reporting taken in Australia for the past decade had not led to any significant use of digital financial reports.[36]

4.22 Therefore, the committee recommended the government take appropriate action to make digital financial reporting standard practice because:

- the evidence indicated considerable enthusiasm for the use of digital financial reporting; and
- the benefits were likely to substantially outweigh the costs leading to:
  - increased transparency and improvements in financial statement quality;
  - lower information processing costs for users of financial statements;
  - increased forecast accuracy undertaken by analysts; and
  - improved information efficiency in capital markets.[37]

4.23 Yet, despite widespread support, no significant action has been taken and the current government deemed a substantive response no longer appropriate due to the passage of time since the report was tabled.[38]

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33 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 6.

34 Professor Peter Wells, *Submission 7* to the committee's 2020 inquiry into regulation of auditing in Australia, [pp 4–5].

35 Australian Accounting Standards Board, *Submission 32* to the committee's 2020 inquiry into regulation of auditing in Australia , p. 13; see also Professor Peter Wells, *Submission 7* to the committee's 2020 inquiry into regulation of auditing in Australia , [p. 5].

36 Parliamentary Joint Committee on Corporations and Financial Service, *Regulation of auditing in Australia*, Interim report, February 2020, pp 105–106.

37 Parliamentary Joint Committee on Corporations and Financial Service, *Regulation of auditing in Australia*, Interim report, February 2020, p. 106; Final report, November 2020, p. 4.

38 Government response to the Joint Committee on Corporations and Financial Services' interim report, *Regulation of auditing in Australia*, 5 July 2024; Government response to the Joint Committee on Corporations and Financial Services' final report, *Regulation of auditing in Australia*, 5 July 2024.

Treasury consultation

4.24 The Treasury consultation paper noted that digital financial reporting would benefit users, companies and regulators and would overcome many of the problems of the current manual, paper-based approach.[39]

4.25 Despite this, Treasury noted that Australia lags countries such as the United States, European Union, United Kingdom, Japan, South Korea, India, and China where some form of digital financial reporting has already been mandated.[40]

Evidence to the current inquiry

4.26 The ASA observed that countries that have moved to digital financial reporting have experienced gains in speed, accuracy, transparency and efficiency,[41] and recommended legislation to make digital financial reporting standard practice in Australia.[42]

4.27 The Governance Institute of Australia (GIA) noted some of its members already produce digital financial reports for other jurisdictions, and that the imminent move to mandatory climate-related financial disclosure may hasten the take up of digital financial reporting.[43]

4.28 Chartered Accountants Australia and New Zealand (CAANZ) indicated its longstanding advocacy for legislation to mandate digital financial reporting for listed companies and public interest entities[44] in Australia, based on research and consultation with professionals, investors, businesses and regulators. CAANZ noted that despite ASIC making digital financial reporting available, it has not been used in Australia. CAANZ also suggested that the balance of

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39 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 38.

40 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 38.

41 Australian Shareholders' Association, answers to questions on notice 28, 6 October 2023 (received 20 December 2023).

42 Australian Shareholders' Association, *Submission 29*, p. 2.

43 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023, received 15 December 2023.

44 In Australia, Public Interest Entities (PIEs) include listed entities, banks, credit unions, insurance and reinsurance companies, pension funds and trusts, collective investments vehicles and mutual funds. International Ethics Standards Board for Accountants, *Database of public interest entity (PIE) definitions by jurisdiction*, 27 April 2023, https://www.ethicsboard.org/publications/database-public-interest-entity-pie-definitions-jurisdiction (accessed 9 July 2024). PIEs are discussed further in Chapter 3.

benefits and costs is less clear for privately owned companies, not-for-profit entities and charities.[45]

4.29 The Australia Institute supported making digital financial reporting mandatory in Australia and noted the benefits of speed, reliability and lower costs if data was available in a consistent, machine-readable format.[46]

4.30 The Institute of Public Accountants (IPA) supported making digital financial reporting standard practice based on the benefits for audit quality.[47]

4.31 ASIC noted that its submission to the committee's 2020 regulation of auditing inquiry supported mandating digital financial reporting in Australia.[48] During hearings for the current inquiry, Mr Greg Yanco from ASIC stated that there is 'a groundswell of support' for digital financial reporting in Australia 'to make financial reporting and auditing a lot more efficient and consistent'.[49]

4.32 In response to questions from the committee, the ASA provided the information in Box 4.1 on the benefits of digital financial reporting. The ASA also provided information on some of the challenges to adoption in Australia.[50]

Box 4.1 Benefits of digital financial reporting

1. Increased Efficiency: Automating financial reporting processes can significantly enhance efficiency

2. Improved Data Quality and Accuracy: Digital systems enhance data reliability through real-time processing and validation checks, as evidenced by the experiences of companies in the EU after the implementation of the iXBRL format…'

3. Enhanced Transparency and Accountability: Digital reporting allows for more consistent and accessible disclosures, improving stakeholder trust and engagement…

4. Improved Compliance: Digital reporting aligns with regulatory trends towards digital formats…

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45 Chartered Accounts Australia and New Zealand, answers to questions on notice 9, 11 October 2023 (received 10 November 2023).

46 The Australia Institute, answers to questions on notice 11, 6 October 2023 (received 14 November 2023).

47 Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023).

48 Australian Securities and Investments Commission, *Submission 49*, p. 6.

49 Mr Greg Yanco, Executive Director, Regulation and Supervision, Australian Securities and Investments Commission, *Committee Hansard*, 3 November 2023, p. 28.

50 Australian Shareholders' Association, answers to questions on notice 28, 6 October 2023 (received 20 December 2023).

> **5. Cost Reduction:** Over time, as seen in Japan's adoption of XBRL, digital reporting reduces costs related to physical storage and manual data processing.
>
> **6. Facilitation of Data Analysis:** Leveraging advanced analytics becomes easier with digital data...[51]

4.33 Mr Tom Dickson, Assistant Secretary, Corporations Branch, Department of the Treasury, indicated that the potential administrative costs of mandating digital financial reporting would need to be considered, to ensure smaller businesses are not burdened with extra regulation and that the benefits outweigh the costs.[52]

How audit is currently regulated in Australia

4.34 Significant differences exist between the regulation of auditing in Australia and the United States and the United Kingdom and the powers of the respective regulators.

4.35 In Australia, ASIC may register an individual as a registered company auditor (RCA) if they meet the requirements. For a reporting entity to appoint a partnership as its auditor, at least one partner must be an RCA.[53] The partnership does not itself hold a separate audit authorisation.[54]

4.36 ASIC submitted that it 'does not have general jurisdiction' over partnerships. Rather, it 'has some jurisdiction over entities or individuals who are registered or licensed by ASIC to perform a particular role'.[55]

4.37 As PwC submitted, 'ASIC essentially regulates the individual, not the firm'.[56]

4.38 Therefore, the legislative framework under which ASIC regulates audit in Australia differs significantly from the United States and United Kingdom where the Public Company Accounting Oversight Board (PCAOB) and the United Kingdom Financial Reporting Council (UK FRC) respectively have regulatory oversight of both audit firms and individual

51 Australian Shareholders' Association, answers to questions on notice 28, 6 October 2023 (received 20 December 2023).

52 Mr Tom Dickson, Assistant Secretary, Corporations Branch, Department of the Treasury, *Committee Hansard*, 22 April 2024, pp 68–69.

53 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 15. See also Australian Securities and Investments Commission, *Submission 49*, p. 3.

54 PwC, *Submission 43*, p. 10.

55 Australian Securities and Investments Commission, *Submission 49*, p. 3.

56 PwC, *Submission 43*, p. 10.

practitioners.[57]Interestingly, the Australian arms of the Big Four firms are registered with the PCAOB because the Australian arms also audit United States public companies. Therefore, the PCAOB may inspect a sample of these audits and the quality control systems every three years.[58]

4.39 ASIC submitted that 'international regulators with the power to register audit firms have taken action for poor culture and governance'.[59] For example:

> The US Securities and Exchange Commission (SEC) fined EY US $US100 million ($144 million) after finding dozens of EY US audit personnel had cheated on the ethics portion of the US Certified Public Accountant exam and that the firm had misled regulators probing the conduct.[60]

4.40 ASIC noted that it is not able to take similar action against an audit firm for poor culture and governance because:

> …unlike the US, the Australian quality management standard is an auditing standard under the *Corporations Act 2001* and ASIC can only act against a lead audit partner for non-compliance with an auditing standard in the conduct of an individual audit.[61]

4.41 Further, as ASIC registers individuals as RCAs and not the audit firm itself, ASIC 'has no ability to act against a firm or staff of a firm who are not RCAs for misconduct related to culture and governance (such as training matters)'.[62]

4.42 Given the above legislative constraints on its powers, ASIC took the view that 'law reform would be required to give ASIC the power to take action on audit firm compliance with quality management standards'.[63]

Committee view

4.43 The committee view covers several matters including ASIC's audit inspection reporting, auditor tenure and audit fees, a mandatory tendering regime, an internal controls framework for financial reporting, digital financial reporting, and the question of whether ASIC should have the power to act against an audit firm.

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57 PwC Australia, *Submission 43*, p. 10.

58 PwC, *Submission 43*, p. 10; KPMG Australia, *Submission 25*, p. 21; Deloitte Touche Tohmatsu, *Submission 40*, p. 35; See also Public Company Accounting Oversight Board, *Registered firms*, https://pcaobus.org/oversight/registration/registered-firms (accessed 27 June 2024).

59 Australian Securities and Investments Commission, *Submission 49*, p. 5.

60 Australian Securities and Investments Commission, *Submission 49*, p. 5.

61 Australian Securities and Investments Commission, *Submission 49*, p. 5.

62 Australian Securities and Investments Commission, *Submission 49*, p. 5.

63 Australian Securities and Investments Commission, *Submission 49*, pp 2–3.

ASIC's audit inspection reporting

4.44 The issues underlying the committee's recommendations in its 2020 report on auditing have been raised again in submissions to this current inquiry and the Treasury consultation paper. Given the ongoing nature of these concerns, the committee does not accept the government's view that 'a response is no longer appropriate given the passage of time'.

4.45 The committee also observes that the government's response could have set out the actions taken in response to some of the recommendations (1, 2, 3, 5, 6, and 8) made by ASIC, the APESB, the FRC, the AASB, AUASB and the Australian Institute of Company Directors (as summarised in Appendix 3).

4.46 The committee notes that ASIC has developed a revised reporting framework that combines financial reporting and audit findings, including a summary of individual audit findings for all firms reviewed. The committee acknowledges the potential benefits of this integrated approach to financial report and audit inspections and the routine communication of audit findings to the directors of companies whose financial reports and audits have been inspected. The committee also welcomes ASIC's new review (announced in May 2024) of auditors' compliance with ethical and independence standards to support ASIC's financial reporting and audit surveillance program.

4.47 However, the committee considers that the new integrated approach to financial report and audit inspections in which ASIC only does risk-based and not random inspections needs to be revised. The committee notes that the FRC arrived at a similar conclusion in its 2023 review of the oversight of audit quality in Australia.

4.48 Further, the reduced number of financial reports and audit files inspected is unsatisfactory. The committee considers that ASIC should review all audit files where conflicts of interest arise from the audit firms providing non-audit services to the same client.

4.49 Recommendation 2 of the committee's 2020 report proposed that the government legislate a requirement that ASIC publish all future individual audit firm inspection reports on its website. ASIC initially responded by publishing the individual firm audit inspection reports between June 2020 and June 2022. The committee is concerned that ASIC has subsequently discontinued publishing the audit inspections by firm name, undoing its earlier positive response to recommendations 1 and 2.

4.50 While the committee understands ASIC's need to prioritise its resources, it considers that reducing audit inspections is inappropriate when audit quality failures and other problems in the Big Four firms continue to be pervasive. Clearly, recommendations 1 and 2 have not been adequately implemented and the committee therefore considers that legislation is necessary to compel ASIC to name firms when publishing the audit inspection results.

4.51 In its interim report, the committee recommended:

- 3 – standards for fee disclosure about audit and non-audit services and a list of non-audit services that audit firms are explicitly prohibited from providing to an audited entity.
- 5 – a safeguard that no audit partner can be incentivised, through remuneration advancement or any other means or practice, for selling non-audit services to an audited entity.
- 6 – standards to require audited entities to disclose auditor tenure in annual financial reports.
- 8 – a review of the reporting requirements for fraud and management's assessment of going concern.

4.52 The committee thanks the FRC and APESB for progressing recommendations 3, 5, 6 and 8. However, the government is yet to act on recommendations 6 and 8, and most other recommendations remain unimplemented. Given the problems in the Big Four audit firms identified in this and other recent inquiries and reviews, the committee considers its recommendations are still relevant. Therefore, the committee updates and resubmits those unimplemented recommendations to the government in this inquiry.

Recommendation 11

4.53 The committee recommends that the Australian Securities and Investments Commission:

- **re-establish a program of random audit inspections;**
- **supplement its existing risk-based approach by also reviewing audit files where conflicts of interest arise from the Big Four firms providing other services to their audit clients (noting that such conflicts should not occur from the time of implementation of operational separation); and**
- **increase the level of resources that it devotes to financial report inspections and audit inspections until there is a significant improvement in audit quality.**

Recommendation 12

4.54 The committee recommends that the Australian Government implement a legislative requirement that the Australian Securities and Investments Commission publish all individual audit firm inspection reports.

Recommendation 13

4.55 The committee recommends that the Australian Government implement the Financial Reporting Council recommendations to the Minister to pursue legislative change on disclosure of auditor tenure and audit fees in directors' reports and going concern assessments in directors' declarations.

Recommendation 14

4.56 **The committee recommends that the *Corporations Act 2001* be amended to expand the auditor's independence declaration to require the auditor to specifically confirm that no prohibited non-audit services have been provided.**

Recommendation 15

4.57 **The committee recommends that the *Corporations Act 2001* be amended to implement a mandatory tendering regime such that Public Interest Entities (including listed companies and the large multidisciplinary partnerships, such as the Big Four) required to have their financial reports audited under the Act must undertake a public tender process every ten years.**

Recommendation 16

4.58 **The committee recommends that the *Corporations Act 2001* be amended (following consultation with relevant stakeholders) such that entities required to have their financial reports audited must establish and maintain an internal controls framework for financial reporting, including requirements that:**

- **management evaluate and annually report on the effectiveness of the entity's internal control framework; and**
- **the external auditor report on management's assessment of the entity's internal control framework.**

Digital financial reporting

4.59 While the committee welcomes the government's move to seek industry views on digital financial reporting in the Treasury consultation paper, it is disappointed that it has taken four years since the committee's 2020 recommendation for Treasury to take that step. The committee strongly encourages Treasury to be proactive in moving policy, regulation and legislation forward to implement digital financial reporting.

4.60 The committee reiterates the evidence that a failure to implement digital financial reporting has a raft of negative impacts including a lack of transparency, reduced productivity, an inability to apply data analytics and AI (Artificial Intelligence) tools, and greater audit risks including around the prevention of fraud.

4.61 The committee considers it vital to substantially speed up progress on digital financial reporting with policy and, if necessary, regulatory or legislative changes, including making digital financial reporting mandatory.

4.62 That said, the committee notes evidence from Chartered Accountants Australia and New Zealand that, while the benefits of digital financial reporting outweigh the costs for listed companies and other public interest entities, it is less clear whether this is the case for privately owned companies, not-for-profit entities and charities. To that end, the committee would support an approach to the introduction of digital financial reporting that ensures small businesses and entities are not unnecessarily burdened with extra regulation.

Recommendation 17

4.63 The committee recommends that the Australian Government:

- **consider mandating digital financial reporting for listed companies and other public interest entities in Australia; and following such implementation and evaluation:**
- **consider options for resolving barriers to implementing digital financial reporting for privately owned companies, not-for-profits and charities in Australia.**

Legislative power to regulate audit firms

4.64 Significant differences exist between the legislative framework under which ASIC regulates the audit industry in Australia compared to the legislative frameworks under which regulators operate in the United States and United Kingdom.

4.65 In both the United States and United Kingdom, the regulator can act against an audit firm on a range of matters including poor culture and governance, and a failure to adhere to quality control and audit standards.

4.66 By contrast, ASIC is unable to take such action in Australia because its current legislative remit is restricted to action against an individual auditor. ASIC has no general power to act against a partnership and no specific power to act against an audit firm.

4.67 Given the instances of ongoing poor audit quality in Australia, as well as the evidence of a failure to adhere to ethical standards as demonstrated by audit personnel cheating on exams, this is an unsatisfactory legal situation.

4.68 The committee considers it important that ASIC have the power to take regulatory action against audit firms as well as against an individual auditor.

4.69 Therefore, the committee recommends that the government bring forward legislation to enable ASIC to take enforcement action against an audit firm, including for quality management standards.

Recommendation 18

4.70 The committee recommends that the Australian Government legislate to enhance the Australian Security and Investments Commission's power to take enforcement action against audit firms, not just individuals, including for quality management standards.

Recommendation 19

4.71 The committee recommends that the Australian Government consider requiring audit firms, or the audit section of multidisciplinary firms, to incorporate.

Chapter 5
Rationalising the regulators for audit and accounting

Introduction

5.1 Evidence to the inquiry identified a range of issues with the current regulatory framework for the Australian financial reporting and auditing industry. Some submitters noted that the current regulatory system 'is a patchwork that has built up over time', leading to both overlaps and regulatory gaps.[1]

5.2 The Treasury has also identified several issues: firstly, the large number of bodies tasked with setting, overseeing and enforcing auditing-related standards; secondly, the limited resources available to the Australian Securities and Investments Commission (ASIC) for audit quality oversight; and thirdly, the shared responsibility for formulating and applying system-wide standards (for quality management and ethics) which may present risks to audit quality.[2]

5.3 The role and effectiveness of the Companies Auditors Disciplinary Board (CADB) and its relationship to ASIC was another prominent issue, as were concerns about the potential for the Big Four audit firms (PwC, Deloitte, EY and KPMG) to exert undue influence over the Financial Reporting Council (FRC) and the two standards boards, the Australian Accounting Standards Board (AASB) and the Australian Auditing and Assurance Standards Board (AUASB), by virtue of the numbers of persons sitting on the boards of those bodies that have connections to the Big Four firms.

5.4 The current regulatory framework consists of both industry and statutory bodies (see Appendix 6).[3] The various statutory bodies undertake a range of functions including regulatory oversight of the industry, standard setting, oversight of the reporting and standard setting framework, and disciplinary action as follows:

- ASIC has regulatory oversight of the *Corporations Act 2001*;
- the AASB sets standards for financial and accounting reporting;
- the AUASB sets standards for the conduct of audits;
- the FRC oversees the framework for financial reporting and the audit and accounting standards setting; and

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1 Tax Justice Network, Tax Justice Network Australia and Centre for International Corporate Tax Accountability and Research, *Submission 28*, p. 5.

2 Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp 35–37.

3 The role of the professional accounting bodies is covered in the next chapter.

- CADB conducts disciplinary hearings and makes decisions about registered company auditors.[4]

5.5 This chapter begins by considering the evidence on the role and effectiveness of CADB. It then looks at the issue of the independence of the standard setters and the FRC from the Big Four firms. Next it considers proposals for rationalising the statutory bodies. The chapter concludes with the committee views and recommendations.

The Companies Auditors Disciplinary Board

5.6 CADB is an independent statutory body[5] that considers disciplinary action against registered company auditors based on referrals by ASIC or the Australian Prudential Regulation Authority (APRA) [6]

Issues that have arisen for the CADB:

5.7 CADB's caseload has been very small over the last decade, often only one or two cases per year, apart from a brief surge in 2020–21[7] following an uptick in ASIC's enforcement activity for auditing.

5.8 CADB submitted:

> Even taking account of periods of increased activity over the last decade, the number of matters that have been considered by CADB is insufficient to fully realise either CADB's potential to meaningfully impact regulatory settings in relation to auditors or the full scope of its legislative function.[8]

5.9 The small CADB caseload has occurred despite significant numbers of audits failing in ASIC surveillance inspections. For example, in ASIC's 2022 audit inspection report, there was an overall increase in the level of negative findings from 32 per cent to 36 per cent, and only 18 out of 45 audit files inspected had no negative findings, with the number of negative findings increasing by nine per cent for the six largest audit firms.[9] Few of those audit quality failures are being referred to CADB.

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4 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp 15, 33. Further information on the Australian financial reporting and auditing regulatory framework is available on pages 31 to 35 of the Treasury consultation paper, *Regulation of accounting, auditing and consulting firms in Australia*.

5 *Australian Securities and Investments Commission Act 2001*, Part 11; *Corporations Act 2001*, Part 9.2; Companies Auditors Disciplinary Board, *Annual report 2021–22*, p. 2.

6 Companies Auditors Disciplinary Board, *Submission 51*, p. 1.

7 Companies Auditors Disciplinary Board, *Submission 51*, p. 1; Companies Auditors Disciplinary Board, *Annual report 2022–23*, p. 7.

8 Companies Auditors Disciplinary Board, *Submission 51*, p. 3.

9 Australian Securities and Investments Commission, *Audit inspection report 1 July 2021 to 30 June 2022*, Report 743, pp 5–6.

5.10 However, ASIC argued that its audit surveillance program is not designed to generate referrals to CADB. Rather, the objective 'is to promote improvement in audit quality' with the most common findings being 'the auditor not having obtained sufficient or appropriate audit evidence'.[10]

5.11 The evidence shows that 27 auditors subject to potential referrals from ASIC to CADB were able to resign (in 2020–2021) and thereby avoid a CADB disciplinary process.[11]

5.12 ASIC confirmed that it could refuse an auditor's resignation, for example in an instance of serious misconduct, to allow CADB to hear a case. However, ASIC advised that most recent cases were low-risk administrative matters where the cancellation of a registration was a quick and efficient means of achieving the desired outcome.[12]

5.13 CADB identified issues around its resourcing and ability to pursue disciplinary processes. CADB argued that the arrangements for resourcing CADB functions through secondments from ASIC have been ineffective due to disagreements between ASIC and CADB.[13]

5.14 CADB also suggested that there needs to be greater oversight of the way in which ASIC and APRA refer matters to CADB, as well as potentially expanding the entities that may make applications to CADB regarding registered auditors.[14]

5.15 However, the disciplinary functions for liquidators, as well as financial services and credit, have less independence from ASIC. For example, liquidator disciplinary functions occur through ASIC referring a matter to a committee consisting of ASIC, a registered liquidator chosen by a prescribed body and a person appointed by the Minister.[15]

5.16 Similarly, ASIC convenes the Financial Services and Credit Panel to consider suspected misconduct by a financial adviser. Each sitting panel comprises an

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10 Australian Securities and Investments Commission, answers to questions on notice 145, 3 July 2024 (received 17 July 2024).

11 Companies Auditors Disciplinary Board, *Annual report 2022–23*, p. 7; Australian Securities and Investments Commission, answers to questions on notice 13, 3 November 2023 (received 30 November 2023).

12 Australian Securities and Investments Commission, Response to Mr Doug Niven's answers to questions on notice 84, 22 February 2024 (received 26 March 2024) (response received 8 April 2024).

13 Companies Auditors Disciplinary Board, answers to questions on notice 61, 3 November 2023 (received 29 November 2023); Australian Securities and Investments Commission, answers to questions on notice 60, 3 November 2023 (received 21 December 2023).

14 Companies Auditors Disciplinary Board, *Submission 51*, p. 3.

15 *Corporations Act 2001*, Schedule 2, Sections 40 - 45 and 40 - 50.

ASIC staff member and at least two members appointed by ASIC from a pool of people specified as being eligible by the Minister.[16]

Regulatory body independence from the Big Four firms

5.17 The committee received evidence expressing concern that numerous members of the FRC, AASB and AUASB have a conflict of interest.

5.18 This conflict of interest was set out by Associate Professor Corinne Cortese, who submitted that members of the FRC, AASB and AUASB 'are entrusted to act in the public interest in the creation of accounting and auditing frameworks and standards at the same time as being employed by firms earning millions of dollars from clients as a result of applying and advising on those same standards'.[17]

5.19 Professor Cortese argued that the part-time appointments of FRC and standards board members exacerbate this issue:

- 40 per cent of the FRC members have ties to the Big Four firms;
- 50 per cent of the AASB members have ties to the Big Four firms; and
- 6 of the 11 AUASB members are partners at the Big Four firms.[18]

5.20 Such conflicts of interest are associated with the wider 'revolving door' problem of staff moving between the public and private sectors, as Dr Kelli Larson explained:

> One concern regarding consultancy use in government departments is the so-called 'revolving door' where individuals move between public and private jobs, notably between working for the government and then moving to work at a consultancy firm and vice versa. The problem with the revolving door is that it can lead to conflict-of-interest situations, increasing the risk of corruption. Given their decision-making power, access to information and influence, former Ministers and other government members can be great assets for private companies. Governments should ensure that appropriate measures are in place so that former public servants do not misuse their power and influence to benefit their private interests.[19]

5.21 Dr Larson suggested the use of cooling-off periods, noting the existing cooling-off period under the Code of Conduct for government ministers. However,

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16 *Australian Securities and Investments Commission Act 2001*, Sections 139–141.

17 Associate Professor Corinne Cortese, *Submission 31*, pp 4, 7.

18 Associate Professor Corinne Cortese, *Submission 31*, pp 4–7.

19 Dr Kelli Larson, *Submission 13*, p. 4; See also Tax Justice Network, Tax Justice Network Australia and Centre for International Corporate Tax Accountability & Research, *Submission 28*, p. 2; Dr Andy Schmulow, *Submission 68*, p. 26.

Dr Larson argued that the cooling-off periods should be longer than 18 months and legally enforceable.[20]

5.22 The Australia Institute also supported measures to address the 'revolving door' by strengthening the Public Service Code of Conduct:

> Post-separation requirements in the Public Service Commission Code of Conduct reportedly rely on the goodwill and ethical behaviour of the individuals involved. A more detailed or strict policy would help address these ambiguities. Worth consideration is whether it should include a mandatory post-separation period for public servants who have who have had direct contact with consulting firms.[21]

5.23 Dr Andy Schmulow commented on the importance of ensuring an oversight body is independent of the firms it regulates:

> To ensure the independence of such an oversight authority, regulated firms should not be permitted to fill board positions or advise to, or be seconded by, such an authority. Failing which the exercise will simply devolve to one of self-regulation. That in turn will exacerbate conflicts of interest.[22]

5.24 To ensure Board independence, Dr Schmulow recommended:

> It would be useful to stipulate that the Board of such an oversight authority may only comprise individuals who are at arms-length from the firms to be regulated, and further, should not at any stage in the past have been associated with the regulatees, or have received any benefit from the regulatees (such as political donations).[23]

5.25 Professor Cortese recommended that board independence requirements would include staggered terms of not more than five years, full-time appointments, and at least 75 per cent of board members not drawn from the Big Four firms.[24]

5.26 As a point of comparison, CADB's membership comprises the Chairperson, the Deputy Chairperson, six members of Professional Accounting Bodies (PABs) and six business members with experience in business, commerce, financial markets, financial products, financial service, economics or law. The *Australian Securities and Investments Commission Act 2001* (ASIC Act) specifies that a person is not eligible for appointment as Chair or Deputy Chair unless they are enrolled as a barrister, solicitor, or legal practitioner of the High Court or any federal

20 Dr Kelli Larson, *Submission 13*, p. 4.

21 The Australia Institute, *Submission 47*, p. 8.

22 Dr Andy Schmulow, *Submission 68*, p. 20. See also Name withheld, *Submission 74*, p. 1.

23 Dr Andy Schmulow, *Submission 68*, p. 20. See also Name withheld, *Submission 74*, p. 1.

24 Associate Professor Corinne Cortese, *Submission 31*, p. 7. See also The Australia Institute, answers to questions on notice 11, 6 October 2023 (received 14 November 2023).

court or Supreme Court of a state or territory and has been so enrolled for a period of at least five years.[25]

5.27 There are currently very few conditions on the appointments of FRC members by the Minister or by an organisation specified by the Minister.[26]

5.28 The Minister appoints the Chairs of the AASB and the AUASB, and the FRC appoints the other members of the AASB and the AUASB.[27]

5.29 Answers to questions on notice received from the International Ethics Standards Board for Accountants and the International Auditing and Assurance Standards Board state that from 2025–2026, board membership will be limited to five audit practitioners on a board of 16. This measure is being undertaken to 'balance the risk of undue influence by the audit profession with the need for relevant technical expertise in setting high-quality standards'.[28]

5.30 Likewise, the United Kingdom Financial Reporting Council informed the committee that it has restrictions on current practitioners sitting on its board:

> Current practitioners cannot sit on the FRC Board, we operate a requirement for…[there] to have been a cooling off period of no less than five years before they can be appointed. A board member can be in receipt of a trailing retirement income…[29]

5.31 To ensure the independence of the Tax Practitioners Board from tax practitioners, the government response to the review of the Tax Practitioners Board included the *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*, which amended the *Tax Agent Services Act 2009* to require that '[b]oard members must be individuals who are representatives of the community rather than representatives of larger registered tax agents or [Business Activity Statement] BAS agents'.[30]

5.32 Another aspect of regulatory independence from the Big Four firms is ensuring that regulatory bodies have appropriate codes of conduct and requirements for disclosure of interests.

5.33 In February 2024, the current Chair of the FRC, Mr Andrew Mills, commented on the requirements for disclosing conflicts of interest:

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25 *Australian Securities and Investments Commission Act 2001*, Section 203.

26 *Australian Securities and Investments Commission Act 2001*, Section 235A.

27 *Australian Securities and Investments Commission Act 2001*, Sections 236B, 236F.

28 International Ethics Standards Board for Accountants, answers to questions on notice 119, 8 May 2024 (received 29 May 2024).

29 Financial Reporting Council, answers to questions on notice 114, 22 April 2024 (received 20 May 2024).

30 *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*, Section 17.

> You need a process to ensure that the matters are declared in the first place and that there are consequences of failure to disclose. I think that's standard in many places. You then need to manage it to ensure, where situations arise that might give rise to that conflict, that it's on the table. People may need to absent themselves from discussion or decision-making on that.[31]

5.34 The committee previously examined codes of conduct and requirements for disclosure of interests in its report on the 2017–2018 annual reports of bodies established under the ASIC Act. That report considered bodies including the FRC, AASB and AUASB, and found significant weaknesses and wide variations in the codes of conduct and requirements for disclosure of conflicts of interest, including that there was no statutory requirement for the members of the FRC to avoid or disclose conflicts of interest.[32]

5.35 At the time, the committee made several recommendations for review by Treasury and legislative change.[33]

5.36 The current and former governments provided no substantive response to the committee's recommendations.[34]

Recent developments—Proposed merger of the FRC and standards boards

5.37 In November 2023, the government announced its intention to combine the AASB, AUASB and FRC into a single entity (the new FRC) with a proposed operational date on or after 1 July 2026. The government identified the following advantages of having a single body:

> In addition to accounting and auditing standards, this new integrated body will better support the ongoing implementation of climate-related financial disclosure standards in Australia.
>
> Business, investors and other stakeholders will benefit from engaging with a single entity, helping to increase regulatory consistency, reduce red tape and unnecessary costs and avoid duplication.[35]

5.38 Mr Andrew Mills, Chair of the FRC, observed that the government's proposal is bringing the bodies together within their existing powers and that one advantage may be improved efficiency and flexibility. He also noted that there

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31 Mr Andrew Mills, Chair, Financial Reporting Council, *Committee Hansard*, 22 February 2024, p. 36.

32 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2017–2018 annual reports of bodies established under the ASIC Act*, April 2019, pp 6–7.

33 Parliamentary Joint Committee on Corporations and Financial Services, *Report on the 2017–2018 annual reports of bodies established under the ASIC Act*, April 2019, p. ix.

34 Government response to the Joint Committee on Corporations and Financial Services report, *Report on the 2017-2018 annual reports of bodies established under the ASIC Act*, May 2024, pp 1–2.

35 The Hon Stephen Jones MP, Assistant Treasurer and Minister for Financial Services, *Streamlining financial reporting architecture*, Joint media release with The Hon Jim Chalmers MP, Treasurer, 21 November 2023. See also Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 34.

is no standard regulatory model internationally and each model has its advantages and disadvantages.[36]

5.39 Mr Doug Niven, Chair and Chief Executive Officer of AASB, agreed that the government's motivation for the proposal to integrate the FRC and the standards boards was greater flexibility in responding to new international standards. This could include the ability to set up a new standards-setting board with the right experience and expertise to pick up on international developments and incorporate Australia-specific elements if required.[37]

5.40 Mr Niven also noted that it was important that any new structure is adequately resourced to oversee the due process of the boards, while also respecting technical decision-making on the standards. These processes need to be recognised internationally because Australia needs 'to work with international standards setters and influence the quality of their standards, which ultimately we're being asked to adopt'.[38]

5.41 Finally, Mr Niven noted that the merger would not deal with the enforceability of standards, which is a separate legislative issue.[39]

Proposals to create a new regulatory and enforcement body

5.42 The proposals put to the committee to create a new regulatory and enforcement body can be broadly generalised into two categories: firstly, a proposal to expand the current FRC regulatory framework to include oversight of the PABs and be the sole 'regulatory clearing-house for the accounting profession'; and secondly, a more substantial proposal to create a body like the United States Public Company Accounting Oversight Board (US PCAOB). See Appendix 5 for a comparison of regulatory frameworks in relevant jurisdictions.

5.43 The first proposal by the Institute of Public Accountants (IPA) would require the new FRC to have new 'compulsory information gathering and information sharing powers and a power to sanction non-compliance with information gathering'.[40]

5.44 The IPA suggested the new FRC 'could then delegate complaint handling to each of the professional accounting bodies'. This could occur 'either in

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36 Mr Andrew Mills, Chair, Financial Reporting Council, *Committee Hansard*, 22 February 2024, p. 31.

37 Mr Doug Niven, Chair and Chief Executive Officer, Auditing and Assurance Standards Board, *Committee Hansard*, 22 February 2024, p. 37.

38 Mr Doug Niven, Chair and Chief Executive Officer, Auditing and Assurance Standards Board, *Committee Hansard*, 22 February 2024, p. 37.

39 Mr Doug Niven, Chair and Chief Executive Officer, Auditing and Assurance Standards Board, *Committee Hansard*, 22 February 2024, p. 37.

40 Institute of Public Accountants, *Submission 15*, p. 9; Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023).

compliance with their individual by-laws' or through 'a joint approach or joint framework'.[41]

5.45 The Australian Shareholders' Association considered the proposal had merit but warned that 'proper oversight and periodic review of its effectiveness, as well as mature whistle-blower protections and obligations on market participants' were essential to avoid 'the risk of the FRC being seen as comprised of insiders' and 'overly influenced by the industry'.[42]

5.46 The second proposal would require more substantial changes to create a body like the United States Public Company Accounting Oversight Board (US PCAOB) with responsibility for:

- registering public accounting and audit firms;
- establishing audit, quality control, ethics, independence and other standards relating to audits of public companies;
- conducting surveillance (inspections), investigations and disciplinary proceedings of registered accounting firms; and
- enforcing compliance with the *Corporations Act 2001*.[43]

5.47 Professor George Tanewski and Professor Peter Carey suggested that the FRC be upgraded to be like overseas regulators such as the US PCAOB. They proposed that the new body work independently of ASIC and be 'funded by ASIC's current levies on the business community'.[44]

5.48 The FRC itself, in its review of the oversight of audit quality in Australia, suggested the government consider two options: to increase ASIC's funding so that it has more resources to conduct its current oversight and enforcement relating to both auditing and financial statements; or to establish a new independent body with a broader remit to include surveillance of financial reporting and auditing, as well as the disciplinary and enforcement processes currently performed by ASIC and the PABs.[45]

5.49 However, ASIC pointed out that several factors need to be borne in mind when comparing ASIC's enforcement outcomes with the admittedly significant

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41 Institute of Public Accountants, *Submission 15*, p. 9; Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023).

42 Australian Shareholders' Association, answers to questions on notice 28, 6 October 2023 (received 20 December 2023).

43 Professor George Tanewski and Professor Peter Carey, *Submission 23.1*, pp 8, 10; Professor Gary Monroe, *Submission 50.1*, [p. 1].

44 Professor George Tanewski and Professor Peter Carey, *Submission 23.1*, pp 4, 8.

45 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 6.

enforcement actions and sanctions achieved by the US PCAOB and the United States Securities Exchange Commission against the Big Four firms.[46]

5.50 Firstly, the sanctions achieved in the US would not be possible under current Australian laws because 'ASIC can only act against a lead audit partner for non-compliance with an auditing standard in the conduct of an individual audit' rather than sanctioning the audit firm.[47]

5.51 Secondly, the US PCAOB has a specific legislative mandate to conduct audit inspections and surveillance whereas ASIC does not.[48]

5.52 Thirdly, the US PCAOB has 460 employees on its audit inspection program, compared to 16 at ASIC. The number of relevant listed entities that are audited is only three times larger for the US PCAOB than ASIC. Additionally, the US PCAOB has clear targets for the scope and frequency of audit firm reviews, whereas ASIC does not.[49]

5.53 The committee also heard evidence on these issues from the current Chair of the FRC, Mr Andrew Mills. He warned that moving some functions out of ASIC and into a new body could reduce the synergies that presently exist in ASIC because ASIC conducts the enforcement of both financial reporting and auditing.[50]

Committee view

5.54 The committee view covers three related topics: integration of some of the roles within the current regulatory framework, ensuring the effectiveness of the disciplinary function, and ensuring the independence of the standard setting and oversight bodies.

Integrating some of the current functions of the regulators and standard setters

5.55 Evidence presented to the committee indicated that Australia's regulatory oversight arrangements in relation to auditing differ significantly from overseas jurisdictions.

5.56 Firstly, jurisdictions such as the US, UK, and New Zealand have fewer bodies covering a more comprehensive range of regulatory functions for auditing.

5.57 Secondly, establishing audit standards for quality control, ethics and independence in Australia is an industry self-regulatory function, whereas it is

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46 Australian Securities and Investments Commission, *Submission 49*, p. 5.

47 Australian Securities and Investments Commission, *Submission 49*, p. 5.

48 Australian Securities and Investments Commission, answers to questions on notice 17, 3 November 2023 (received 30 November 2023).

49 Australian Securities and Investments Commission, answers to questions on notice 17, 3 November 2023 (received 30 November 2023).

50 Mr Andrew Mills, Chair, Financial Reporting Council, *Committee Hansard*, 22 February 2024, pp 31-32.

government-regulated in the other jurisdictions such as the US, UK, and New Zealand.

5.58 Thirdly, the Australian FRC currently has a minimal role overseeing the accounting and auditing standard setters, while overseas peers in the US, UK, and New Zealand have a broader role.

5.59 Evidence to the inquiry supported some rationalisation of Australia's arrangements for standard setting for financial reporting, assurance and auditing. To that end, the committee supports the government's proposal to integrate the FRC, AASB and AUASB into a single body (the new FRC).

5.60 Noting the views of the current FRC Chair, Mr Andrew Mills, the committee is particularly mindful of the value in retaining the synergies that currently exist within ASIC as performs enforcement for both financial reporting and auditing.

5.61 The first option for reform would involve giving greater priority and increased funding and resourcing for ASIC's financial reporting and auditing surveillance and enforcement program.

5.62 Further, the committee notes that in the previous chapter, it recommended that ASIC be given the legislative power to act against an audit firm rather than just an individual auditor. Should this recommendation be implemented, ASIC would then have many of the surveillance, investigation, and enforcement powers of the US PCAOB. These reforms could be made without major structural change.

5.63 The second option for reform, as proposed by some inquiry participants, would be to establish a body like the US PCAOB in Australia, with responsibilities including registering auditors and firms, setting standards, conducting surveillance and investigation, and undertaking enforcement and disciplinary action.

5.64 The committee observes that such a proposal would require moving some functions, such as registration, surveillance, investigation and enforcement, out of ASIC. There may be significant implications of such a substantial change that would need to be carefully worked through.

5.65 The integrated nature of a proposed Australian PCAOB would remove barriers in the processes that presently exist in Australia between inspections done by ASIC and disciplinary action for individuals by CADB.

5.66 However, as the committee notes in the next section, folding the disciplinary functions of CADB into ASIC would achieve the same outcome within an existing structure.

Recommendation 20

5.67 The committee recommends that:

- **the Australian Government adopt a phased approach and proceed with its proposal to integrate the accounting and audit standards boards with the Financial Reporting Council; and**
- **the Australian Government then establish an organisation in Australia equivalent to the United States Public Company Accounting Oversight Board.**

The role and effectiveness of CADB

5.68 CADB is not presently an efficient or effective part of the regulatory framework for auditing.

5.69 Despite ongoing issues with audit quality, few cases are referred to CADB. The committee notes that ASIC maintains that most instances it uncovers result in low-risk administrative findings where the most cost effective and efficient method is to allow an auditor to resign. Further, ASIC has discretion over whether to refer such matters to CADB for a disciplinary process.

5.70 The committee notes that Australia appears to be unique in having an organisation solely devoted to auditor disciplinary proceedings. Further, the arrangements for seconding staff from ASIC to CADB have been subject to disagreement.

5.71 Sufficient time has elapsed since the liquidator disciplinary functions were moved out of the former Companies Auditors and Liquidators Disciplinary Board (leaving the resultant CADB) to consider whether the current arrangements are satisfactory.

5.72 In this regard, the disciplinary functions for liquidators and financial advisers achieve independence through committees and panels, which include ASIC but have a majority of independent members. Similarly, the US PCAOB appears to be able to impose sanctions on auditors, without reference to a separate body.

5.73 Therefore, the committee is of the view that, while the government is making other changes to address regulatory overlaps and gaps in the auditing sector, there is scope to consider the efficiency and effectiveness of auditor disciplinary functions and CADB.

5.74 Given that many of the findings against an individual auditor may be administrative, the committee suggests that the government consider:

- whether the disciplinary functions of the CADB should be folded into ASIC with arrangements established similar to those for the liquidator and financial advisor disciplinary functions;
- whether a different body could better perform the auditor disciplinary functions;

- different arrangements for staffing and resourcing auditor disciplinary functions;
- whether more clarity should be provided on what cases are to be referred to CADB;
- whether it is appropriate for ASIC to have discretion over whether auditors can avoid a disciplinary process by resigning;
- whether it is appropriate for the ASIC audit surveillance program to continue to operate without the intention and actions to generate referrals to CADB and whether the findings of ASIC audit surveillance reports should be automatically referred to CADB; and
- whether CADB should be given the power to make own-motion investigations, in addition to receiving referrals from ASIC or APRA.

Recommendation 21

5.75 The committee recommends that the Australian Government reform the Companies Auditors Disciplinary Board (CADB) to improve its efficiency and effectiveness by:

- **implementing improved, more stable and transparent arrangements for staffing and resourcing auditor disciplinary functions;**
- **providing more clarity around what cases trigger referral to CADB;**
- **removing the Australian Security and Investments Commission's (ASIC's) discretion over whether auditors can avoid a disciplinary process by resigning;**
- **compelling the findings of ASIC audit surveillance reports to be automatically referred to CADB; and**
- **giving CADB the power to make own-motion investigations, in addition to receiving referrals from ASIC or the Australian Prudential Regulation Authority.**

Independence of the regulators and standard setters from the Big Four firms

5.76 A tension exists in the make-up of regulators and standards boards between having access to relevant skills and experience, often drawn from the industry to be overseen, and the ability to act independently of the industry which they oversee.

5.77 In the audit sector, the committee notes the make-up of the FRC, AASB and AUASB draws heavily on members with ties to the Big Four audit firms. The committee acknowledges the need for these bodies to have sufficient access to relevant skills and experience. However, the committee also considers it very important that such these bodies can act independently of the Big Four firms. The current arrangements create a risk that an appropriate level of independence is not achieved.

5.78 The committee is also concerned about the 'revolving door' associated with the movement of staff between the public and private sectors. At some level there are benefits from such movements, however, it can also lead to conflicts of interests.

5.79 The committee notes that any restriction on membership may limit access to the relevant technical expertise. However, the committee observes that the International Ethics Standards Board for Accountants is currently implementing restrictions on the numbers of audit practitioners able to sit on its board. The committee therefore considers it feasible to apply a similar approach to Australia's domestic standards boards for the accounting and auditing sectors.

5.80 The committee considers that the government's proposal to integrate the FRC, AASB and AUASB into a single organisation will provide an opportunity to review the independence, qualifications and other conditions for appointment to the new organisation.

5.81 If the government does not proceed with the integration of the three bodies, the committee considers that it should take separate action to address their independence from the Big Four.

5.82 In addition to ensuring that the Big Four firms do not unduly influence regulatory bodies, the committee considers it timely to address other matters.

5.83 For example, Treasury officers currently staff the FRC secretariat. While such an arrangement may provide efficiencies, the committee is concerned that there is insufficient separation between the FRC and Treasury. In contrast, the secretariat for the AASB and AUASB is independent of Treasury.

5.84 When the government implements the integration of the FRC, AASB and AUASB, it will have to choose one approach. The committee is of the view that it is appropriate for the new FRC to have an independent secretariat.

Recommendation 22

5.85 The committee recommends that the Australian Government consider additional mechanisms to ensure the Financial Reporting Council and any related standards boards, the Companies Auditors Disciplinary Board, the Australian Securities and Investments Commission, the Tax Practitioners Board, and the Australian Taxation Office and other government regulatory bodies are independent and are seen to be independent, including by ensuring that the bodies do not include individuals with a current financial interest in entities under the direct governance of the body. This may include revision of internal governance structures, independent review or audit of decision making and internal governance structures by an external third party, such as a government department or parliamentary committee or appropriate expert to ensure that the revolving door between the public and private sectors does not lead to perceived or actual conflicts of interest.

Recommendation 23

5.86 The committee recommends that the Australian Government ensure that the new Financial Reporting Council has structural, governance and administrative arrangements which are independent from Treasury, including by ensuring that the new Financial Reporting Council do not include individuals with a current financial interest in entities under the direct governance of the body.

5.87 In addition to ensuring that persons from the Big Four firms do not dominate regulatory bodies, the committee considers that appropriate mechanisms must be in place to monitor the influence of board members through codes of conduct and requirements for disclosure of conflicts of interests.

5.88 In 2019, the committee identified significant gaps and inconsistencies in the codes of conduct and requirements for disclosure of conflicts of interest for bodies established under the ASIC Act, including the FRC, AASB, and AUASB. There is no statutory requirement for the members of the FRC to avoid or disclose conflicts of interest. The committee therefore made recommendations to enhance and harmonise the codes of conduct and requirements for disclosure of conflicts of interest.

5.89 Since 2019, there have been developments internationally to ensure the structural avoidance of conflicts of interest on industry and standards boards. The committee welcomes these developments as evidence that matters the committee identified in 2019 are still relevant and merit serious consideration. Consequently, the committee does not agree with the government's view that a substantive response to its 2019 recommendations is no longer appropriate.

5.90 Rather, the committee urges the government to reconsider its position on enhancing and harmonising codes of conduct and requirements for disclosure of conflicts of interest for the new FRC and other bodies established under the ASIC Act. At a time when the government is making significant regulatory changes to address governance issues within the Big Four, it is of the utmost importance that government bodies set the benchmark for codes of conduct, including a rigorous approach to the disclosure of conflicts of interest.

Recommendation 24

5.91 The committee recommends that the Australian Government enhance and harmonise codes of conduct and requirements for disclosure of conflicts of interest for all bodies established under the *Australian Securities and Investments Commission Act 2001*, including the new Financial Reporting Council.

Chapter 6
Professional bodies and standards

Introduction

6.1 The industry self-regulatory bodies for the accounting profession in Australia include the three professional accounting bodies (PABs), namely Certified Practicing Accountants Australia (CPA Australia), Chartered Accountants Australia and New Zealand (CAANZ) and the Institute of Public Accountants (IPA).

6.2 The PABs are intended to function in the public interest by maintaining and monitoring a range of professional competency standards and conducting quality reviews.

6.3 However, evidence to this inquiry revealed several concerning failures in relation to the PABs' oversight of the PwC breach of confidentiality obligations.

6.4 For example, CAANZ did not take disciplinary action against one of the PwC partners at the centre of the PwC breach of confidentiality obligations in part because the partner resigned from CAANZ, when he should not have been able to do so.[1] Further, the Tax Practitioners Board (TPB) was not aware that the partner was a member of CAANZ and therefore did not notify CAANZ.[2]

6.5 It is unclear whether PwC informed CAANZ about the partner's role in the PwC breach of confidentiality obligations and subsequent legal professional privilege issues.

6.6 Even when CAANZ did act, the maximum fine that CAANZ could impose on PwC at the time was $50 000 which is unlikely to have been a significant deterrent considering that PwC is a large and profitable firm. The maximum allowable fine was subsequently increased by a factor of five.[3]

6.7 This chapter is split into two broad parts. The first part sets out the role of the three professional accounting bodies and the professional standards schemes. It then considers the functions of the PABs and options to improve the oversight processes, including whether legislative backing is required for ethical

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1 Mrs Ainslie van Onselen, Chief Executive Officer, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 5 March 2024, p. 32.

2 Mrs Ainslie van Onselen, Chief Executive Officer, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 5 March 2024, p. 32.

3 Chartered Accountants Australia and New Zealand, *PricewaterhouseCoopers Australia censured and fined by CA ANZ Disciplinary Tribunal*, 28 November 2023, https://www.charteredaccountantsanz.com/news-and-analysis/media-centre/press-releases/pwc-australia-censured-and-fined-by-ca-anz-disciplinary-tribunal (accessed 26 September 2024).

standards. Next, evidence on a gap in code coverage for the accounting profession is presented. The first part concludes with the committee's views and recommendations on these matters.

6.8 The second part explores the regulation, professional standards and ethical code for consultants.

Role of the professional accounting bodies in Australia

6.9 The PABs maintain and monitor their members' professional competence and standards through eligibility requirements for their membership, provide their members with ongoing training, guidance, and tools, require continuous professional development, and conduct quality reviews of individual members and firms.[4]

6.10 As members of the International Federation of Accountants, the PABs are required to comply with membership obligations such as benchmarks and core competencies and 'plan and perform quality assurance reviews of firms and individual members (including auditors) and take appropriate corrective action for non-compliance'.[5]

Professional standards schemes

6.11 The PABs administer the professional standards schemes for accountants in Australia under the state and territory professional standards councils enabled by professional standards legislation.[6]

6.12 The Professional Standards Councils' submission explained that a professional standards scheme is 'a statutory instrument underpinned by an occupational association's commitments to monitor, enforce, and improve the professional standards of its members'.[7]

6.13 The Professional Standards Councils submitted that the professional standards system is effective because professional associations and their members share in the regulation of their professions, creating a culture of peer-driven continuous improvement. Additionally, their specific regulatory functions complement regulation of the professions by other state entities.[8]

6.14 The PABs must submit a professional standards report to the Professional Standards Councils by 31 March each year. The reports are required to cover decisions, policies and actions on a range of matters including informing

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4 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 16.

5 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 16.

6 Professional Standards Councils, *Submission 77*, p. 9; Institute of Public Accountants, *Submission 15*, p. 6.

7 Professional Standards Councils, *Submission 77*, p. 9.

8 Professional Standards Councils, *Submission 77*, pp 1–2.

members and consumers, protecting consumers, responding to consumer complaints and claims, and scheme administration.[9]

6.15 The PAB reports to the Professional Standards Councils are not publicly available.

APESB and APES 110

6.16 The PABs established and funded the Accounting Professional and Ethical Standards Board (APESB), an independent national body, to set the code of ethics (APES 110). APES 110 imposes professional obligations and ethical requirements on members of the accounting profession based on five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.[10]

6.17 APES 110 is based on the international code of ethics for professional accountants issued by the International Ethics Standards Board for Accountants (IESBA). PAB members must comply with the APES 110 code under the PAB by-laws and associated disciplinary frameworks.[11]

6.18 The APES 110 code is a mandatory requirement with the force of law for audits and reviews of entities subject to the *Corporations Act 2001*. Currently, only the APES 110 code has legislative backing provided by a legislative instrument.[12]

Functions of the PABs and options to improve the oversight processes

6.19 The Financial Review Council (FRC)'s 2023 review of the oversight of audit quality in Australia considered several matters related to the roles and functions of the PABs.

6.20 The FRC noted that because each PAB has its own separate investigatory and disciplinary function, a conflict of interest arises because the PABs receive fees from members and represent their members interests, and at the same time must manage the conduct of their members.[13]

6.21 Therefore, the FRC recommended that the government review the Companies Auditors Disciplinary Board, the Australian Securities and Investments

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9 Professional Standards Councils, *Guidance: Annual professional standards report*, https://psc.gov.au/sites/default/files/SAF/SAF_Module_6/6_Guidance_Annual_Professional_Standards_Report.pdf, p. 2.

10 Accounting Professional and Ethical Standards Board, *Compiled APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, June 2023, p. 47.

11 Senate Economics References Committee, *Inquiry into the Australian Securities and Investments Commission investigation and enforcement* (referred October 2022), Chartered Accountants Australia and New Zealand, *Submission 165*, pp 5–6.

12 APESB, *Submission 20*, p. 13.

13 Financial Reporting Council, *Oversight of audit quality in Australia–A review*, November 2023, p. 5.

Commission (ASIC) and the PABs' investigatory and disciplinary processes, including whether these functions should be performed by a single independent body.[14]

6.22 The FRC also suggested the government consider whether ethical standards should be set by an independent statutory body to 'help address any perceived conflict of interest', and whether ASIC was the most appropriate body to undertake the enforcement role.[15]

6.23 The FRC also recommended the government consider giving legislative backing to requirements for auditors to comply with ethical standards and enforcement of compliance.[16]

6.24 The IPA noted that an alternative approach would be to give legislative force to codes of conduct applicable to members of the PABs, which could be achieved by requiring the PABs to report directly to the FRC.[17] Further:

> …the existing FRC regulatory framework could be expanded to include oversight of the professional accounting bodies, which would strengthen and improve the co-regulatory function which the accounting bodies currently undertake. This framework could be streamlined if the existing functions of the APESB (which do not have the force of law) were absorbed into the FRC.[18]

6.25 This proposal was supported by the APESB, FRC and other submitters.[19]

6.26 The IPA noted that the investigative and disciplinary functions of the professional bodies are limited.[20] In requiring the PABs to report directly to the FRC, the IPA considered that the FRC would require various powers including 'a power to sanction non-compliance with information gathering requests' and the ability to delegate complaint handling to the PABs.[21]

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14 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 8.

15 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 7.

16 Financial Reporting Council, *Oversight of audit quality in Australia—A review*, November 2023, p. 7.

17 Institute of Public Accountants, *Submission 15,* pp 8–9.

18 Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023).

19 Accounting Professional and Ethical Standards Board, *Submission 20*, pp 3–4; Financial Reporting Council, *Oversight of audit quality in Australi*a*—A review*, 6 November 2023, p. 7; BDO Group Holdings Limited, *Submission 38*, p. 5.

20 Institute of Public Accountants, *Submission 15,* p. 6.

21 Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023.

Gaps in code coverage for accounting and internal audit

6.27 The committee received evidence that significant gaps exist around the professional licensing requirements for accountants and internal auditors.

6.28 For example, CAANZ noted that there is no regulatory requirement for professionals who offer general accounting services to be licensed or to be a member of a PAB.[22]

6.29 The IPA submitted there are:

> …thousands of people who can legally call themselves 'accountant' and provide numerous services to the public, without being subject to any accountability framework or governance requirements.[23]

6.30 To improve consumer protection, accountability, and regulatory efficiency, the IPA proposed legally defining the term 'accountant'.[24]

6.31 Likewise, the Institute of Internal Auditors noted that not all internal auditors are covered by professional memberships,[25] and suggested 'mandating professional membership requirements for all internal audit consultants' to strengthen governance within firms.[26]

Parliamentary scrutiny of bodies administering professional standards schemes

6.32 In its June 2024 report on its inquiry the management and assurance of integrity by consulting services, the Senate Finance and Public Administration References Committee (F&PA committee) concluded that improved oversight and regulation of self-regulatory structures and bodies like the PABs is required to ensure the integrity of consulting services procured by government.

6.33 Accordingly, the F&PA committee recommended greater parliamentary scrutiny of the bodies administering professional standards schemes by recommending that the government:

- require those organisations that operate professional standards as self-regulatory regimes, to report annually on the operation of those standards to the Joint Standing Committee on Corporations and Financial Services; and
- require these same organisations to appear before that committee to provide oversight on the operation of the relevant standard.[27]

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22 Chartered Accountants Australia and New Zealand, *Submission 30*, pp 5–6.

23 Institute of Public Accountants, *Submission 15*, p. 6.

24 Institute of Public Accountants, *Submission 15*, p. 6.

25 Institute of Internal Auditors, *Submission 10*, p. 1.

26 Institute of Internal Auditors, *Submission 10*, p. 1.

27 Senate Finance and Public Administration References Committee, Inquiry into the management and assurance of integrity by consulting services, *Final report*, June 2024, p. 92.

Committee view

Parliamentary scrutiny of bodies administering professional standards schemes

6.34 The committee supports the F&PA committee's recommendation for greater parliamentary scrutiny of the bodies administering professional standards schemes, noting the shortcomings of such bodies in relation to the PwC breach of confidentiality obligations.

6.35 In August 2024, the committee therefore determined that it would commence annual oversight of CAANZ, CPA Australia and the IPA in accordance with its statutory functions under subsection 243(a) of the *Australian Securities and Investments Commission Act 2001*.

Publication of PAB reports on their professional standards schemes

6.36 The committee is concerned that the PAB reports on their professional standards schemes to the professional standards councils are not publicly available. As a result, there is a lack of accountability on the operation of the PAB professional standards schemes. Hence, the committee recommends that the PAB reports to the professional standards councils are published on the PAB websites.

Recommendation 25

6.37 The committee recommends that the professional accounting bodies' reports to the Professional Standards Councils are published on the professional accounting bodies' websites.

Single independent body for investigatory and disciplinary functions

6.38 The committee concurs with the view of several submitters that there is a potential conflict of interest between the role of the PABs in managing the conduct of their members and their role in representing the interests of members. The committee therefore considers that the government should review the PABs' investigatory and disciplinary processes and consider the establishment of a single, independent body to perform these functions.

Recommendation 26

6.39 The committee recommends that the Australian Government review the professional accounting bodies' investigatory and disciplinary processes and, if appropriate, establish a single, independent body to perform these functions. Such a body should incorporate a positive disclosure standard so that relevant entities would be required to disclose incidents that are flagged to the Australian Securities and Investments Commission and the new integrated Financial Reporting Council.

Legislation to make the term 'accountant' a protected term

6.40 The committee is concerned by the evidence from the IPA that persons with no statutory registration can legally call themselves accountants and provide numerous services to the public without being subject to any accountability framework or governance requirements.

6.41 The committee therefore suggests that the government define the term 'accountant' at law.

Recommendation 27

6.42 The committee recommends that the Australian Government bring forward legislation to make the term 'accountant' a protected term, so that only qualified accountants who are members of a professional body can use it.

Integration of the APESB into the new FRC

6.43 The committee agrees with the evidence received that there would be advantages in giving the APESB standards legislative backing and moving the APESB into the new FRC. This would be more consistent with relevant overseas jurisdictions. The committee suggests the government's implementation of the proposal to integrate the FRC, the Australian Accounting Standards Board, and the Auditing and Assurance Standards Board (AUASB) would also provide an opportunity to integrate the APESB into the new FRC and give legislative backing to the standards.

Recommendation 28

6.44 The committee recommends that the Australian Government, as part of establishing the new integrated Financial Reporting Council (FRC), consider how ethical standards and professional matters are to be treated (including the FRC's role in creating standards, and the role of the Accounting Professional and Ethics Standards Board). Appropriate measures should be adopted to address the conflict of interest inherent in professional bodies setting and enforcing their own standards whilst overseeing entities who are their own fee-paying members.

Regulation, professional standards, and code of ethics for consultants

6.45 The Big Four firms advised that, to provide consulting services, their firms draw on a network of specialists in economics, financial instrument valuation, assurance, taxation, security, commercial strategy and emerging professions such as climate transition, information technology, data science, and cyber security.[28]

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[28] See, for example, EY Australia, *Submission 12.1*, p. 2; KPMG Australia, *Submission 25*, p. 3; Deloitte Touche Tohmatsu, *Submission 40*, p. 2; PwC, *Submission 43*, p. 3.

6.46 However, several submitters noted that the multidisciplinary nature of the Big Four firms means that the professional and ethical standards and obligations that apply to some staff and managers based on their profession (for example, auditing, tax, insolvency, law and financial advice) do not apply to other staff and managers, such as consultants.[29]

6.47 Further, the committee was warned that consultants may operate with a very different logic to the professions which are required under their relevant codes of ethics to act in the public interest. Therefore, any public sector agency needs to clearly recognise that when they engage consultants, they are dealing with market actors that are not required to have any regard for the interests of their client or the public interest but may merely be interested in satisfying their own commercial self-interest.[30]

6.48 Accordingly, several submitters and market participants called for a range of measures including coverage of consultants by professional and ethical codes and an independent oversight body to regulate the industry.

6.49 The remainder of this chapter looks at the lack of regulatory coverage of consulting services, the lack of professional standards for consultants, and the inherent conflicts of interest faced by consultants in the Big Four firms. It then considers the options for reform and finishes with the committee views and recommendations.

Lack of regulatory coverage of consulting services

6.50 BDO commented that the rise of consulting has created a gap in regulatory oversight. While audit, tax and financial advisory services are regulated, the regulation of advisers and services outside these classifications, such as management consultants, cyber security advisers and risk managers, is less clear or ambiguous.[31]

6.51 Treasury noted that there is no single standard definition of 'consulting'. Accordingly, 'the incentive that drives firms in this sector to perform to a satisfactory level is the firm-client relationship', typically managed by the contractual arrangement. Apart from consultants who are legal practitioners, or certain consulting services that may, for example, require an Australian financial services licence, there is no specific regulation that covers consultancy services.[32]

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29 See, for example, BDO Group Holdings Limited, *Submission 38*, p. 1; The Australia Institute, *Submission 47*, p. 11.

30 Dr Simon Longstaff, The Ethics Centre, *Committee Hansard*, 20 November 2023, p. 5.

31 BDO Group Holdings Limited, *Submission 38*, pp 1, 5.

32 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp 20–21.

Lack of professional standards for consultants

6.52 Just as there is no specific regulation of consultants, there are no common professional requirements or attendant code of ethics.

6.53 The Australian Council of Professions defines a profession:

> A Profession is a disciplined group of individuals who adhere to ethical standards and who hold themselves out as, and are accepted by the public as, possessing special knowledge and skills in a widely recognised body of learning derived from research, education and training at a high level, and who are prepared to apply this knowledge and exercise these skills in the interest of others.[33]

6.54 Importantly, each profession has a recognised code of ethics that governs the behaviour and activities of its members:

> It is inherent in the definition of a Profession that a code of ethics governs the activities of each Profession. Such codes require behaviour and practice beyond the personal moral obligations of an individual. They define and demand high standards of behaviour in respect to the services provided to the public and in dealing with professional colleagues. Often these codes are enforced by the Profession and are acknowledged and accepted by the community.[34]

6.55 The IPA submitted that, even though the Institute of Management Consultants has developed an ethical code, 'consultants are generally not required to be members and so are largely not subject to any ethical standards'.[35]

6.56 The IPA noted that:

> This position is understandable from a historical perspective given that consultants do not present themselves as having particular qualifications and are engaged by a generally sophisticated client base to perform a diverse range of work, to which a single ethical code would not necessarily be appropriate. Clients are free to engage consultants on the contractual terms that are agreed, including terms relating to probity.[36]

6.57 However, the IPA also recognised that 'recent issues demonstrate how the reliance upon consultants by the Australian public and private sectors is such that the public interest requires consultants to be subject to stricter standards'.[37]

6.58 The Ethics Centre was concerned that consultants in the Big Four firms do not belong to a genuine profession subject to mandatory ethical standards. The

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33 Australian Council of Professions, *What is a profession?* https://professions.org.au/what-is-a-professional/ (accessed 23 September 2024); Deloitte Touche Tohmatsu, *Submission 40*, p. 24.

34 Australian Council of Professions, *What is a profession?* https://professions.org.au/what-is-a-professional/ (accessed 23 September 2024); Deloitte Touche Tohmatsu, *Submission 40*, p. 24.

35 Institute of Public Accountants, *Submission 15*, p. 7.

36 Institute of Public Accountants, *Submission 15*, p. 7.

37 Institute of Public Accountants, *Submission 15*, p. 7.

Ethics Centre recognised that it would take time for consultancy to become a true profession and, in the meantime, it may be necessary for consultants 'to be controlled by members of another profession' such as accountants and auditors.[38]

Conflicts of interest faced by consultants in the Big Four firms

6.59 Professor Peter Wells submitted that conflicts of interests arise for consultants in the Big Four firms because of 'the diverse nature of the relations between the clients of the large accounting firms'.[39]

6.60 These conflicts of interest are difficult to address when consultants concurrently provide policy and legislative advice to the public sector and advice to private sector clients on compliance with the legislation. Professor Wells characterised these conflicts as 'poacher and gamekeeper' conflicts. Because of the inherent nature of the conflicts, he argued that consultants cannot do both.[40]

6.61 Dr Simon Longstaff from the Ethics Centre explained that the conflicts of interest have resulted from the balance of power in the Big Four firms shifting away from the original regulated professions with 'very high professional commitments' to consultants 'who may not be bound by any of those professional obligations'. This shift in the Big Four firms has occurred as the share of revenue derived from consulting has grown.[41]

Current professional codes in the Big Four firms

6.62 Given the nature of the observations and critiques put forward by some submitters, the Big Four firms provided information on the professional codes and internal policies that apply to their staff:

- Deloitte advised that all its staff, regardless of their discipline, are required to comply with Deloitte Australia policies, which incorporate requirements of APES 110. In addition, all its partners are CAANZ members and must therefore comply with APES 110.[42]
- EY advised that it 'adheres to the EY Global Code of Conduct which provides a clear set of ethical business conduct standards that build upon our purpose, values and culture to provide the ethical and behavioural framework on which we provide services to our clients and base our decisions every day'.[43]

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38 The Ethics Centre, *Submission* 9, pp 4-6; *Submission 50.4*, p. 4.

39 Professor Peter Wells, *Submission 3*, p. 2.

40 Professor Peter Wells, *Submission 3*, p. 2.

41 Dr Simon Longstaff, The Ethics Centre, *Committee Hansard*, 20 November 2023, p. 5.

42 Deloitte Touche Tohmatsu, *Submission 40*, p. 24.

43 EY Australia, *Submission 12.1*, p. 2.

- KPMG advised that it has a global code of conduct setting out the individual and collective responsibilities all KPMG people have to their peers, clients, and the public.[44]
- PwC noted that all PwC partners are members of CAANZ and must therefore comply with APESB standards.[45]

6.63 The APESB noted that its pronouncements such as APES 110 apply to all services, including consulting services, provided by members of the PABs, regardless of the services they provide. APESB suggested specifying that APES 110 applies to consulting in areas such as information technology, management, strategy, marketing and human resources.[46]

Options for reform

6.64 The AUASB provided a substantial list of matters that government should consider in forming a policy position on the regulation of consultants, foremost amongst them clarity on what constitutes consulting services as well as a clear definition of the objectives of regulation, which would determine its nature and scope.[47]

6.65 The proposed approaches for regulating consultants generally fell into four categories, which are not mutually exclusive:

- establishing an independent regulator for consultants;
- establishing an overarching governance framework;
- using Commonwealth procurement processes to impose professional and ethical standards; and
- implementing a global professional code of ethics.

Establishing an independent regulator for consulting

6.66 Several submitters proposed an independent regulator to oversee the audit, assurance and consultancy industry.

6.67 The APESB supported the establishment of an independent body to 'monitor all professional services firms that provide audit, assurance and consulting services'. The APESB noted that the new body would need to take enforcement actions and report annually on its monitoring and enforcement activities.[48]

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44 KPMG Australia, *Submission 25*, p. 12.

45 PwC, *Submission 43*, p. 6.

46 Accounting Professional and Ethical Standards Board, answers to questions on notice 65, 1 March 2024 (received 22 March 2024).

47 Auditing and Assurance Standards Board, answers to questions on notice 72, 22 February 2024, received 25 March 2024.

48 Accounting Professional and Ethical Standards Board, *Submission 20*, pp 3–4.

6.68 EY was firmly of the view that its own policies and the overall regulatory environment provided sufficient protection for its clients. However, EY also considered that the fragmentation of oversight functions justified establishing a single Commonwealth regulator 'to oversee and coordinate the regulatory framework for partnerships and indeed all professional services providers, regardless of their structures'. EY also called for the development of a partnership disciplinary board.[49]

6.69 Dr Andy Schmulow favoured establishing an independent regulator for consulting services to government to monitor conflicts of interest and take appropriate enforcement action.[50]

6.70 BDO suggested the establishment of an independent oversight body with the following features:

- Professional industry bodies would be required to register with this oversight body so that their members are registered.
- Consultants to the public sector would be required to register with this indirectly through their membership of a registered professional body or directly if they are not members of a professional body.
- All consultants would be required to adhere to standards that govern their conduct.
- The body would monitor the conduct of registered consultants and take enforcement action when misconduct is identified.
- The oversight body should report annually, providing details on its monitoring and enforcement activities.[51]

6.71 While not calling for a single regulator as such, Deloitte recommended the establishment of an 'independent oversight body for misconduct reporting' along with:

- harmonising the fit and proper person requirements of CAANZ and the various bodies that license disciplines such as audit, insolvency, tax and legal practitioners;
- a framework for reporting different types and severity of misconduct; and
- guidance for when individual misconduct should also be considered a reportable event by a firm.[52]

6.72 Boston Consulting Group submitted that it 'would welcome the establishment of a formal Australian Government process for reviewing breaches of integrity,

49 EY Australia, *Submission 12.1*, p. 1.

50 Dr Andy Schmulow, *Submission 68*, p. 2.

51 BDO Group Holdings Limited, *Submission 38*, p. 5.

52 Deloitte Touche Tohmatsu, *Submission 40*, p. 9.

contracts or other ethical standards', with 'the explicit ability to ban or bar consultants' from some or all engagements for breaches.[53]

Establishing an overarching governance framework

6.73 Several submitters supported an overarching governance framework that would apply generally to the audit, assurance and consultancy industry. Deloitte, for example, submitted:

> The development of such a framework will address any gaps in regulatory oversight, reduce duplication, ensure greater alignment and consistency between regulatory and professional associations, and consider matters of structure, governance, accountability and transparency to uniformly strengthen the system.[54]

6.74 The joint submission from the Tax Justice Network, Tax Justice Network Australia and the Centre for International Corporate Tax Accountability and Research stated:

> It would be desirable for government to embark upon a reform to cover all financial service professionals under the one overarching regulatory framework. An example of an Australian framework to cover professionals in a single industry is the Australian Health Practitioner Regulation Agency. The principles for a regulatory system for financial services professionals would be to ensure that:
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> - the financial service industry serves the public interest;
> - the regulation of financial service professionals is efficient; and,
> - the financial services regulatory system promotes high standards by the professionals involved.[55]

Using Commonwealth procurement to impose and enforce ethical standards

6.75 Several professional bodies such as the IPA suggested that 'it may be more expedient to strengthen the government procurement processes rather than to try and regulate such a diverse group of consultants'.[56]

6.76 Similarly, CAANZ noted that gaps in the governance of consulting could be addressed by public sector procurement practices.[57]

6.77 The Institute of Internal Auditors (IIA) recommended that governments require all contractors undertaking internal audit work for public sector agencies to be members of a professional association and therefore be bound by professional

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53 Boston Consulting Group, *Submission 50.11*, p. 1.

54 Deloitte Touche Tohmatsu, *Submission 40*, p. 1.

55 Tax Justice Network, Tax Justice Network Australia and Centre for International Corporate Tax Accountability and Research, *Submission 28*, p. 6.

56 Institute of Public Accountants, *Submission 15*, p. 7.

57 Chartered Accountants Australia and New Zealand, *Submission 30*, pp 5–6.

standards and an associated code of ethics. The IIA also recommended a mandatory governance reporting framework for professional services firms who contract to government.[58]

Implementing a global professional code of ethics

6.78 The APESB suggested that the government adopt a global code of ethics at least as demanding as APES 110 that would apply to the audit, assurance and consultancy industry, as well as persons that contract with or provide any form of professional services to the government.[59]

6.79 As an example, the APESB pointed to IESBA's development of professional-agnostic Independence Standards for Sustainability Assurance that could 'be applied regardless of whether professional accountants or other professionals conduct the assurance engagement'. APESB therefore suggested that 'this approach could be considered [in Australia] to develop a professional-agnostic APES 110 that could apply to all professionals based on the services they provide'.[60]

Committee view

6.80 Evidence to the inquiry revealed a marked absence of professional and ethical standards that apply to the work of consultants in Australia. Consultants are only subject to existing professional ethical requirements in limited instances, such as when a member of a professional accounting body, who is subject to the APES 110 code, performs consulting work.

6.81 This inconsistent regulation means that many consultants are unconstrained 'market actors' behaving in their own commercial self-interest.

6.82 The committee notes that the Big Four firms draw on a network of specialists in economics, financial instrument valuation, assurance, taxation, security, commercial strategy and emerging professions such as climate transition, information technology, data science, and cyber security.

6.83 The committee considers that, regardless of the nature of the professional services being performed, all consultants should be subject to professional ethical standards equivalent to APES 110 to ensure that their services are provided in the public interest.

6.84 The committee acknowledges the benefits that may accrue from the four general and non-exclusive options for reform. However, the development and

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58 Institute of Internal Auditors, *Submission 10*, p. 2.

59 Accounting Professional and Ethical Standards Board, *Submission* 20, p. 4; answers to questions on notice 65, 1 March 2024 (received 22 March 2024).

60 Accounting Professional and Ethical Standards Board, answers to questions on notice 65, 1 March 2024 (received 22 March 2024).

implementation of such proposals would be complex and require more detailed consultation and consideration than provided for in the context of this inquiry.

6.85 That being acknowledged, one option could clearly be implemented with immediate and potentially profound effect. The government could use the Commonwealth procurement process to impose professional and ethical standards on all consultants and firms providing consultancy services to the public sector and use its position as a significant buyer in the market to promote better governance.

6.86 Additionally, the committee considers the government should implement a consultancy code of professional and ethical conduct (consultancy code) based on the APES 110 code, supported by the establishment of a consultancy industry membership body to oversee the code, including in relation to enforcement and the conduct of disciplinary processes.

6.87 However, noting the current patchwork nature of the audit, assurance and consultancy industry in Australia, the committee recognises the potential overlap in application of the consultancy code and the operation of the associated consultancy industry body with existing professional requirements and industry and professional bodies.

6.88 Therefore, the consulting code and associated body should apply narrowly as last resort measures, such that consultants are only subject to the consultancy code and required to join the associated body if not already subject to mandatory professional ethical obligations.

6.89 The committee also considers that transparency in the operation of the new consulting body and code is important. The committee notes that the register of banned financial advisors has been very useful and suggests that a similar approach be taken for consultants.

6.90 The committee notes that for the register to be effective, there must be appropriate information transfer between regulators and professional bodies. Therefore, the committee recommends that the government and professional bodies develop mechanisms to enhance the transfer of misconduct information between regulators and professional bodies. The Government should consider inclusion of the following features in the consultancy code compliance body:

- It should apply to persons providing consultancy services not already subject to other mandatory professional ethical obligations and include an overarching registration for firms themselves.
- Government agencies should be required to only engage consultancies who are members of this body.
- The registration fees should not create a financial burden for firms.
- Membership requirements of the body include mandatory reporting of misconduct witnessed by other consultants.

- Once an individual reaches a certain number of complaints, they may be subject to investigation, sanction and potential exclusion from the membership body.
- If there are a certain number of reported cases of misconduct against members of a single firm, it should trigger a probation, then a show cause mechanism, which may result in the firm losing its overarching consulting license.
- Junior consultants may not require individual registrations (they can work under the supervision of a registered consultant), but if such individuals are found to have engaged in misconduct the license/registration holder is liable for this misconduct.
- The disciplinary board should contain no more than 25 per cent of former staff of large consulting firms (firms of over 3000 employees).
- Every six months the registration body should publish a report totalling the number of substantiated complaints against individuals within large firms, as well as any 'probation' or 'show cause' action against firms themselves.
- The entity should be reviewed after 3 years after its establishment and consideration be given to the adequacy of its remit and actions.

Recommendation 29

6.91 The committee recommends that the Australian Government consult with industry with a view to creating a consultancy code and associated consultancy code compliance body (with sufficient powers to ensure compliance with the code) within government that will register individual consultants and have graduated registration requirements for firms based on firm size. Government entities, including Corporate Commonwealth Entities, should be required to only engage consultancies who are members of this body. At a minimum the body should apply to persons providing consultancy services not subject to other mandatory obligations and membership requirements should include mandatory reporting of misconduct witnessed by other consultants. This should be reviewed three years after implementation.

Recommendation 30

6.92 The committee recommends that the Australian Government consider the creation of a voluntary industry code for public interest entities' engagement of consultancies, which includes the exclusive use of consultants subject to the code and/or registration body determined in recommendation 29. After three years, the government should review the capacity and effectiveness of the code becoming mandatory for public interest entities.

Recommendation 31

6.93 The committee recommends that consulting firms undertaking government work be required to make a declaration if subject to supervised remediation whilst undertaking government work, and the exact terms of such supervised remediation. Upon tendering for government work, consulting firms should also be required to provide specific information regarding the engagement of the firm with global leadership, including but not limited to the provision of information regarding what oversight, if any, exists with respect to that firm's engagement with Australian regulatory and legal bodies.

Recommendation 32

6.94 The committee recommends that the Australian Government explore options to enhance accountability for consultants, potentially including the establishment of a public register (maintained by the relevant registration body) to record for public view all instances of malpractice.

Recommendation 33

6.95 The committee recommends that the Australian Government and professional bodies develop mechanisms to enhance the transfer of misconduct information between regulators and all relevant professional bodies.

Recommendation 34

6.96 The committee recommends that the Department of Finance consider further mechanisms to increase usage of small and medium-sized consulting firms in government procurement, including firms which exclusively undertake government work.

Recommendation 35

6.97 The Committee recommends that the Australia Government consider options to improve the Australian Taxation Office's tax settlement procedures with a view to making their details more transparent to all taxpayers and setting out appropriate procedures and protocols for their use, negotiation and terms.

Chapter 7
Protection of whistleblowers

Introduction

7.1 Whistleblower protection laws provide legal rights and protections to individuals who provide a company, organisation, or regulator information about alleged misconduct and/or breaches of the law inside a company or organisation.

7.2 The threat of whistleblowing acts as a deterrent to wrongdoing by increasing the likelihood that misconduct will be reported.[1] Indeed, the importance of whistleblowers and whistleblowing was emphasised to the committee throughout the inquiry. For example, Ms Catherine Maxwell, General Manager, Governance Institute of Australia (GIA), pointed to the critical role whistleblowing plays 'in identifying and stopping misconduct'.[2]

7.3 However, the committee also received evidence that the multiplicity of whistleblower protection laws is creating confusion and leading to poor outcomes for whistleblowers and employers. Further, the patchwork legislative approach excludes important sectors of the economy including the large professional services firms.

7.4 Therefore, this chapter explores the adequacy of the current whistleblower protection laws in Australia. It begins by providing a background on public and private sector whistleblower legislation, including the failure to include the audit, assurance and consultancy sector under the provisions of the *Corporations Act 2001* (Corporations Act). The chapter then considers the evidence regarding the multiplicity of whistleblower protection laws, and examines proposed reform options. It concludes with the committee's views and recommendations.

Background on public and private sector whistleblower legislation

7.5 Whistleblower protection laws in Australia are legislated through various acts at the Commonwealth, state and territory level, depending on the sector and whether that sector is public or private.

7.6 Evidence to the inquiry identified 17 different federal, state, and territory statutes applying to whistleblowers in Australia:

- *Public Interest Disclosures Act 2013* (Cth);

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1 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 39.

2 Ms Catherine Maxwell, General Manager, Policy and Advocacy, Governance Institute of Australia, *Committee Hansard*, 6 October 2023, p. 12.

- *Corporations Act 2001* (Cth);
- *Fair Work (Registered Organisations) Act 2009* (Cth);
- *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);
- *Aged Care Act 1997* (Cth);
- *National Disability Insurance Scheme Act 2013* (Cth);
- *Taxation Administration Act 1953* (Cth);
- *Public Interest Disclosures Act 2022* (NSW);
- *Public Interest Disclosures Act 2012* (Vic) (previously titled *Protected Disclosure Act 2012* (Vic));
- *Public Interest Disclosure Act 2010* (Qld);
- *Public Interest Disclosure Act 2018* (SA);
- *Public Interest Disclosure Act 2003* (WA);
- *Public Interest Disclosure Act 2012* (ACT);
- *Public Interest Disclosure Act 2002* (Tas);
- *National Anti-Corruption Commission Act 2022* (Cth);
- *Public Service Act 1999* (Cth); and
- *Independent Commissioner Against Corruption Act 2017* (NT).[3]

Public sector whistleblower protections and their relation to officers and employees of consulting firms

7.7 The *Public Interest Disclosures Act 2013* (Cth) (PID Act) promotes accountability and integrity within the public service by encouraging the disclosure of information about alleged misconduct and wrongdoing. The objective of the PID Act is to provide support and protection from adverse consequences to individuals who disclose information and provide an avenue for public interest disclosures to be properly investigated and reported.[4]

7.8 Amendments to the PID Act commenced on 1 July 2023, and focused on immediate improvements for public sector whistleblowers and support for corruption disclosures to the National Anti-Corruption Commission.[5]

7.9 On 22 November 2023, further reforms to the PID Act through a staged approach were announced.[6]

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3 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 48; Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023); Your Call, *Australia's multiple whistleblowing regimes prove hard to navigate,* 2023, p. 3.

4 Department of Employment and Workplace Relations, *Submission 59*, p. 6.

5 Attorney-General's Department, *Public sector whistleblowing reforms*, Consultation paper, November 2023, p. 5.

6 Attorney-General's Department, *Public sector whistleblowing reforms*, Consultation paper, November 2023, p. 5; Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 39.

7.10 The PID Act can apply to officers and employees of consulting firms when contracted as service providers to the Commonwealth Government. The joint submission by Griffith University, the Human Rights Law Centre and Transparency International Australia noted that section 69 of the PID Act clarifies that a 'public official' whose disclosures may trigger the PID Act includes any individuals who are:

- a contracted service provider for a Commonwealth contract; or
- an officer or employee of a contracted service provider for a Commonwealth contract who provides services for the purposes (whether direct or indirect) of the Commonwealth contract.[7]

7.11 Therefore, officers and employee of consulting firms may be covered by the PID Act, irrespective of whether the consulting firm is a body corporate, partnership or individual. However, the joint submission emphasises that misconduct can only be reported to an 'authorised internal recipient', which means they can only make a disclosure to the Commonwealth agency who is the party to, or responsible for, the consultancy contract (or to an independent agency like the Ombudsman) and not internally at their consulting firm.[8]

Private sector whistleblower protections and their relation to officers and employees of consulting firms

7.12 Commonwealth whistleblowing laws that apply to the private sector include protections under the Corporations Act and the *Taxation Administration Act 1953* (TAA Act).[9]

7.13 Entities subject to regulations under the Corporations Act and TAA Act include companies, superannuation entities or trustees, incorporated associations and bodies corporate that are trading or financial corporations.[10]

7.14 The Corporations Act requires these entities to have a whistleblower policy and to make it available to all officers and employees of the entity.[11]

7.15 To be eligible for whistleblower protection under the Corporations Act, an individual must be, or have been, in a relationship with the 'regulated entity'

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7 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 10; *Public Interest Disclosure Act 2013*, para 69(1) (15–16).

8 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 11.

9 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 39.

10 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 39.

11 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 39.

that the individual is reporting about as set out in section 1317AAA of the Corporation Act.[12]

7.16 In contrast to employees of corporate bodies or other financial licensees or trustees covered by the private sector whistleblower protection legislation under Part 9.4AAA of the Corporations Act, there are substantial inconsistencies and gaps for those employed by consulting firms or other contractors.[13]

7.17 The main accounting firms in Australia, KPMG, Deloitte, EY and PwC, are partnerships in their legal form, even though most employees of the Big Four firms are engaged by service companies owned or controlled by the partnership.[14]

7.18 The joint submission by Griffith University, the Human Rights Law Centre and Transparency International Australia pointed out that partnership-based firms have lesser whistleblower protections because for the purposes of Part 9.4AAA of the Corporations Act:

- a partnership is not a 'regulated entity' (as required by section 1317AAA);
- a partner is not an 'eligible recipient' for protected disclosures of wrongdoing (section 1317AAC), despite being an owner and typically an important leader (unless they happen to also be a director or officer of a service company that employs or instructs the employee blowing the whistle); and
- a partner may also not themselves be an 'eligible whistleblower' (section 1317AA) and capable of benefiting from the protections if they disclose wrongdoing, other than in possibly in a very indirect sense.[15]

7.19 The Treasury expanded on this, stating:

> As partnerships are not companies, most aspects of the Corporations Act do not apply to partnerships. For example, partnerships are not regulated entities for the purposes of the corporate whistleblower regime.

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12 Accounting Professional and Ethical Standards Board, answers to questions on notice 153, 20 June 2024 (received 19 July 2024).

13 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 7.

14 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 7.

15 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 9. See also Professor AJ Brown, Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University and Board Member, Transparency International Australia, *Committee Hansard*, 6 October 2023, p. 1.

> Partnerships are only subject to any state and territory laws that may protect private sector whistleblowers.[16]

2017 committee report on whistleblower protections and subsequent legislative reform

7.20 This committee tabled a report titled *Whistleblower protections* in 2017 with 35 recommendations aimed at improving whistleblower protection legislation in Australia.[17]

7.21 Following the committee's report, the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* expanded whistleblower protections in Part 9.4AAA of the Corporations Act and Part IVD of the TAA Act, to provide broader protections for the corporate and financial sectors.[18] The amending Act implemented approximately half of the recommendations from the committee's 2017 report.[19] These amendments are due for statutory review in 2024.[20]

7.22 Although the amendments to the Corporations Act and TAA Act were introduced at the same time, the TAA Act applies to partnerships and partners while the Corporations Act does not. Under the TAA Act, partners of an entity, company or partnership are eligible whistleblowers and are eligible recipients to receive disclosures.[21]

7.23 The joint submission by Griffith University, the Human Rights Law Centre and Transparency International Australia argued that a failure to fully reform the private sector whistleblowing regime has led to substantial issues in the audit, assurance and consultancy sector.[22]

7.24 The *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* commenced on 1 July 2024 and expanded tax whistleblower protections. The new Act protects individuals blowing the whistle about related entities to the

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16 Department of the Treasury, *Submission 50*, p. 17. See also Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 40.

17 Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower protections*, September 2017.

18 Australian Securities and Investments Commission, *Protections for corporate sector whistleblowers*, https://asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/, last updated 9 November 2023 (accessed 17 April 2024).

19 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 6.

20 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023).

21 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 9.

22 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, pp 6–7.

Tax Practitioners Board that may assist the board in performing its duties under the *Tax Agent Services Act 2009*.[23]

7.25 The joint submission by the Inspector-General of Taxation and the Taxation Ombudsman noted the recently commenced *National Anti-Corruption Commission Act 2022* could provide an alternative pathway for disclosures in relation to the audit, assurance and consultancy sector.[24]

7.26 The Accounting Professional and Ethical Standards Board (APESB) noted that the *Code of Ethics for Professional Accountants (including Independence Standards)* (APES 110) contains provisions for professional accountants, including auditors, to respond to Non-Compliance with Laws and Regulations (NOCLAR). However, APES 110, including the NOCLAR provisions, does not establish whistleblower protections.[25]

Issues with the multiple current whistleblower schemes

7.27 Several inquiry participants drew the committee's attention to complexities and inconsistencies within Australia's current whistleblower legislation, the confusion this creates, and the potential constraints it imposes on disclosure.

7.28 Professor AJ Brown, Professor of Public Policy and Law at the Centre for Governance and Public Policy, Griffith University, noted that each state and territory has whistleblower protection legislation covering the public sector and to varying degrees the private sector (see Appendix 4) and that 'contractors and service providers to government may not be aware of state and territory whistleblowing protection laws'.[26]

7.29 The joint submission by Griffith University, the Human Rights Law Centre and Transparency International Australia stated many of the statutes are 'out of date and inconsistent with the latest iteration of protections found in the Corporations Act'.[27]

7.30 Ms Maxwell from the GIA argued that the complexities of whistleblower protection in the private sector disincentivise employees from making disclosures:

23 Tax Practitioners Board, *Whistleblower legislation*, https://www.tpb.gov.au/whistleblower-legislation, 1 July 2024 (accessed 28 October 2024).

24 Inspector-General of Taxation and Taxation Ombudsman, *Submission 37*, p. 14.

25 Accounting Professional and Ethical Standards Board, answers to questions on notice, 20 June 2024 (received 19 July 2024).

26 Professor AJ Brown, Professor of Public Policy and Law at the Centre for Governance and Public Policy, Griffith University, Your Call, *Australia's multiple whistleblowing regimes prove hard to navigate*, 2023, p. 3.

27 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 12.

> …Australian whistleblower protection laws are a complex patchwork. The area is complex to understand, complex to administer and confusing for anyone contemplating speaking up about unlawful, unethical, or irresponsible behaviour … A whistleblower should not need a nuanced knowledge of the applicable legal and regulatory frameworks to know which regulator or which law enforcement agency they should make their disclosures to, to qualify for protection. It is a strong disincentive to making disclosures if employees or other relevant parties feel that they require legal advice before making any disclosure [28]

7.31 Charted Accountants Australia and New Zealand (CAANZ) shared a similar view:

> The existence of numerous existing laws relating to whistleblowing regimes and protection in different industries such as banking and finance, taxation, aged care and child protection makes it difficult for an individual to know what protections are available to them and in what circumstances.[29]

7.32 Mr Kieran Pender, Senior Lawyer, Human Rights Law Centre, emphasised the uncertainty experienced by employees of partnership-based firms regarding whistleblower protections:

> Unfortunately, right now we have a huge gap between law and reality. The law says you can speak up safely, lawfully; it says it's a crime to take reprisal against a whistleblower. But there are so many loopholes, there are so many complexities…if you're a whistleblower at one of the Big Four accounting and consulting firms, you need a law degree—you need more than a law degree!—to know whether you're protected and who to speak up to.[30]

7.33 CAANZ drew attention to the fact that, as a result of partnership-based firms being excluded from the whistleblower protection legislation under the Corporations Act, some firms have created their own whistleblowing policies leading to further inconsistencies:

> Whilst a number of organisations have voluntarily developed whistleblowing policies and procedures, these are not supported by legislation to ensure consistency in the programs and to adequately protect whistleblowers.[31]

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28 Ms Catherine Maxwell, General Manager, Policy and Advocacy, Governance Institute of Australia, *Committee Hansard*, 6 October 2023, p. 12.

29 Charted Accountants Australia and New Zealand, *Submission 30*, p. 7; see also Appendix 4.

30 Mr Kieran Pender, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 6 October 2023, p. 3.

31 Charted Accountants Australia and New Zealand, *Submission 30*, p. 6.

7.34 The GIA highlighted a recent report by Your Call[32] that illustrated the complexities of the current whistleblower legislation in Australia and the impacts of overlapping federal and state and territory legislation:

> …more than half of the participants at a Workshop said their organisations must comply with four or more separate sets of whistleblowing laws.
>
> Attendees also noted…inconsistencies between regimes…'…when you get a disclosure, it could fall within all three whistleblowing regimes. In reality, we could end up having to do three separate investigations if we were to follow everything to the letter of the law, which just seems kind of ludicrous and…surely that can't be the intended outcome.'
>
> Another attendee observed: 'Trying to meet the requirements of both [two laws] can be a challenge while trying to maintain the anonymity of the whistleblower and… if we don't maintain it, that's when we'll put people off and in the future people won't come forward as whistleblowers if it's obvious who that person is'.[33]

Options for reform

7.35 This section examines the proposed reform options suggested by witnesses and submitters during the inquiry, including:

- expansion of current legislation to include partnerships;
- harmonisation of whistleblower legislation;
- a whistleblower protection authority;
- bounty or reward systems; and
- the whistleblower protection federal roadmap.

Expansion of current legislation to include partnerships

7.36 The committee heard from numerous inquiry participants about the need to improve and strengthen whistleblower protection for partners and partnership-based firms.

7.37 KPMG Australia emphasised its commitment to whistleblower protections and noted that as a partnership, its commitment to whistleblowers is voluntary because 'adherence is not currently a regulatory requirement under the Corporations Act'. Therefore, KPMG Australia proposed that the professional services sector should be required to commit to these protections under the Commonwealth Procurement Rules.[34]

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32 On 26 July 2023, Your Call CEO Ms Lauren Witherdin hosted a workshop that including numerous senior leaders from organisations subject to multiple whistleblowing regimes. Following this workshop, Your Call authored a report on *Australia's multiple legislative regimes prove hard to navigate*.

33 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023).

34 KPMG Australia, *Submission 25*, p. 18.

7.38 EY Australia went a step further and recommended extending the whistleblower protection framework in the Corporations Act to large, registered partnerships.[35] This proposal was endorsed by the Institute of Public Accountants.[36]

7.39 CAANZ supported extending Part 9.4AAA of the Corporations Act to partnerships across all sectors but noted the need for appropriate exemptions for small partnerships.[37]

7.40 Ms Vanessa Chapman, Group Executive, CAANZ, argued that Parliament should consider amending the definition of regulated entity for the purposes of Part 9.4AAA of the Corporations Act:

> …to bring partnerships or other structures within it…because there are many organisations that are not companies per se, that are not bodies corporate, but that are subject to Part 9.4AAA by virtue of being caught by the definition of regulated entity.[38]

7.41 CAANZ also proposed that the following be considered:

- whether section 1317AAB of the Corporations Act allows ASIC to prescribe partnerships (whether general, limited liability or other partnerships) as regulated entities for the purposes of Part 9.4AAA; and
- whether sections 115(1) and (2) of the Corporations Act, which effectively cap the size of partnerships, may provide a basis for bringing partnerships within the ambit of Part 9.4AAA.[39]

7.42 CAANZ pointed out that the Corporations Act treats a member of an audit team as an individual, not an entity, which differs from the treatment of other eligible recipients of whistleblower reports under the Corporations Act. CAANZ expressed concern that:

> …a junior member of the audit team who receives a protected disclosure may be limited in what they can share with superiors, including their manager or an audit partner. This puts the junior audit team member in a difficult situation as they are unlikely to be best placed to receive the disclosure.[40]

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35 EY Australia, *Submission 12.1*, p. 15.

36 Institute of Public Accountants, answers to questions on notice 4, 11 October 2023 (received 31 October 2023).

37 Chartered Accountants Australian and New Zealand, answers to questions on notice 9, 11 October 2023 (received 10 November 2023).

38 Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 5 March 2024, p. 40.

39 Chartered Accountants Australian and New Zealand, answers to questions on notice 9, 11 October 2023 (received 10 November 2023).

40 Chartered Accountants Australian and New Zealand, *Submission 30*, pp 6–7.

7.43 To address this concern, CAANZ proposed amending section 1317AAC(1)(b) and section 1317AAB to better support members of audit teams who receive qualifying disclosures. However, CAANZ noted that a longer-term solution would be to enact a single law covering all non-government whistleblowers.[41]

Harmonisation of whistleblower protection legislation

7.44 Most inquiry participants supported harmonising whistleblower protection legislation in Australia. Where they differed was over whether it was better to have a comprehensive Whistleblower Protection Act covering all government and non-government entities, or a harmonised set of laws that protect government and non-government entities separately.

7.45 CAANZ preferred harmonising whistleblower protection legislation for all non-government whistleblowers,[42] but considered a single national whistleblower regime unnecessary.[43]

7.46 Deloitte concurred with CAANZ that harmonising whistleblower legislation for the audit, insolvency, tax and legal practitioner sectors would be appropriate.[44]

7.47 The GIA concluded that Australia needs a general whistleblower regime in its own act applicable to the private sector.[45]

7.48 By contrast, the joint submission from Griffith University, the Human Rights Law Centre and Transparency International Australia recommended the establishment of a single Whistleblower Protection Act covering all private and not-for-profit entities and employers and entities under Commonwealth legislation or subject to Commonwealth regulation.[46]

Whistleblower protection authority

7.49 Inquiry participants broadly supported the establishment of a whistleblower protection authority with many acknowledging the benefits of having a standalone authority to assist with understanding whistleblower protection legislation.

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41 Chartered Accountants Australian and New Zealand, Submission 30, p. 7; Chartered Accountants Australian and New Zealand, answers to questions on notice 9, 11 October 2023 (received 10 November 2024).

42 Chartered Accountants Australian and New Zealand, *Submission 30*, pp 6–7.

43 Chartered Accountants Australian and New Zealand, answers to questions on notice 9, 11 October 2023 (received 10 November 2023).

44 Deloitte Touche Tohmatsu, *Submission 40*, p. 38.

45 Governance Institute of Australia, *Submission 22*, p. 2.

46 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 13.

7.50 The joint submission from Griffith University, the Human Rights Law Centre and Transparency International Australia stated that its 'top priority remains the establishment of a whistleblower protection authority to oversee and enforce whistleblower protection laws and support Australian whistleblowers'.[47]

7.51 The joint submission noted that the Australian Government issued a discussion paper exploring whether there is a need for a whistleblower protection authority for the public sector but the joint submission emphasises that the need for this authority is not confined to the public sector only.[48]

7.52 The GIA highlighted the need for an independent stand-alone whistleblower protection authority to enforce whistleblower protection legislation, provide support to whistleblowers, and provide guidance to organisations regarding their obligations.[49]

7.53 Ms Chapman from CAANZ supported:

> …a whistleblowing protection agency that can help not only whistleblowers but also organisations, employers, to understand what their obligations are in relation to the protection of whistleblowers within their organisation or to their organisation.[50]

7.54 The Australia Institute observed that a whistleblower protection authority would make it easier for the National Anti-Corruption Commission to receive complaints and referrals.[51]

7.55 Professor Allan Fels supported 'a fully independent, impartial whistleblower organisation that people have confidence in and go to'.[52]

7.56 Professor Dale Pinto, President and Chair of Certified Practicing Accountants Australia (CPA Australia), observed that a whistleblower protection authority could provide an alternative disclosure pathway for employees who do not feel comfortable blowing the whistle internally:

> Sometimes, whether it's within firms or within organisations, junior staff would be reluctant within the hierarchy to raise an issue that they see. So, part of the information is having a mechanism—and I think Senator Scarr

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47 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 14.

48 Centre for Governance and Public Policy, Human Rights Law Centre and Transparency International Australia, *Submission 34*, p. 14.

49 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023).

50 Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance, Chartered Accountants Australia and New Zealand, *Committee Hansard*, 5 March 2024, p. 40.

51 The Australia Institute, answers to questions on notice 11, 6 October 2023 (received 14 November 2023).

52 Professor Allan Fels, Private capacity, *Committee Hansard*, 20 November 2023, p. 62.

> floated the idea previously of an independent whistleblower agency where people could, outside of their own particular entity, make a disclosure of information.[53]

7.57 The Community and Public Sector Union recommended the establishment of a whistleblower protection authority, and a commissioner to oversee the authority.[54]

7.58 Mr Pender from the Human Rights Law Centre noted that a similar system to the Office of the Whistleblower Ombuds in the United States (US)[55] could be an alternative to a whistleblower protection authority:

> …the US Congress has a dedicated independent body within it that helps members of parliament in the United States engage with whistleblowers, deal with whistleblowers. It helps them with best practice on intaking whistleblowers. It's called the Office of the Whistleblower Ombuds in the US House. Even something like that, which would only require a small independent team in parliament working with committees, senators and MPs, could be a real game changer for whistleblower protection.[56]

Bounty, rewards or compensation for whistleblowers

7.59 The Institute of Public Accountants argued that the committee should consider the provision of rewards or bounties to whistleblowers whose disclosures lead to the imposition of a penalty on an entity.[57]

7.60 The GIA noted that while it has not previously supported a bounty or rewards system, it will reconsider the system during the next stage of proposed whistleblower reforms.[58]

7.61 Professor Brown argued that it was important to address compensation for the detriment that whistleblowers suffer, as it is rare that they do not suffer detriment.[59] Professor Brown suggested that thresholds for compensating whistleblowers should be reformed to make them more practical and accessible

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53 Professor Dale Pinto, President and Chair, CPA Australia, *Committee Hansard*, 1 March 2024, p. 40.

54 Community and Public Sector Union, *Submission 48*, pp 15–16.

55 The Office of the Whistleblower Ombuds describes itself as an independent and non-partisan support office established to advise House offices on best practices for working with whistleblowers from the public and private sectors.

56 Mr Kieran Pender, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 6 October 2023, p. 5.

57 Institute of Public Accountants, *Submission 15*, p. 10.

58 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023).

59 Professor AJ Brown, Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University and Board Member, Transparency International Australia, *Committee Hansard*, 6 October 2024, pp 9–10.

because they are presently onerous, restrictive and inconsistent across Commonwealth whistleblower legislation. Professor Brown argued that the changes are needed ‘so that it actually becomes effective and feasible for people who have suffered detriment to apply to the courts or a tribunal…for compensation and relief’.[60]

7.62 The Human Rights Law Centre noted that under the current legislation, it is very rare for whistleblowers to be able to access compensation:

> Recently, the Human Rights Law Centre reviewed every whistleblowing case to go to judgement ever in Australia under both the Corporations Act protections and the Public Interest Disclosure Act. There hasn't been a single successful case. The only case of compensation to a whistleblower for detriment across all of Australia since the first whistleblowing laws came in was a $5,000 compensation award under the Corporations (Aboriginal and Torres Strait Islander) Act. So the laws aren't working in having that enforcement mechanism.[61]

Federal roadmap

7.63 In November 2022, Griffith University, the Human Rights Law Centre and Transparency International Australia published *Protecting Australia's whistleblowers: The federal roadmap*, which provided an overview of the shortfalls of Australia's whistleblower legislation (Figure 7.1). The roadmap sets out twelve key areas for reform, drawing from previous reviews and inquiry reports.[62]

7.64 Many of the key issues in the roadmap are a response to the committee's inquiry into whistleblower protections in 2017, including:

- the establishment of whistleblower protection authority;
- ensuring a no wrong doors approach for disclosures;
- the enactment of a single law covering all non-government whistleblowers;
- the simplification and upgraded proof requirements for remedies and compensation;
- ensuring easier and consistent access to remedies;
- the enhancements of information sharing and ability to access support;
- the expansion of the definition of detriment attracting remedies;
- the protection of public and third-party whistleblowing; and

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60 Professor AJ Brown, Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University and Board Member, Transparency International Australia, *Committee Hansard*, 6 October 2024, p. 6.

61 Mr Kieran Pender, Senior Lawyer, Human Rights Law Centre, *Committee Hansard*, 6 October 2024, p. 9.

62 Professor AJ Brown and Mr Kieran Pender, *Protecting Australia's whistleblowers: The federal roadmap*, Griffith University, Human Rights Law Centre and Transparency International Australia, 2022, pp 4–5.

- the exclusion of solely individual employment grievances from PID protections.[63]

7.65 The roadmap is supported by numerous inquiry participants, including the GIA, the Australia Institute and CAANZ.[64]

7.66 CAANZ expressed the view that:

> …*Protecting Australia's Whistleblowers: The Federal Roadmap* presents a well thought out and internationally benchmarked set of measures that deserve consideration by Government as the process of reforming relevant law in Australia continues.[65]

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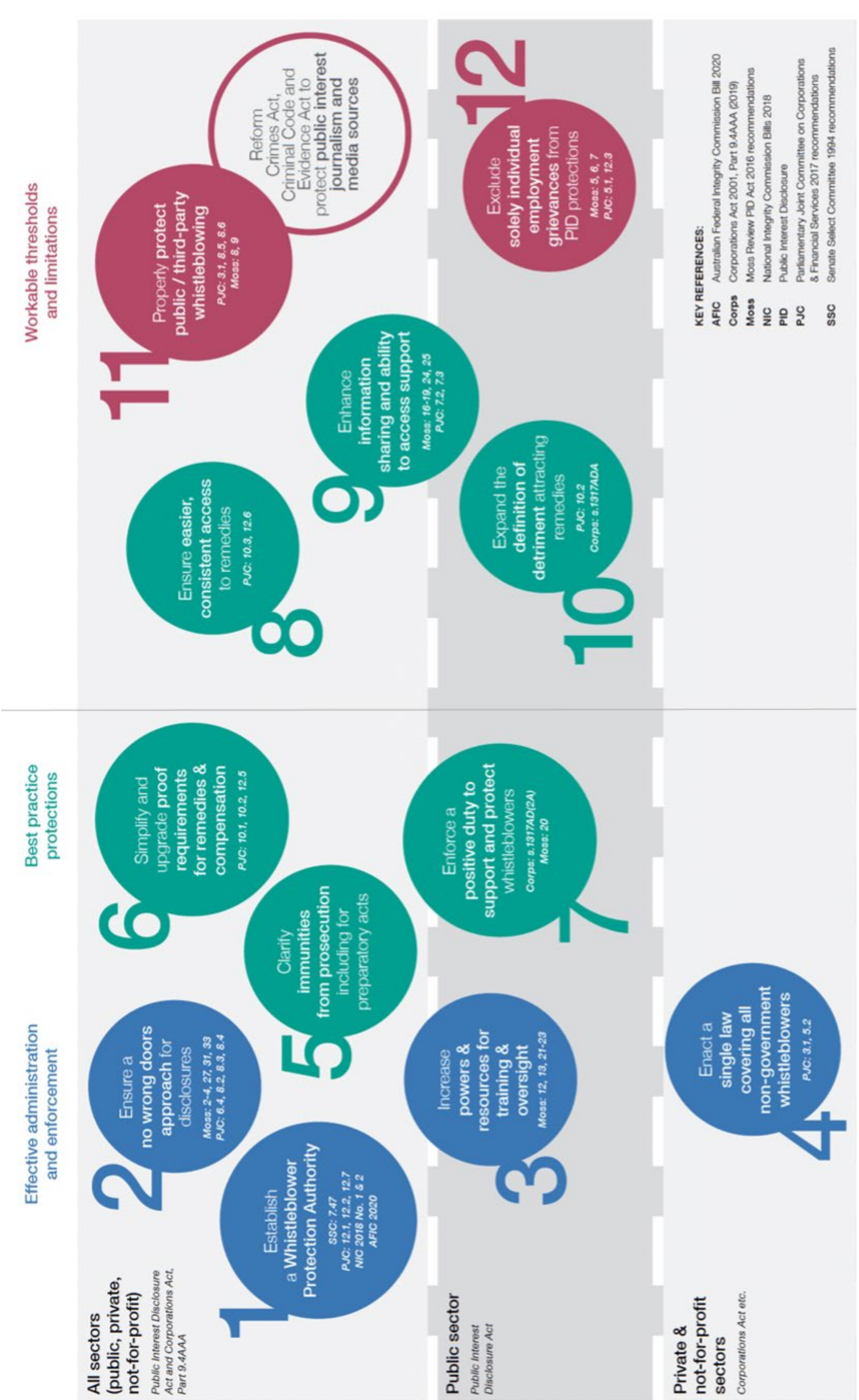
63 Professor AJ Brown and Mr Kieran Pender, *Protecting Australia's whistleblowers: The federal roadmap*, Griffith University, Human Rights Law Centre and Transparency International Australia, 2022, pp 4–5.

64 Governance Institute of Australia, answers to questions on notice 27, 6 October 2023 (received 15 December 2023); The Australia Institute, answers to questions on notice 11, 6 October 2023 (received 14 November 2023); Chartered Accountants Australia and New Zealand, *Submission 30*, p. 6.

65 Chartered Accountants Australia and New Zealand, *Submission 30*, p. 6.

Figure 7.1 Protecting Australia's whistleblowers: The federal roadmap



Source: Professor AJ Brown and Mr Kieran Pender, Protecting Australia's whistleblowers: The federal roadmap, Griffith University, Human Rights Law Centre and Transparency International Australia, 2022, pp 4–5.

Committee view

7.67 Whistleblowing matters. It has a crucial role to play in identifying, stopping and deterring misconduct.

7.68 Whistleblower protection laws should provide legal rights and protections to individuals who provide a company, organisation or regulator with information about alleged misconduct and/or breaches of the law.

The need for consistent and harmonised whistleblower protection legislation

7.69 The evidence provided to this inquiry revealed the substantial concerns of a range of stakeholders about the complexities, inconsistencies and gaps in current whistleblower protection legislation in Australia.

7.70 This complex patchwork of legislation requires a high level of knowledge on the part of a whistleblower to understand which legislation and regulator covers the misconduct they wish to disclose. Unfortunately, this causes confusion and disincentivises whistleblowers from making a disclosure when they witness misconduct.

7.71 Further, the multiplicity of inconsistent laws burdens employers with additional and unnecessary red tape because multiple pieces of different legislation may apply in any given situation.

7.72 Given the complexities, attendant confusion, and frequent doubling up of resources, there was broad support for harmonising and aligning Australia's whistleblower protection laws, although most inquiry participants favoured separate Acts for the public and private sectors. The committee recognises the vital importance of greater alignment across the public and private sectors.

Recommendation 36

7.73 The committee recommends that the Australian Government take action to ensure greater alignment of whistleblower protection laws across the public and private sectors.

Partnerships and whistleblower protection laws

7.74 The committee is concerned about gaps in the current regulatory framework for whistleblower protections in Australia regarding the exclusion of partners and partnerships under the Corporations Act.

7.75 The committee heard strong support from inquiry participants for the current whistleblower legislation to be expanded to include large, registered partnerships, with appropriate exemptions for small partnerships.

Recommendation 37

7.76 The committee recommends that whistleblowing protections be applied to large audit, accounting and consulting firms.

Greater practical support of whistleblowers

7.77 The committee noted evidence indicating that it was important to address compensation for whistleblowers' detriment, as it is common that they suffer detriment. Evidence showed that it is very rare for whistleblowers to be able to access compensation for detriment, as the processes to apply to the courts or a tribunal for compensation are onerous, restrictive and inconsistent across Commonwealth legislation. The committee supports views suggesting reforms to make it effective and feasible for whistleblowers who have suffered detriment to apply to the courts or a tribunal for compensation.

Recommendation 38

7.78 The committee recommends that the Australian Government consider options for greater practical support of whistleblowers such as a Whistleblower Protection Authority (covering both the public and private sectors), including access to civil remedies and financial compensation particularly in instances where disclosures result in the imposition of a penalty on the relevant entity or organisation.

Recommendation 39

7.79 The committee recommends that the Australian Government continue to monitor and review legal frameworks and regulations that have been implemented to protect workers from harmful internal cultures and unsafe working environments in the form of bullying, sexual harassment and exploitation.

Chapter 8
Competition in the audit sector

Introduction

8.1 This chapter considers competition in the audit sector. After providing an overview of views expressed during this inquiry on the current state of competition in the sector, this chapter discusses key risks identified in evidence arising out of the current market structure and the possible impacts on competition that may result from some of the key regulatory reforms proposed during this inquiry.

8.2 This chapter concludes with the committee's views and recommendations.

Current market structure in the audit sector

8.3 Deloitte, EY, KPMG and PwC—the 'Big Four'—have dominated the international audit market since the collapse of Arthur Anderson in 2002. This followed a period of consolidation in the top end of the audit market from the 1980s, when eight companies dominated the sector.[1] In Australia, there are six major firms that provide audit services: the Big Four, as well as BDO and Grant Thornton.[2]

8.4 This section canvasses some of the available data on competition and market concentration and presents some of the views presented in evidence on the data as well as the consequences of market concentration.

Data on competition in the Australian audit market

8.5 The committee was assisted by recent research undertaken by Dr Sarowar Hossain and Professor Gary Monroe, which was funded by Certified Practicing Accountants Australia (CPA Australia) and Chartered Accountants Australia New Zealand (CAANZ). Professor Monroe and Dr Hossain considered the audit market structure, concentration and competition in Australia between 2019 and 2022. They found that the Australian audit market taken as a whole is 'competitively structured' when measured based on the number of clients. According to this research, the market share of the Big Four firms constituted less than 38 per cent of companies listed on the Australian Securities Exchange (ASX) in 2022. In terms of audit fees, however, these firms dominated the

1 In Australia, the audit function of Arthur Anderson merged with EY: Professor Allan Fels AO, *Submission 52*, [p. 3].

2 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 41.

market, receiving 83 per cent of audit fees paid by listed companies during the same period.[3]

8.6 Dr Hossain and Professor Monroe's research reinforced the view that the Australian audit market is 'highly segmented' with differing levels of concentration and competition across the market based on company size.[4]

8.7 Amongst the largest and most complex clients (the top 200 companies listed on the ASX), the Big Four audited approximately 96 per cent of all clients and captured 99 per cent of audit fees in 2022. Amongst the next 300 companies, Big Four firms enjoyed a market share of 76 per cent, capturing 84 per cent of fees in in the same period.[5]

8.8 Big Four firm market share dropped significantly in the medium and small client segments, auditing 31 per cent and 6.2 per cent of clients in these categories in 2022.[6]

8.9 Dr Hossain and Professor Monroe noted that overall, the Big Four firms' market share decreased from 42 per cent in 2019 to 38 per cent in 2022.[7] In contrast, non-Big Four (Grant Thornton and BDO) and medium audit firms increased their market share across the same period.[8] However, with respect to the largest 200 companies, the Big Four audit firms' market share slightly increased from 95.5 per cent in 2019 to 96.5 per cent in 2022.[9]

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[3] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 3, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[4] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 3, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[5] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p 3–4, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[6] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 15, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[7] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* pp 4, 12, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[8] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 4, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

[9] Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* pp 4, 15, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

8.10 Dr Hossain and Professor Monroe made several additional observations:

- When rated against the Herfindahl-Hirschman Indices (HHI),[10] the audit market overall is 'moderately concentrated' based on audit fees and 'competitively structured' when calculated based on the number of clients. However, the audit market for the top 200 companies is 'highly concentrated'.[11]
- Companies in the top 200 switched auditor least frequently, whereas auditor change was most prevalent amongst the medium and small client segments.[12]
- Audit firm tenure for the top 200 companies was lengthiest (ranging from 13 to 16 years) and shortest amongst the medium and small client market segments.[13]
- Audit fee premiums have seen 'significant' increases following the consolidation of the large international firms into the Big Four that currently exist. Dr Hossain and Professor Monroe observed that this may suggest a reduction in competition in the market. However, they noted that this impact was not consistent across all client segments.[14]

8.11 Dr Hossain and Professor Monroe's study extended and updated previous work undertaken by Professor Elizabeth Carson for the Auditing and Assurance Standards Board (AUASB) in 2019. Professor Carson's report focused on competition in the audit market between 2012 and 2018, finding that during this period, audit market share amongst Big Four audit firms declined from 40.7 per cent to 37.7 per cent.[15] Like Dr Hossain and Professor Monroe's later findings, Professor Carson also observed the segmented nature of the audit market and the differing levels of concentration amongst client sizes. Her report observed

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10 Professor Monroe and Dr Hossain submitted that '[t]he ACCC Merger Guidelines (2008) state that the HHI will be the primary indicator of the likelihood that the merger will raise competition concerns: *Submission 4*, p. 3.

11 Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 26, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

12 Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* pp 27–28, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

13 Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 29, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

14 Dr Sarowar Hossain and Professor Gary S. Monroe, *Submission 4*, p. 4.

15 Professor Elizabeth Carson, *Audit market structure and competition in Australia: 2012–2018*, Auditing and Assurance Standards Board Research Report 3, 8 October 2019, p. i. See also, Deloitte Touche Tohmatsu, *Submission 40*, p. 19.

that '[t]he largest and most complex clients are serviced by the Big Four, whilst smaller clients are serviced by a range of other providers'.[16]

Perspectives on the data

8.12 Differing views on the data were emphasised by inquiry participants.

8.13 Big Four firms underscored the competitiveness of the Australian sector, with PwC and EY pointing to Dr Hossain, Professor Monroe and Professor Carson's findings on Big Four market share as a percentage of the overall audit market.[17] PwC highlighted that the Australian audit market 'is more constrained relative to the growth for other professional services', noting that the number of companies and organisations requiring audits has only seen minimal growth. It also noted that the market itself is 'mature' and the audit product has not changed significantly over recent decades.[18]

8.14 Other inquiry participants highlighted the Big Four's dominance of the audit market for the large 'Public Interest Entities'.[19] Dr Hossain told the committee that the representation of Big Four firms amongst large listed company audits 'indicates a lack of competition in the upper echelons of the market'. He stated:

> …the dominance of large audit firms, commonly known as the "Big 4," raises apprehensions about market concentration and potential conflicts of interest, limiting competition and options in the audit market.[20]

8.15 The Australian Competition and Consumer Commission (ACCC) told the committee that based on its assessment of some of the submissions (and without inside knowledge), 'it is clear that for big companies the market does seem reasonably concentrated'.[21]

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16 Professor Carson's research found that just over 90 per cent of the largest 200 companies on the ASX were audited by the Big Four. For the next 300 companies, the Big Four audited between 64.67 and 70.67 per cent of clients during the study period. Big Four market share amongst the medium client segment was between 30.81 to 33.68 per cent, while in the small client market, Big Four market share fell from and from 18.8 in 2012 to 9.9 per cent in 2018: Professor Elizabeth Carson, *Audit market structure and competition in Australia: 2012–2018*, Auditing and Assurance Standards Board Research Report 3, 8 October 2019, pp i, 16.

17 EY Australia, *Submission 12.1*, p. 18; Deloitte Touche Tohmatsu, *Submission 40*, pp 18-19; PwC, *Submission 43*, p. 15; PwC, *Submission 43.1*, p. 7.

18 PwC, *Submission 43*, p. 15.

19 Professor Allan Fels AO, *Submission 52*, [p. 7]; Mr Tom Leuner, Executive General Manager, Mergers, Exemptions and Digital, Australian Competition and Consumer Commission (ACCC), *Committee Hansard*, 1 March 2024, p. 13.

20 Dr Sarowar Hossain, Response to *Submission 50*, [p. 4].

21 Mr Tom Leuner, Australian Competition and Consumer Commission, *Committee Hansard*, 1 March 2024, p. 13.

8.16 Deloitte and PwC also acknowledged the segmented nature of the market, and the Big Four's dominance of the large, listed company sector. Both, however, insisted that competition remains significant.[22]

International comparisons

8.17 Professor Monroe and Dr Hossain noted that concerns about market concentration are also present in other jurisdictions. For example, in the United States, the Big Four firms audited more than 45 per cent of public companies and received 82 per cent of audit fees.[23] Similarly, in Europe, Big Four firms received 93 per cent of the audit fees for all listed companies on regulated European Exchanges during the same period.[24]

8.18 In the United Kingdom, the Big Four audited 61 per cent of companies listed on the London Stock Exchange and accounted for 96 per cent of audit fees in 2022.[25] In 2019, the Competition and Markets Authority (CMA) observed that the United Kingdom audit market 'exhibits…high concentration among four big audit firms, resulting in limited choice and a market that is not resilient'.[26]

8.19 PwC suggested that market concentration in Australia is not as significant as in other jurisdictions, pointing to Professor Carson's analysis which stated:

> Unlike other jurisdictions where the Big 4 audit more than 70% (United States) or 84% (United Kingdom) of listed companies, in Australia the market share of Big 4 auditors is now less than 40%, declining from 40.71% in 2012 to 37.70% in 2018.[27]

Concerns associated with market concentration

8.20 Some inquiry participants argued that the current market structure, and the dominance of the Big Four firms at the top end of the audit market, had consequences for the broader audit market including increased risk and impacts on prices. This section outlines some of the key evidence provided on this issue.

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22 Deloitte Touche Tohmatsu, *Submission 40*, p. 19; PwC, *Submission 43*, p. 15.

23 Dr Sarowar Hossain and Professor Gary S. Monroe, *Submission 4*, p. 2.

24 Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 30, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

25 Professor Gary S. Monroe and Dr Sarowar Hossain, *Audit market structure, concentration and competition in Australia,* p. 30, provided in Professor Gary S. Monroe, answers to questions on notice 40, 20 November 2023 (received 19 January 2024).

26 United Kingdom Competition and Markets Authority (UK CMA), *Statutory audit services market study: Final summary report*, 18 April 2024, p. 2.

27 Professor Elizabeth Carson, *Audit market structure and competition in Australia: 2012–2018*, Auditing and Assurance Standards Board Research Report 3, 8 October 2019, p. 17, quoted in PwC, *Submission 43*, p. 15.

8.21 In its consultation paper, Treasury stated:

> Some PJC Inquiry submissions identified that regulation of large accounting firms is of greater importance than would otherwise be the case due to the importance of audit to the functioning of capital markets in Australia, and the dominance of the key players in auditing the largest listed companies.[28]

8.22 Professor Allan Fels, cited in Treasury's paper, emphasised the importance of audit to Australia and stated that market dominance 'is risky for consumers of audit products, but also self-perpetuating', 'creates a relaxed climate in which conflicts of interest can be accepted as the norm' and 'complicates the regulatory response'.[29] He also asserted that 'any further reduction in the numbers [of audit firms for large listed companies] will undermine competitive tenders for audits'.[30]

8.23 Dr Hossain told the committee that the dominance of the Big Four may also undermine auditor independence and objectivity.[31] Additionally, Professor Monroe and Dr Hossain suggested that the market dominance of the Big Four firms has led to concerns from regulators about whether the lack of competition 'may have adverse impacts on audit pricing and quality'.[32] Treasury concurred with the view that market concentration and an absence of competition in the auditing sector may lead to higher costs and risks to the economy.[33]

8.24 Both Deloitte and PwC suggested that competition in the market has had a downward effect on prices. Deloitte added that benefits in quality and innovation are also being achieved as a result of the current market structure.[34] PwC stated that while a regulatory response would be warranted if market power was being misused, in its view, 'the outcome of the very competitive [Australian audit] market has often been to put downward rather than upward pressure on price'.[35]

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28 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 41. Treasury cited Professor Allan Fels AO, *Submission 52*, pp 1–2; Professors Ian Gow and Stuart Kells, *Submission 16*, pp 2–3.

29 Professor Allan Fels AO, *Submission 52*, [pp. 2, 4, 5].

30 Professor Allan Fels AO, *Submission 52*, [pp. 1, 5].

31 Dr Sarowar Hossain, Response to *Submission 50*, [p. 4].

32 Professor Gary S. Monroe and Dr Sarowar Hossain, *Submission 4*, p. 1.

33 Mr Tom Dickson, Assistant Secretary, Corporations Branch, Department of the Treasury, *Committee Hansard*, 22 April 2024, p. 62.

34 Deloitte Touche Tohmatsu, *Submission 40*, p. 19.

35 PwC, *Submission 43*, p. 15.

Supporting competition in the audit market

8.25 The need and suggestions for supporting greater competition in the audit sector were raised during the inquiry. For example, Professor Fels asserted that the increased risks associated with market concentration 'would be less if other auditing firms were meaningful competitors for major audit mandates'. He highlighted, however, that so called 'challenger' firms have not been able to assume a significant share of the top end of the audit market anywhere in the world.[36]

8.26 Treasury also supported greater competition in the sector, telling the committee that:

> Without having to debate whether there's enough competition or not, I think you can always have appetite for more. Moving beyond that the question is: how do you bring that to fruition? That's a more challenging question, but it's one that we're starting the process of working through.[37]

8.27 This section discusses some of the key inhibitors to competition raised throughout the inquiry, referred to as 'barriers to entry'.

Barriers to entry in the audit market

8.28 In its consultation paper, Treasury identified as a potential issue for consideration barriers to entry into the audit market, which may have the effect of limiting competition, entrenching existing dominant players and reducing the resilience of the audit services market.[38] In its submission, Treasury highlighted three factors identified by Professors Roger Simnett and Ken Trotman in a 2022 research report that are cited by companies when appointing new auditors:

- the reputation of the firm, including their credibility, size, global and industry standing;
- the quality of the lead engagement partner, including their capability and industry experience; and
- the quality of the audit team.[39]

8.29 The first of these, reputation, was identified by a number of inquiry participants as a major barrier to entry for non-Big Four or 'challenger' firms seeking to

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36 Professor Allan Fels AO, *Submission 52*, [p. 4].

37 Mr Tom Dickson, Department of the Treasury, *Committee Hansard*, 22 April 2024, pp 62–63.

38 Department of the Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 42.

39 Roger Simnett and Ken Trotman, *Perceptions of audit quality by audit committee chairs in Australia: Research informing the FRC's and AUASB's views of audit quality*, Auditing and Assurance Standards Board Research Report No. 9, 2022, quoted in Department of the Treasury, *Submission 50*, p. 20.

compete in the top end of the audit market.[40] While disputing the accuracy of this belief, Professor Graeme Samuel gave evidence that large audit clients will seek out the services of the Big Four firms because of notions that these firms provide credibility.[41]

8.30 Reflecting the second and third factors identified in Treasury's submission, capability was another major barrier to entry identified in evidence. Professor Monroe stated that the size, complexity and often global operations of the largest companies go beyond the capability and resources of small auditors. PwC expressed a similar sentiment, stating that large, listed companies often 'require a firm with global reach, access to a range of skills in the audit…as well as the capital to be constantly investing in the latest technology and processes'.[42]

8.31 Professor Monroe noted concerns about perception issues amongst audit clients about potential signals that might be sent by retaining a non-Big Four firm. He stated:

> Those firms want to pick a big four auditor because everyone else in that group is picking a big four auditor, so what does it signal if they pick somebody else? Are they signalling that they have lower-quality financial reports because they're picking what might be perceived as a lower-quality auditor, a non-big-four?[43]

8.32 He also explained that gaps in available data hinder the ability to determine whether small firms bid for auditing jobs in large firms and are rejected in favour of a Big Four firm or are simply not bidding for these types of jobs at all due to a lack of capacity.[44]

8.33 Treasury identified other factors that may be barriers to entry for challenger firms, including:

- the often-longstanding relationships between companies and their audit firms, which limit turnover and hinder the ability of smaller firms to provide services to these clients; and
- the small size of the pool of large audit firms. Companies often use one of the largest firms as their auditor and two of other firms to provide non-audit services. This can lead to a tendency for companies to select auditors

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40 See, for example, Professor Graeme Samuel AC, *Committee Hansard*, 21 November 2023, p. 20; Professor Gary S. Monroe, *Committee Hansard*, 20 November 2023, p. 24; Department of the Treasury, *Submission 50*, p. 20.

41 Professor Graeme Samuel AC, *Committee Hansard*, 21 November 2023, p. 20.

42 PwC, *Submission 43*, p. 15.

43 Professor Gary S. Monroe, *Committee Hansard*, 20 November 2023, p. 24.

44 Professor Gary S. Monroe, *Committee Hansard*, 20 November 2023, p. 24.

from a small pool and may pre-dispose firms to remain with their current auditor and not tender for new audit contractors.[45]

8.34 In the United Kingdom, the CMA identified similar barriers to entry for challenger firms. It further noted the difficulties for challenger firms in hiring suitably experienced staff and scaling up capabilities to compete for and undertake complex audits.[46] The Australian Financial Reporting Council shared similar reports, stating that some non-Big Four audit firms in the United Kingdom have expressed reluctance to make the requisite significant investments in training and systems to provide such services for a small number of audits.[47]

8.35 Professor Fels argued in favour of government intervention in Australia, stating that the current market concentration at the top end of the audit market would continue in the absence of positive action by government and regulators.[48]

8.36 In the United Kingdom, the CMA recommended that major (FTSE 350) companies be required to appoint joint auditors, with at least one being a non-Big Four firm. This recommendation was aimed at improving choice and resilience in the audit sector by breaking down barriers that prevent challenger firms from auditing large companies.[49] The Australian Financial Reporting Council told the committee that this recommendation has not been implemented in the United Kingdom to date.[50]

Potential impacts of regulatory proposals

8.37 In addition to the impact of competition on the current audit market structure, the effect of regulatory reforms proposed during this inquiry (such as structural or operational separation to address conflicts of interest arising from the multidisciplinary structure of the Big Four firms discussed in Chapter 3) was

45 Department of the Treasury, *Submission 50*, p. 24. Treasury notes that individual auditors that play a significant role in the audit of a particular company must be rotated periodically and may not play a significant role for more than five consecutive, or more than five out of seven successive, financial years.

46 Competition and Markets Authority (United Kingdom), *Statutory audit services market study: Final report*, 18 April 2019, p. 94.

47 Mr Andrew Mills, Chair, Financial Reporting Council (Australia), *Committee Hansard*, 22 February 2024, pp 49–50.

48 Professor Allan Fels AO, *Submission 52*, [p. 7].

49 Competition and Markets Authority (United Kingdom), *Statutory audit services market study: Final report*, 18 April 2019, pp 144–147.

50 Mr Andrew Mills, Financial Reporting Council (Australia), *Committee Hansard*, 22 February 2024, p. 49.

also considered as part of the broader conversation about competition in the audit sector.

8.38 While acknowledging that proposed regulatory reforms may have some impact on competition, the ACCC told the committee that the nature and extent of this impact is ‘a little hard to predict’. It explained:

> …[I]f you’ve been audited by firm A and you can’t use A for consulting services, then what might have been four options could be restricted to three, if you’re talking about the big four. So, there could be a flow-on impact to competition. Whether it’s significant or not is very hard to judge. I think it would depend on, for example, whether there are other options outside of the big four for some of that consulting work.[51]

8.39 While not expressing a view as to what form of separation should be implemented, Dr Hossain emphasised that the influence and dominance of the Big Four firms in the upper echelons of the audit market make it ‘imperative’ that clear boundaries between audit and consulting services be established. He explained:

> This separation is necessary to ensure that auditors remain unbiased and vigilant in detecting any irregularities or conflicts of interest that may arise when their audit firms also provide consulting services to their clients.[52]

8.40 Professor Samuel told the committee that his proposal for change, which would prohibit one company providing both audit and consulting services to the same client (operational separation), ‘should simply result in advisory mandates being redistributed amongst the accounting firms’.[53] In his view, the dominance of the four major firms is unlikely to change. Despite this, Professor Samuel emphasised the importance of imposing ‘the right disciplines’ on the audit sector, such as his suggested regulatory reform and greater transparency around reporting on audit quality.[54]

8.41 Some inquiry participants suggested that structural separation, which would require audit functions of a multi-service firm to separate from the non-audit functions, may have a limiting effect on small business. Treasury stated that in larger firms, structural separation ‘might result in the simple redistribution of consulting work amongst the firm, so they’re not providing consulting services to audit clients’. However, the impact on smaller firms might be more significant. It explained:

> For a smaller firm, that might become more of a question of their viability. For a smaller firm that survives on providing both consulting and audit

51 Mr Tom Leuner, Australian Competition and Consumer Commission, *Committee Hansard*, 1 March 2024, p. 14.

52 Dr Sarowar Hossain, Response to *Submission 50*, [p. 4].

53 Professor Graeme Samuel AC, *Submission 1*, pp [3–4].

54 Professor Graeme Samuel AC, *Committee Hansard*, 21 November 2023, p. 20.

services, it might be that the cross-subsidisation of those activities is important to their existence.[55]

8.42 BDO also expressed concern for the potential impact of structural separation on small businesses. It asserted that establishing separate audit-only firms would be 'uneconomical' for a large number of smaller accounting firms. In its view, such a requirement would lead to a decline in market competition 'as smaller firms exit and the pool of providers diminishes'.[56]

8.43 Another regulatory intervention, mandatory audit firm rotation, may also impact competition in the sector. In the United Kingdom, companies are required to change audit firms every 20 years. While describing this intervention as 'necessary', the CMA acknowledged that this measure had had a flow-on effect on competition because it removed access to one company where the market is dominated by the Big Four.[57]

8.44 Both the CMA and Professor Fels highlighted the importance of preventing further consolidation in the market where mandatory audit firm rotation exists. Professor Fels explained:

> Auditor firm rotation in a market dominated by the Big Four means however that the pool of bidders for the work on rotation is three at most. That is before firms, in their current audit and non-audit conglomerate form, consider whether an auditing contract is not worth bidding for, given the amount they are earning from the company from non-audit work.
>
> Imagine now what happens if the Big Four become the Big Three. With the departing auditor eliminated from a tender there would be two firms at the most in many tenders. Sometimes, possibly often, there would be no competitive tender at all.[58]

8.45 As a general observation, Treasury highlighted the importance of ensuring that any regulatory intervention is appropriately balanced. It stated:

> In designing specific interventions, the potential benefits should be weighed against potential costs for the community, such as higher prices, lower quality services and slower economic growth. For example, the imposition of regulation can create barriers to entering an industry that reduce competition, increase concentration and create dominant firms.[59]

8.46 EY told the committee that it would welcome an inquiry from the ACCC into competition in the audit market that 'addresses any concerns the Committee

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55 Mr Tom Dickson, Department of the Treasury, *Committee Hansard*, 22 April 2024, p. 66.

56 BDO Group Holdings Limited, *Submission 38*, pp 1–2.

57 Competition and Markets Authority (United Kingdom), *Statutory audit services market study: Final summary report*, p. 5. See also Department of the Treasury, *Submission 50*, p. 19.

58 Professor Allan Fels AO, *Submission 52*, [p. 7].

59 Department of the Treasury, *Submission 50*, p. 23.

may have'.[60] The ACCC told the committee that it had not received a formal suggestion that it conduct an inquiry into the audit market.[61] It added that its compulsory information-gathering powers 'are only activated when the ACCC is directed to undertake an inquiry under Part VIIA of the Competition and Consumer Act by a Treasury portfolio Minister', and 'are not available where the ACCC self-initiates a market study'. It noted that whether such a direction is made 'is a matter for the Government'.[62]

Committee view

8.47 Relative to jurisdictions such as the United States and the United Kingdom, it appears that Australia enjoys a greater degree of competition in its audit sector, particularly in the medium and small company sectors. However, the data reveals that in the large and very large, listed company sector—amongst the 'public interest entities'—the Big Four have a significant and entrenched stranglehold on the market.

8.48 There are clearly concerns about the impact of this dynamic on the sector, including the risks of conflicts of interest and the ability of regulators to intervene to address poor conduct. Further, the barriers to entry for challenger firms are substantial and appear to require significant intervention to overcome. Evidence to this inquiry provided some insight into these concerns, but further analysis is required.

8.49 Any future reforms must occur in a way that does not negatively affect competition—we must tread carefully to avoid inadvertently creating unintentional consequences in seeking to remedy other concerns. For this reason, the committee strongly recommends that the government direct the ACCC to conduct an inquiry into competition in the audit sector. This inquiry should consider the key themes of this chapter, including:

- the current state of competition in the audit market, including the impact of and concerns associated with market concentration;
- mechanisms for supporting competition in the market, including addressing barriers to entry; and
- the implications of broader regulatory reform proposals, including operational or structural separation from tax and other consulting services.

8.50 The committee is of the view that this inquiry should be commenced at the government's direction pursuant to Part VIIA of the *Competition and Consumer*

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60 EY Australia, *Submission 12.1*, p. 18.

61 Australian Competition and Consumer Commission, answers to questions on notice 76, 1 March 2024 (received 27 March 2024).

62 Australian Competition and Consumer Commission, answers to questions on notice 76, 1 March 2024 (received 27 March 2024).

Act 2010 so that the ACCC may have the benefit of its compulsory information gathering powers.

8.51 The committee notes that in the United Kingdom, the CMA recommended that major (FTSE 350) companies be required to appoint joint auditors, with at least one being a non-Big Four firm. The committee considers that such an approach has merit and recommends that a similar approach be taken in Australia.

Recommendation 40

8.52 The committee recommends that the Australian Government consider mechanisms to increase competition within the audit sector. This may include mandating tendering, mandating firm rotation for auditors, and mandating public interest entities be subject to joint audits which include smaller firms.

Senator Deborah O'Neill
Chair
Labor Senator for New South Wales

Additional comments by Hon Alex Hawke MP, Deputy Chair and Senator Paul Scarr

Introduction

1.1 The purpose of these additional comments is to detail reservations held in relation to some of the recommendations made in the committee report.

1.2 At the outset, it should be noted that we are very supportive of a majority of the recommendations made in the committee report. This is because we agree with the need for greater governance, disclosure and transparency requirements being imposed upon large professional partnerships, including the large multidisciplinary accounting practises, given their significance to the Australian economy. Further, the inquiry has indicated that there needs to be a range of reforms implemented with respect to matters such as: regulatory oversight, disciplinary procedures and the calibration of appropriate penalties for misconduct. Again, we agree with these recommendations.

1.3 With respect to the limited number of recommendations where we have reservations, we appreciate the intent. However, in considering the appropriate response to the conduct of PwC (and other issues considered by the inquiry), in our view, care must be taken to implement reforms which are reasonable and proportionate. Ideally, reforms would be staged so that their impact can be assessed prior to additional reforms being implemented. The cost of implementation (for both the public sector and private sector) needs to be balanced against the benefit. Great care is needed to avoid unintended consequences. Throughout the process of implementation, there must be close liaison with impacted stakeholders.

1.4 Finally, we thank Senator Deborah O'Neill, Chair of the committee, for her outstanding leadership of this inquiry. The committee has acted in a collegiate way in the best traditions of the Australian parliament. The Chair has been resolute in pursuing the issues falling within the terms of reference of this inquiry. We commend Senator Deborah O'Neill for her leadership, particularly in leading the pursuit of additional evidence from PwC and those previously associated with PwC. We also acknowledge the diligence and contribution of other members of the committee and the secretariat.

1.5 We now turn to the recommendations made in the committee report where we have reservations.

Reservations in relation to decrease in cap on the size of partnerships (recommendation 3 in the committee report)

1.6 We do not agree with the recommendation that the Australian government reduce the allowable size of partnerships for accountants to a maximum of 400 partners (refer to recommendation 3 of the committee report).

1.7 As detailed in the committee report, the Government previously passed laws that increased the cap to 1,000 partners. A cut in the number of partners would cause great disruption to those firms which currently have more than 400 partners. Businesses have been built based on the current cap. Individuals within the firms have no doubt made decisions with respect to their prospects of career progression on the expectation that there was a path to partnership. Any change to the cap would cause great organisational disruption. Is it practical to impose such a material change? How do you cut the number of partners to the extent contemplated by the proposed cap? How is that decision made under a Partnership Deed? Will it lead to litigation? What does it mean for salaried partners? How does it impact the progression of talented staff who are on the partnership track? What workarounds would large partnerships adopt to mitigate the impact of such a change to the cap?

1.8 Implementation of the recommendation would represent an extraordinary intervention in the market by the government and cause great disruption to firms who have implemented structures in good faith in the reasonable expectation that the law would not be materially changed after the event. In our view, such an extraordinary intervention would require extremely strong justification, including that there was no alternative way in which to address the issues identified in the committee's report. We are not satisfied that such justification has been provided.

1.9 The recommendation is based on the argument that it is impractical for partners to exercise appropriate oversight where there are just so many partners. However, this is a dynamic which occurs in any large organisation. In our view, the relevant question is what governance structures do the owners of the business (be they partners or shareholders) implement to mitigate the risk. Given that partners have joint and several liability, shouldn't they be the ones who are most exercised by this issue?

1.10 If our views are not accepted in this regard, we strongly recommend that there be detailed consultation with relevant stakeholders (including the firms impacted by such a change) prior to any decrease in the cap.

1.11 Finally, we also note that recommendation 19 in the committee report calls upon the government to consider requiring audit firms to incorporate. If large partnerships are to be put through the organisational disruption of going through a material reduction in partners, then this should be an end to the matter – they should not face the additional prospect of potentially being required to incorporate. Moreover, if the other reforms proposed in the committee report are implemented, then whether or not a business is a partnership or a company should be of less concern.

Recommendation 1

1.12 We recommend that the Australian Government not implement a change in the cap on the size of large multidisciplinary accounting firms to 400 partners at this point in time given that firms have been structured in good faith on the basis of the existing law and there are other reforms (governance, disclosure, transparency, regulatory oversight) that may be implemented to address the issues raised during the inquiry. The effectiveness of any such reform should be assessed prior to implementing such a significant change.

Recommendation 2

1.13 If our recommendation 1 is not accepted, we recommend that any proposed change in the cap on the number of partners be the subject of detailed consideration prior to implementation to provide the firms impacted by any such change and other relevant stakeholders with the opportunity to make detailed submissions, including with respect to any unintended consequences arising from such a change in the cap on the number of partners.

Reservations in relation to imposing absolute prohibition on provision of any non-audit services to an audit client (recommendation 8 in the committee report)

1.14 We note that recommendation 8 in the committee report proposes an absolute prohibition upon large multidisciplinary accounting firms providing non-audit services to an audit client. In this regard, we note that there are already stringent controls with respect to what non-audit services may be provided to an audit client. There is an absolute prohibition on the provision of some services. With respect to the audit of public interest entities (including listed public companies) there are further prohibitions. In other cases, the relevant codes and standards impose applicable principles which must be adhered to in order to maintain independence and mitigate against conflicts of interest. Refer to APES 110 *Code of Ethics for Professional Accountants* issued by the Accounting Professional & Ethical Standards Board. This Code is based on the *International Code of Ethics for Professional Accountants*.

1.15 We also note that the committee report proposes operational separation of the audit and non-audit functions in firms which audit public interest entities. This is based on the operational separation principles applying in the United Kingdom. We support that recommendation. We also note that the United Kingdom does not impose an absolute prohibition upon the provision of non-audit services to audit clients. The Ethical Standard issued by the Financial Reporting Council of the United Kingdom contains principles consistent with those applying in Australian under APES 110. Again, that standard applies rigorous and detailed controls.

1.16 In conclusion, in our view, the impact of the reforms proposed in the other recommendations, including with respect to the operational separation of the audit practice, should be assessed prior to implementing an absolute prohibition upon the provision of any non-audit services to audit clients.

Recommendation 3

1.17 Given the other reforms proposed (including the operational separation of audit practices from non-audit practices as per the practice in the United Kingdom) and current regulation of the provision of non-audit services to audit clients, we do not recommend the introduction of an absolute prohibition on the provision of any non-audit services to audit clients.

Reservations in relation to imposition of additional regulatory obligations, including upon mid-size and small partnerships and miscellaneous matters (various recommendations in the committee report)

1.18 There are a number of recommendations in the committee report which countenance additional regulatory burdens, including for mid-size firms and potentially smaller firms. In our view, the focus should be on large partnerships; especially those which are conducting audit and assurance work for public interest entities. Care should be taken prior to imposing additional regulatory burdens upon mid-size and small partnerships. Reforms need to be reasonable and proportionate.

1.19 We refer to the following:

- we have reservations with respect to potentially expanding the governance and accountability requirements imposed upon large partnerships to mid-size partnerships (refer to recommendation 5 of the committee report);
- we have reservations with respect to the need to establish an organisation equivalent to the United States Public Company Accounting Oversight Board – any such reform should be preceded by a rigorous holistic review of the entire regulatory framework in this regard (refer to recommendation 20 of the committee report); and
- there are recommendations for the Australian Government to lead in the process of establishing a consultancy code and associated compliance body which is not subject to any size based thresholds – we do not consider that the case has been made for those recommendations; especially given that the misconduct which was the particular focus of the committee's deliberations related to large multi-disciplinary accounting and audit firms (refer to recommendations 29, 30 and 32 of the committee report).

Recommendation 4

1.20 It is recommended that detailed consideration is required prior to imposing the same regulatory burdens imposed upon large multidisciplinary accounting and auditing firms upon mid-size (or smaller) firms or businesses.

Hon Alex Hawke MP
Deputy Chair
Liberal Member for Mitchell

Senator Paul Scarr
Member
Liberal Senator for Queensland

Australian Greens Senators' additional comments

1.1 This is an important report which responds to a public scandal in PwC and the consulting industry more broadly, including all of the Big Four – PwC, KPMG, EY, and Deloitte. This scandal has shocked Australians – and many beyond our shores. Meaningful reform cannot wait. The evidence is in. Reprehensible behaviour has thrived in gaps in our regulatory framework and bent the cultures of some of our largest private entities, much of whose income and profit comes from the public purse.

1.2 This evidence is of international significance: it reveals global challenges that beset effective governance, behaviour and structures in some of the world's large entities - that too often put their own interests before those of the public.

1.3 Australians want to see action that prevents any repeat into the future. They want their government to ensure that these very large partnerships no longer operate beyond regulatory scrutiny in opaque, poorly governed, profitable secrecy. We need comprehensive legislative, cultural and structural change to fix these organisational failures. There is a strong case for change. Shared outrage is not enough: it is essential to see action.

1.4 The recommendations of this Inquiry are a vital step towards change and they deserve strong support. The Australian Greens offer five supplementary recommendations that also deserve action.

1.5 This Inquiry builds upon the work of the Senate Finance and Public Administration References Committee's Inquiry into the Management and Assurance of Integrity by Consulting Services. The Australian Greens made lengthy additional comments in the final report of that inquiry, titled 'A Very Public Swindle: Ending the Cost, Conflict and Regulatory Failure in Big Consulting'.[1] Many are reflected in this report and in our additional comments below.

1.6 On behalf of the Australian Greens, I want to thank the committee for their work. I would also like to add a personal thanks to all those who supplied evidence to the Inquiry. This thanks extends to the many whistleblowers and journalists who diligently, and sometimes at great risk, informed our work. I thank my parliamentary colleagues for their cross-party collaboration and the committee secretariat for their work.

[1] Senate Finance and Public Administration References Committee, Inquiry into management and assurance of integrity by consulting services, *Australian Greens Additional Comments: A Very Public Swindle: Ending the Cost, Conflict and Regulatory Failure in Big Consulting and Rebuilding the Public Sector*, June 2024.

Partnership reform

1.7 As this report shows, partnerships need serious structural and regulatory overhaul. All four big accounting firms are partnerships not corporations, and thus lack the accountability, transparency, and obligations of other large entities in our economy.

1.8 One of the only Commonwealth powers of partnership regulation is setting limits on size through the Corporations Act 2001. The Corporations Act 2001 allows accounting firms to have up to 1,000 partners, a much higher cap than medical practitioners (50) and pharmaceutical chemists or vets (100). The majority report recommends a reduction in accounting partnerships to 400, reflecting the evidence that effective governance in a partnership with up to 1,000 partners is not possible. Mr Adam Powick, CEO of Deloitte has acknowledged that once a partnership gets above 100 equity partners, it becomes too complex to manage.[2]

1.9 PwC is a case in point, having around 800 partners at the time the scandal broke. The size and complexity of its structure enabled Mr Peter Collins to use confidential government information for the benefit of PwC's private clients, undetected or concealed by other partners over a long period. While size of firm is not the sole determinant of organisational culture, it is clear that an opaque partnership structure, unclear lines of accountability, and partnership hierarchy made it difficult to challenge the actions and decisions of those at the top.[3] The partnership structure made it harder to uncover, investigate, enact penalties, and hold the firm broadly to account.[4]

1.10 The committee's recommendation to cap partnership size at 400 partners is a good starting point, but there is considerable evidence in favour of it being lower. As noted in the majority report, both Brent Fisse Lawyers and Professor Andy Schmulow suggested that the number of partners in accounting firms be limited to 100.[5]

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2 Mr Adam Powick, Chief Executive Officer, Deloitte, *Senate Finance and Public Administration References Committee Hansard*, 23 February 2024, p. 52.

3 See, for example, Professor Brendan Lyon, *Senate F&PA References Committee, Management and assurance of integrity by consulting services, Submission 45*.

4 Senate Finance and Public Administration References Committee, Inquiry into management and assurance of integrity by consulting services, *Australian Greens Additional Comments: A Very Public Swindle: Ending the Cost, Conflict and Regulatory Failure in Big Consulting and Rebuilding the Public Sector*, June 2024, p. 133.

5 Brent Fisse Lawyers, *Submission 11*, p. 2; Professor Andy Schmulow, *Submission 68*, p. 2.

Recommendation 1

1.11 The Australian Greens recommend that the Australian Government reduce the allowable size of partnerships for accountants to a maximum of 100 partners.

Regulation

1.12 The majority report recommends operational separation of the provision of audit and non-audit services to any single client entity (and their associated entities both in Australia and internationally).

1.13 This recommendation is an important step. However, other approaches were suggested to the inquiry including full structural separation of audit from non-audit work to prevent built-in conflicts of interest by requiring those firms doing audit work to be precluded from doing non-audit work entirely. The majority report includes explanation of the case for structural separation.

1.14 Professor Allan Fels argued for this approach to separation of audit from non-audit services within the Big Four firms, saying that it 'is far simpler and more effective than alternative methods of dealing with the conflicts of interest that inevitably arise when auditing and non-auditing work are offered by the same firm'.[6] The CPSU also supports structural separation.[7]

1.15 Audit is a legal requirement of public companies and poor audit quality can undermine economic stability.

1.16 While the majority report recommends operational separation, structural separation is an alternative, firmer way to ensure the integrity of the audit system and guarantee that audits are not compromised by non-audit services, creating conflicts of interest.

Recommendation 2

1.17 The Australian Greens recommend that on completion of the 2 year review of the operational separation proposed in the majority report, if progress is too slow or not effective, consideration be given to implementing structural separation such that any firm providing audit services in Australia be prevented from providing non-audit services, including when engaging in business with the Australian Government.

A Strong Independent Regulator for the Consulting Industry

1.18 Bad behaviour thrives in regulatory gaps. A key issue is that Australia's current regulation of consulting services is weak and inadequate. It lacks meaningful enforceability and is too opaque.

6 Professor Allan Fels AO, *Submission 52*, p. 1.

7 Community and Public Sector Union, *Submission 48*.

1.19 There is a pressing need for governments to reset regulation of professional services, in particular consulting services. We cannot rely solely on voluntary codes or self-regulatory professional bodies. While the majority report recommends the establishment of a registration body and a code for consultants, it does not make a recommendation to establish an independent regulator of the consulting profession with teeth.

1.20 We believe the evidence about consultant conduct[8] necessitates the need for a single, independent regulator for the consulting industry as we recommended (Recommendation 16) in our additional comments to the Senate Finance and Public Administration References Committee's Inquiry into the Management and Assurance of Integrity by Consulting Services.[9]

Recommendation 3

1.21 The Australian Greens recommend that the Australian Government, beyond establishing a register and code for consultants as recommended in the majority report, establish an Independent Regulator for the consulting industry, with an enforceable professional code of conduct, national standards, investigation powers and penalties for breaches.

End Donations to Political Parties

1.22 Donations to political parties should not be possible from those who tender for, or receive, government contracts. Money must not buy, or be perceived to buy, political access and influence. This applies to direct, indirect, in-kind and pro-bono donations.

1.23 While not implying any wrongdoing by the members of this committee, the corrosive impact of political donations in relation to government consulting must stop.

1.24 Over the past decade, the Big Four consulting firms have donated over $6.6 million to the ALP and Coalition and received a staggering $8.5 billion in government contracts, over the same period.[10] It is no surprise that the Australian Government became amongst the highest spenders on consultants in the world.

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8 Accounting Professional and Ethical Standards Board, *Submission 20*, pp 3–4; Dr Andy Schmulow, *Submission 68*, p. 2; BDO Group Holdings Limited, *Submission 38*, p. 5; Professor Allan Fels, Private Capacity, *Senate Finance and Public Administration References Committee Hansard*, 17 July 2023, p. 7.

9 Senate Finance and Public Administration References Committee, Inquiry into management and assurance of integrity by consulting services, *Australian Greens Additional Comments: A Very Public Swindle: Ending the Cost, Conflict and Regulatory Failure in Big Consulting and Rebuilding the Public Sector*, June 2024.

10 Advice provided by the Parliamentary Library.

1.25 Australians want to see us break the link between political donations and consulting to government. There is widespread support for banning these donations. Research by the Australia Institute shows that three in four Australians (74 per cent) support banning political donations from entities that receive funding from government contracts, including 80 per cent of Coalition voters and 70 per cent of Labor voters.[11]

1.26 A ban on political donations is key to restoring public confidence in government and to ensure that decisions about allocating public resources are guided by public interest, rather than the interests of donors.

1.27 The Australian Greens urge the government to immediately legislate, at the very least, a ban on political donations from those who tender or receive government contracts.

Recommendation 4

1.28 The Australian Greens recommend that any entities tendering or contracting to the Australian Government be banned from making political donations (direct, indirect, in-kind, pro-bono or otherwise) in the 12 months before applying for contracts, while an application is being considered, or 12 months after contract obligations have been completed.

Ending the Concealment of Harmful Cultures and Behaviours

1.29 The inquiry found considerable evidence within the Big Four firms of poor organisational cultures that put staff well-being at risk or caused clear harm to individuals. The findings of both the Broderick report, and the Switkowski reports provided detailed accounts of failed internal cultures.[12] Further, whistle blowers provided accounts (sometimes in direct communication with Senators) about the use of devices such as non-disclosure agreements to conceal unacceptable behaviours or protect bad actors from public consequences.

1.30 Devices like non-disclosure agreements should not be used to conceal poor behaviour. Further they prevent any deterrence affect arising from appropriate public consequences. In this light we recommend that the government review of the use and consequences of non-disclosure agreements.

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11 The Australia Institute, *Voters Back Donations Ban for Government Contractors*, Media Release, 8 August 2023 (accessed 28 October 2024).

12 Elizabeth Broderick & Co, *independent review into workplace culture at EY*, 27 July 2023; Dr Ziggy Switkowski, *Review of Governance, Culture and Accountability at PwC Australia*, August 2023.

Recommendation 5

1.31 The Australian Greens recommend that the government review the use of non-disclosure agreements in large employing entities to ensure that their use does not conceal or protect harmful behaviours by individuals and/or harmful internal cultures including in relation to sexual harassment, bullying, and exploitative work cultures that create unsafe work environments.

Senator Barbara Pocock
Member
Greens Senator for South Australia

Appendix 1
Submissions and additional information

1 Professor Graeme Samuel AC
- 1.1 Supplementary to submission 1

2 Mr John Ferguson
- 2.1 Supplementary to submission 2

3 Dr Peter Wells
4 Dr Sarowar Hossain, Professor Gary S. Monroe
5 Dr Sarowar Hossain, Dr Jeff Coulton and Dr Jenny Jing Wang
6 Professor Elise Bant
- 6.1 Supplementary to submission 6

7 McKell Institute
8 Professor Andrew Sturdy
9 The Ethics Centre
10 The Institute of Internal Auditors Australia
- 10.1 Supplementary to submission 10

11 Brent Fisse Lawyers
12 EY Global Ltd with a supplementary submission from EY Australia
- 12.1 Supplementary to submission 12

13 Dr Kelli Larson, Curtin Law School
14 Department of Veterans' Affairs
15 Institute of Public Accountants
16 Professor Ian Gow, Professor Stuart Kells
17 Australian Restructuring Insolvency and Turnaround Association
18 CPA Australia
19 Financial Reporting Council
20 Accounting Professional and Ethical Standards Board
21 AUSTRAC
22 Governance Institute of Australia
23 Dr George Tanewski, Professor Peter Carey
- 23.1 Supplementary to submission 23

24 Society of Corporate Law Academics
- 24.1 Supplementary to submission 24

25 KPMG Australia
26 McKinsey & Company
- 26.1 Supplementary to submission 26

27 The Victorian Bar

28 Tax Justice Network, Tax Justice Network Australia, Centre for International Corporate Tax Accountability and Research

29 Australian Shareholders' Association

30 Chartered Accountants Australia and New Zealand

31 Associate Professor Corinne Cortese

32 Emeritus Professor James Guthrie, Professor John Dumay, Professor Jane Andrew, and Dr Erin Twyford

- Emeritus Professor James Guthrie, Professor John Dumay, Professor Jane Andrew, Dr Erin Twyford superseded submission 32
- Deloitte response to submission 32
- KPMG response to submission 32
- Emeritus Professor James Guthrie response to submission 32
- EY response to submission 32
- PwC Australia response to submission 32

33 Emeritus Professor James Guthrie, Professor John Dumay, Dr Erin Twyford, and Associate Professor James Hazelton

- Emeritus Professor James Guthrie, Professor John Dumay, Dr Erin Twyford, Associate Professor James Hazelton superseded submission 33
- KPMG response to submission 33
- Emeritus Professor James Guthrie response to submission 33
- EY response to submission 33
- PwC Australia response to submission 33

34 Centre for Governance & Public Policy, Human Rights Law Centre, Transparency International Australia

35 Public Interest Oversight Board

36 Australian Taxation Office

37 Inspector-General of Taxation and Taxation Ombudsman

38 BDO Group Holdings Limited

39 Department of Finance

40 Deloitte Touche Tohmatsu

41 Dr Barbara Voss

42 International Ethics Standards Board for Accountants

43 PwC

- 43.1 Supplementary to submission 43

44 Professor Mariana Mazzucato & Ms Rosie Collington

45 Scyne Advisory

- 45.1 Supplementary to submission 45

46 Tax Practitioners Board

47 The Australia Institute

48 Community and Public Sector Union

49 Australian Securities and Investments Commission (ASIC)

50 Department of the Treasury

- Professor Gary Monroe response to submission 50
- Dr Sarowar Hossain response to submission 50
- Professors George Tanewski and Peter Carey response to submission 50
- Dr Simon Longstaff AO response to submission 50
- Dr Jeff Coulton response to submission 50
- McKinsey Australia response to submission 50
- Ms Kristin Stubbins response to submission 50
- The Institute of Internal Auditors Australia response to submission 50
- Deloitte response to submission 50
- KPMG response to submission 50
- Boston Consulting Group response to submission 50
- Professional Standards Council response to submission 50
- Accounting Professional & Ethical Standards Board response to submission 50
- Bain & Company response to submission 50
- EY Oceania response to submission 50
- PwC Australia response to submission 50

51 Companies Auditors Disciplinary Board
52 Professor Allan Fels AO
53 Name Withheld
54 Department of Infrastructure, Transport, Regional Development, Communications and the Arts
55 Accenture
56 Boston Consulting Group
57 Department of Health and Aged Care
58 Auditing and Assurance Standards Board
59 Department of Employment and Workplace Relations
60 Department of Home Affairs
61 Attorney-General's Department
62 Department of Social Services
63 Mr Gerald Jaworski

- Chartered Accountants Australia & New Zealand response to submission 63

64 Aged Care Crisis

- StewartBrown response to submission 64

65 Mr George Rozvany
66 Name Withheld
67 Confidential
68 Dr Andy Schmulow
69 Australian Federal Police
70 Department of Agriculture, Fisheries and Forestry
71 Department of Education
72 Confidential

73 Mr Mark Gailey
- Certified Practising Accountants Australia response to submission 73

74 Name Withheld
75 Name Withheld
- EY response to submission 75
- SGS Australia response to submission 75
- Peabody response to submission 75
- ALS Global response to submission 75

76 Australian Public Service Commission
77 Professional Standards Councils
78 Bain & Company
79 Confidential
80 Confidential
81 Department of Defence
82 Ms Meredith Beattie
- 82.1 Confidential

83 Dr Shann Turnbull PhD

Additional Information

1 Correspondence to the committee from EY on Commissioner of Taxation's case against a former EY partner, received 1 November 2023
2 Correspondence from CA ANZ to the committee clarifying the confidentiality of CA ANZ investigations and discussing proposals for a duty to report others' suspected misconduct, received 7 August 2024
3 Correspondence from APESB to CA ANZ on a proposed requirement for a member to report wrongdoing of other members, received 7 August 2024
4 Pacioli speech given by Channa Wijesinghe at University of Sydney on 22 August 2024, received 13 September 2024
5 IESBA Firm Culture and Governance preliminary report, received 26 September 2024

Answers to Questions on Notice

1 ATO, various answers, answers to written questions on notice from Senator Deborah O'Neill, 17 July 2023 (received 8 September 2023)
2 Tax Practitioners Board, answers to written questions on notice from Senator Deborah O'Neill, 17 July 2023 (received 15 September 2023)
3 Department of the Treasury, answers to written questions on notice from Senator Deborah O'Neill, 17 July 2023 (received 10 October 2023)
4 Institute of Public Accountants, answers to written questions on notice from Senator Deborah O'Neill, 11 October 2023 (received 31 October 2023)

5 Institute of Public Accountants, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 6 October 2023 (received 31 October 2023)

6 CPA Australia, answers to written questions on notice from Senator Deborah O’Neill, 11 October 2023 (received 30 October 2023).

7 CPA Australia, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 6 October 2023 (received 30 October 2023).

8 CA ANZ, answers to written questions on notice from Senator Deborah O’Neill 6 October 2023 (received 10 November 2023)

9 CA ANZ, answers to written questions on notice from Senator Deborah O’Neill 11 October 2023 (received 10 November 2023)

10 Centre for International Corporate Tax Accountability and Research, CICTAR Report on DPWorld tax, answers to written questions on notice from Senator Barbara Pocock 21 November 2023 (received 28 November 2023)

11 The Australia Institute on Whistleblower protections and various other topics on answers to written questions on notice from Senator Deborah O’Neill, notice 6 October 2023 (received on 14 November 2023)

12 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

13 ASIC, auditing and ASIC staffing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

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15 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

16 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

17 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

18 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

19 ASIC, CADB, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

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23 ASIC, auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 30 November 2023)

24 McKell Institute, fiduciary law, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 20 November 2023 (received 1 December 2023)

25 McKell Institute, Intangibles, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 20 November 2023 (received 1 December 2023)

26 McKell Institute, Department of Treasury submission, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill on 20 November 2023 (received 1 December 2023)

27 Governance Institute of Australia, Whistleblower protections and various other topics, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 6 October 2023 (received on 15 December 2023)

28 Australian Shareholders Association, Digital financial reporting standards and various other topics, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 6 October 2023 (received 20 December 2023)

29 The Institute of Internal Auditors, Big four internal auditing, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 20 November 2023 (received 18 January 2024).

30 Dr Sarowar Hossain, 2020 Interim and Final Reports on the regulation of auditing in Australia, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 20 November 2023 (received 19 January 2024)

31 Community and Public Sector Union, Response to the Thondey Review, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 21 November 2023 (received 19 January 2024)

32 Community and Public Sector Union, Advisory and Audit Structural Split in Big Four, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 21 November 2023 (received 19 January 2024)

33 Community and Public Sector Union, Banning versus Separation in Audit Services, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 21 November 2023 (received 19 January 2024)

34 Community and Public Sector Union, Global Cap on IT, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 21 November 2023 (received 19 January 2024)

35 Community and Public Sector Union, APS Senior Leadership KPIs, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 21 November 2023 (received 19 January 2024)

36 Community and Public Sector Union, Government Contracts, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 21 November 2023 (received 19 January 2024)

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38 Dr Sarowar Hossain, Dr ZE Switkowski AO Review of PwC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 20 November 2023 (received 19 January 2024)

39 Professor Gary Monroe, Dr ZE Switkowski AO Review of PwC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 20 November 2023 (received 19 January 2024)

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42 Tax Justice Network Australia and CICTAR, Conflicts of interest in major accounting firms and various other topics, answers to questions on notice asked at a public hearing from Senators Deborah O'Neill and Barbara Pocock, 21 November 2023 (received 30 January 2024)

43 ATO, Barton Office arrangements between Colliers Ventia and ATO, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

44 ATO, Barton Office conflicts of interest, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

45 ATO, Barton Office lease process, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

46 Department of Finance, Property services coordinated procurement arrangements, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

47 Department of Finance, Conflicts of interest disclosure requirements, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

48 Department of Finance, ATO and PSCP, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

49 Department of Finance, Colliers and PSCP, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

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51 Department of Finance, Colliers and Ventia, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

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53 Department of Finance, PSCP and conflicts of interest, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

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55 Department of Finance, Colliers and the Department of Agriculture, Fishing and Forestry, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

56 Department of Finance, Colliers and the Department of Agriculture, Fishing and Forestry, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

57 Department of Finance, Colliers and the Department of Agriculture, Fishing and Forestry, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

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59 Department of Finance, Deloitte, answers to written questions on notice from Senator Deborah O’Neill, 3 November 2023 (received 4 December 2023)

60 ASIC, CADB, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 21 December 2023)

61 CADB, ASIC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 3 November 2023 (received 29 November 2023)

62 CPA Australia, Investigating Case Managers and various other topics, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

63 Professional Standards Councils, Systems intentionality and various other topics, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

64 Accounting Professional and Ethical Standards Board, ethical standards, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 1 March 2024 (received 22 March 2024)

65 Accounting Professional and Ethical Standards Board, Professional Services Firm, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 1 March 2024 (received 22 March 2024)

66 Accounting Professional and Ethical Standards Board, remuneration disclosures, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 1 March 2024 (received 22 March 2024)

67 Accounting Professional and Ethical Standards Board, responses to Big Four recommendations, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

68 Accounting Professional and Ethical Standards Board, 'fit and proper person', answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

69 Accounting Professional and Ethical Standards Board, ethical standards on fraud, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

70 Accounting Professional and Ethical Standards Board, KPMG and Paladin, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 22 March 2024)

71 Auditing and Assurance Standards Board, The Institute of Internal Auditors, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 February 2024 (received 25 March 2024)

72 Auditing and Assurance Standards Board, Consulting, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 February 2024 (received 25 March 2024)

73 Auditing and Assurance Standards Board, Auditor independence, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 February 2024 (received 25 March 2024)

74 Financial Reporting Council, Consulting and ASIC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 February 2024 (received 25 March 2024)

75 ACCC, Previous ACCC merger reviews, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 27 March 2024)

76 ACCC, Correspondence from market participants to the ACCC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 27 March 2024)

77 ACCC, Various, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 27 March 2024)

78 ACCC, Overseas Inquiries, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 27 March 2024)

79 ACCC, ACCC use of contracts or consultants, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 1 March 2024 (received 27 March 2024)

80 Boston Consulting Group, Various, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 5 March 2024 (received 26 March 2024)

81 Institute of Internal Auditors Australia, Various, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 February 2024 (received 26 March 2024)

82 McKinsey, Various, answers to questions on notice asked at a public hearing from Senators Deborah O'Neill and Barbara Pocock, 5 March 2024 (received 26 March 2024)

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86 Chartered Accountants ANZ, Various, answers to questions on notice asked at a public hearing from Senators Deborah O'Neill, Barbara Pocock, Senators Louise Pratt and Paul Scarr, 5 March 2024 (received 26 March 2024)

87 Accenture, Various, answers to questions on notice asked at a public hearing from Senators Deborah O'Neill, Barbara Pocock and Paul Scarr, 5 March 2024 (received 27 March 2024)

88 PwC Australia, PwC International and PwC Australia, answers to written questions on notice from Senator Deborah O'Neill, 27 March 2024 (received 10 April 2024)

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91 ATO, Processes involved with releasing ATO responses, answers to questions on notice asked at a public hearing from Mr Alex Hawke MP, 22 April 2024 (received 13 May 2024)

92 ATO, Rover model, answers to questions on notice asked at a public hearing from Senator Deborah O’Neill, 22 April 2024 (received 13 May 2024)

93 ATO, ASIC compliance model, answers to questions on notice asked at a public hearing from Senator Deborah O’Neill, 22 April 2024 (received 13 May 2024)

94 ATO, ATO concerns, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 22 April 2024 (received 13 May 2024)

95 ATO, Data sharing under the TASA Act, answers to questions on notice asked at a public hearing from Mr Alex Hawke MP, 22 April 2024 (received 13 May 2024)

96 Attorney-General’s Department, Details of submissions regarding whistleblowing authority, answers to questions on notice asked at a public hearing from Senator Deborah O’Neill, 22 April 2024 (received 17 May 2024)

97 Attorney-General's Department, Whistleblower protection authority, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 22 April 2024 (received 17 May 2024)

98 Attorney-General's Department, Whistleblower protections for contractors, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 22 April 2024 (received 17 May 2024)

99 Attorney-General's Department, Notifications to department of breach of contracts, answers to questions on notice asked at a public hearing from Mr Alex Hawke MP, 22 April 2024 (received 17 May 2024)

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102 Attorney-General's Department, PIDs made by contractors, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

103 Colliers, Commercial arrangements with DOMA, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

104 Colliers, ATO delegate for arrangements with DOMA, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

105 Colliers, DOMA Group evaluation process, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

106 Colliers, Colliers role in helping DOMA purchase Department of Finance building, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

107 Colliers, Financial risk, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

108 Colliers, Colliers and Ventia government property services, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

109 Colliers, ATO building lease, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

110 Colliers, ATO building contract, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

111 Colliers, Charter Hall building purchase, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

112 Colliers, Government department conflicts of interest, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

113 Ventia, Cost of public engagement, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

114 Ventia, Business arrangements with Colliers, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

115 Financial Reporting Council UK, Board requirements for retired practitioners, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 22 April 2024 (received 20 May 2024)

116 Financial Reporting Council UK, Linklaters PwC Global report request, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

117 Financial Reporting Council UK, Reports on operational separation implementation progress, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 22 April 2024 (received 20 May 2024)

118 ATO, Committee recommendations, answers to written questions on notice from Senator Deborah O'Neill, 23 April 2024 (received 28 May 2024)

119 ATO, Recommendation for addressing blanket claims, answers to questions on notice asked a public hearing from Mr Alex Hawke MP, 22 April 2024 (received 28 May 2024)

120 IESBA, Role and governance of IESBA, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 8 May 2024 (received 29 May 2024)

121 IESBA, Firm culture and governance, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 8 May 2024 (received 29 May 2024)

122 IESBA, Government response to crisis, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 8 May 2024 (received 29 May 2024)

123 IESBA, Renumeration of INEDs, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 8 May 2024 (received 29 May 2024)

124 IESBA, Type of ethics, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 8 May 2024 (received 29 May 2024)

125 Department of the Treasury, answers to questions on notice asked at a public hearing from Ms Zaneta Mascarenhas MP, 22 April 2024 (received 29 May 2024)

126 Bain Australia, various, answers to question on notice asked at a public hearing by Senator Deborah O'Neill, 22 April 2024 (received 20 May 2024)

127 Institute of Public Accountants, various, answers to questions on notice taken at a public hearing from Senators Deborah O'Neill and Barbara Pocock, 8 May 2024 (received 31 May 2024)

128 Department of Finance, Barton purchase, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

129 Department of Finance, Review timeline, answers to questions on notice asked at a public hearing from Mr Alex Hawke MP, 22 April 2024 (received 5 June 2024)

130 Department of Finance, PwC and Finance, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

131 Department of Finance, Defence and Finance, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 22 April 2024 (received 5 June 2024)

132 Department of Finance, Notifications of sanctions, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

133 Department of Finance, Deloitte and Finance, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

134 Department of Finance, DOMA and Finance, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

135 Department of Finance, PwC and procurement, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

136 Department of Finance, Deloitte and conflicts of interest, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

137 Department of Finance, Conflict of interest framework, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 5 June 2024)

138 Department of Finance, Largest contract termination, answers to questions on notice asked at a public hearing from Senator Barbara Pocock, 22 April 2024 (received 6 June 2024)

139 Department of Finance, Finance awareness of sanctions, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 6 June 2024)

140 ATO, Foreign Investment Review Board approval process, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 22 April 2024 (received 24 June 2024)

141 PwC Australia, Compensation received by PwC Australia's CEO, answers to written questions on notice from Senator Deborah O'Neill, 13 June 2024 (received 1 July 2024)

142 Treasury, FIRB Process, answers to written questions on notice from Senator Deborah O'Neill, 5 June 2024 (received 24 June 2024)

143 Sayers Group, Mathias Cormann and Sayers Group, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 3 July 2024)

144 PwC, Various, answers to written questions on notice from Senator Deborah O'Neill, 19 July 2024 (received 29 July 2024)

145 ATO, Meetings with Mr Luke Sayers, answers to written questions on notice from Senator Barbara Pocock, 4 July 2024 (received 1 August 2024)

146 ASIC, ASIC audit inspections, answers to written questions on notice from Senator Deborah O'Neill, 3 July 2024 (received 17 July 2024)

147 APESB – ASIC Recommendations, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

148 APESB – Authorised Audit Companies, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

149 APESB – ASIC Regulation of Auditing, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

150 APESB – Fraud in Audit, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

151 APESB – Self-Regulatory, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

152 APESB – Regulatory Capture, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

153 APESB – Fraud and Whistleblowing for Auditors, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

154 APESB – Whistleblower Protections for Auditors, answers to written questions on notice from Senator Deborah O'Neill, 20 June 2024 (received 19 July 2024)

155 Mr Tom Seymour, Terms of reference, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 16 August 2024)

156 Mr Tom Seymour, Dr Switkowski report, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 16 August 2024)

157 PwC, Mr Burrowes' services agreement, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 20 August 2024)

158 PwC, Mr Burrowes' term as CEO of PwC Australia, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 20 August 2024)

159 PwC, Correspondence between PwC International and PwC Australia, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 20 August 2024)

160 PwC, Communicating Mr Burrowes' remuneration to PwC Australia Partners, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

161 PwC, Escalation of information to PwC Global, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

162 PwC, UK Financial Council request of the Linklaters Report, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

163 PwC, Reporting individuals to regulators, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

164 PwC, Terms of any settlement regarding Mr Fuller, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

165 PwC, Documentation recording Luke Sayer's meeting with the ATO on 29 August 2016, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

166 PwC, Former partners seeking legal support from PwC, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill and Mr Alex Hawke MP, 2 August 2024 (received 20 August 2024)

167 PwC, Payment to other individuals in the firm from PwC International from 2019, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

168 PwC, Number of members on the PwC Governance Board at the time of Mr Burrowes' appointment as CEO of PwC Australia, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

169 PwC, Global Board meeting where the TPB matter was discussed, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

170 PwC, Reporting of Global Board meetings to the Governance Board in Australia, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

171 PwC, Who Mr Morris worked with in providing assistance on preparing the statement of facts, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

172 PwC, Mr Morris' communication to Tax Partners about the TPB matter, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

173 PwC, Mr Morris' receipt of the 'How did all the MAAL stuff turn out' email, answers to questions on notice asked at a public hearing from Senator Deborah O'Neill, 2 August 2024 (received 20 August 2024)

174 PwC, Chart showing PwC Global staff entering and leaving Australia since 15 February 2023, answers to written questions on notice from Senator Deborah O'Neill, 19 September 2024 (received 3 October 2024)

175 PwC, Reason for PwC's change in external legal firm from King & Wood Mallesons to Allens, answers to written questions on notice from Senator Deborah O'Neill, 24 September 2024 (received 3 October 2024)

176 Ms Meredith Beattie, Reason for PwC's change in external legal firm from King & Wood Mallesons to Allens, answers to written questions on notice from Senator Deborah O'Neill, 24 September 2024 (received 4 October 2024)

177 Dr Ziggy Switkowski AO, Lack of analysis of firm's relationship with PwC Global in PwC review and response to Professor Graeme Samuel's comments, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 9 October 2024)

178 PwC, Date Mr Burrowes' service agreement was signed, answers to written questions on notice from Senator Deborah O'Neill, 8 October 2024 (received 9 October 2024)

179 PwC, Mr Burrowes' bonuses pursuant to clause 8 of services agreement, answers to written questions on notice from Senator Deborah O'Neill, 8 October 2024 (received 9 October 2024)

180 Mr Tom Seymour, Mr Seymour's comments on Mr Neil Fuller and recommendations for structural changes in PwC Australia, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 14 October 2024)

181 Mr Luke Sayers, various answers, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 15 October 2024)

182 PwC International, various answers, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 16 October 2024)

183 Law Council of Australia, various answers, answers to written questions on notice asked on 8 October 2024 and questions on notice asked at a public hearing on 20 September 2024 from Senator Deborah O'Neill (received 22 October 2024)

184 Tax Practitioners Board, Evidence provided by Mr Seymour regarding PwC, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 23 October 2024)

185 PwC, various answers, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 15 October 2024)

186 PwC, various answers, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 15 October 2024)

187 PwC, Supervised remediation correspondence, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 27 September 2024)

188 PwC, Supervised remediation correspondence between PwC International and PwC Australia, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 29 October 2024)

189 PwC, PwC MDP protocol for legal services and tax as legal triage escalation framework, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 15 October 2024)

190 PwC, Ms Beattie's file notes on conversation with Mr Sayers following his conversation with Mr Hirschorn, answers to written questions on notice from Senator Deborah O'Neill, 9 October 2024 (received 21 October 2024)

191 PwC, Mr Burrowes' services agreement, answers to questions on notice asked at a public hearing from Senator Paul Scarr, 2 August 2024 (received 27 September 2024)

192 Department of the Treasury, Corporations Act breaches, answers to questions on notice asked at a public hearing from Senator Louise Pratt, 22 April 2024 (received 1 November 2024)

193 Ms Meredith Beattie, Materials provided by PwC Australia lawyers to Ms Beattie, answers to questions on notice asked at a public hearing on 20 September 2024 from Senator Deborah O'Neill (received 23 October 2024)

194 Ms Meredith Beattie, various answers, answers to written questions on notice from Senator Barbara Pocock, 2 October 2024 (received 23 October 2024)

195 Ms Meredith Beattie, various answers, answers to written questions on notice from Senator Deborah O'Neill, 8 October 2024 (received 23 October 2024)

196 PwC, Email attaching Mr Burrowes' Amended Employment Agreement, answers to written questions on notice from Senator Deborah O'Neill, 9 October 2024 (received 21 October 2024)

Correspondence

1 KPMG, response to evidence provided at a public hearing by CPSU on 21 November 2023 (received 22 November 2023)

2 Max Douglass, letter of correction in regard to evidence provided at a public hearing on 20 November 2023 (received 1 December 2023)

3 StewartBrown, response to evidence provided at a public hearing by Mr Jason Ward on 21 November 2023 (received 14 December 2023)

4 CA ANZ, letter to the Parliamentary Joint Committee on Corporations and Financial Services and Senate Standing Committees on Finance and Public Administration regarding Mr Peter John Collins' resignation (received 27 February 2024)

5 Mr Michael O’Neill, CEO and Secretary of the Tax Practitioners Board, clarification of evidence provided at a public hearing on 29 February 2024 (received 4 March 2024)

6 Accenture, letter of correction in regard to evidence provided at a public hearing on 5 March 2024 (received 7 March 2024)

7 The Institute of Internal Auditors Australia, letter of correction in regard to evidence provided at a public hearing on 22 February 2024 (received 25 March 2024)

8 Mr Simon Grant FCA, letter of correction in regard to evidence provided at a public hearing on 5 March 2024 (received 26 March 2024)

9 ASIC correction to evidence from 3 November 2023 and response to Mr Niven's answers to questions on notice number 83 (received 8 April 2024)

10 Professor Andy Schmulow letter of correction in regard to evidence provided at a public hearing on 8 May 2024 (received 9 May 2024)

11 Mr Jeremy Hischhorn letter of correction in regard to evidence provided at a public hearing on 22 April 2024 (received 21 May 2024)

12 Mr Luke Sayers, letter of correction in regard to evidence provided at a public hearing on 2 August 2024 (received 16 August 2024)

Media Releases

1 Public hearings on 3 November 2023

2 Statement by the committee on the use of AI in submissions

3 Public hearings on 20 and 21 November 2023

4 Public hearing on 22 February 2024

5 Public hearings on 29 February and 1 March 2024

6 Public hearing on 5 March 2023

7 Public hearing on 2 August 2024 and responsibility of witnesses

Tabled Documents

1 ASIC Media Release, '198MR Former auditor of Big Un Limited convicted for failing to comply with auditing standards', 1 August 2022. Tabled by ASIC at a public hearing on 03 November 2023.

2 ASIC Media release '22-240MR Grant Thornton and auditor charged over 2018 audit of iSignthis', 1 September 2023. Tabled by ASIC at a public hearing on 03 November 2023.

3 ASIC Audit inspection report: 1 July 2019 to 30 June 2020, Report 677, December 2020. Tabled by ASIC at a public hearing on 03 November 2023.

4 ASIC Audit inspection report: 1 July 2020 to 30 June 2021, Report 709, November 2021. Tabled by ASIC at a public hearing on 03 November 2023.

5 ASIC Audit inspection report: 1 July 2021 to 30 June 2022, Report 743, October 2022. Tabled by ASIC at a public hearing on 03 November 2023.

6 ASIC Root cause analysis: Audit firm thematic review, Report 739, October 2022. Tabled by ASIC at a public hearing on 03 November 2023.

7 ASIC Annual financial reporting and audit surveillance report 2022-23, Report 774, October 2023. Tabled by ASIC at a public hearing on 3 November 2023.

8 Chartered Accountants Australia New Zealand, CPA Australia and Institute of Public Accountants, Auditing Competency Standard for Registered Company Auditors, August 2015. Tabled by ASIC at a public hearing on 3 November 2023.

9 ASIC Regulatory Guide 180: Auditor registration, June 2016. Tabled by ASIC at a public hearing on 03 November 2023.

10 CADB Opening Statement, 03 November 2023. Tabled by the CADB at a public hearing on 03 November 2023.

11 PwC open letter from CEO Kevin Burrowes, 26 September 2023. Tabled by Senator Deborah O'Neill at a public hearing on 20 November 2023.

12 Dr Sarowar Hossain Opening Statement, 20 November 2023. Tabled by Dr Sarowar Hossain at a public hearing on 20 November 2023.

13 The Institute of Internal Auditors Opening Statement, 20 November 2023. Tabled by The Institute of Internal Auditors at a public hearing on 20 November 2023.

14 The Institute on Internal Auditors Summary of TPP20-08 and Audit Factsheets, 20 November 2023. Tabled by The Institute on Internal Auditors at a public hearing on 20 November 2023.

15 Mr Ian Bartley, 28 February 2024. Tabled by Senator Barbara Pocock at a public hearing on 29 February 2024.

16 Australian Taxation Office Opening Statement, 22 April 2024. Tabled by the Australian Taxation Office at a public hearing on 22 April 2024.

17 Australian Financial Review, 'PwC fallout threatens big four partner model', 6 May 2024. Tabled by Senator Deborah O'Neill at a public hearing on 8 May 2024.

18 Australian Financial Review, 'PwC claiming legal privilege – that’s a bit Rich', 20 July 2023. Tabled by Senator Deborah O'Neill at a public hearing on 2 August 2024.

19 Australian Financial Review, 'PwC has a ‘perception’ problem over tax leak: CEO', 9 March 2023. Tabled by Senator Deborah O'Neill at a public hearing on 2 August 2024.

Appendix 2
Public hearings and witnesses

Friday 6 October 2023
2S1 Parliament House
Canberra

Griffith University's Centre for Governance & Public Policy, Human Rights Law Centre, Transparency International Australia and Dennis Gentilin

- Dr A J Brown, Professor of Public Policy and Law/Board member
- Mr Kieran Pender, Senior Lawyer
- Mr Dennis Gentilin, Adviser

Governance Institute of Australia

- Ms Catherine Maxwell, General Manager, Policy and Advocacy
- Mr Charles Dane, Policy and Government Relations Adviser

Australian Shareholders' Association

- Ms Rachel Waterhouse, Chief Operating Officer
- Ms Fiona Balzer, Policy and Advocacy Manager

Dr Erin Twyford, Emeritus Professor James Guthrie AM, Associate Professor James Hazelton, Private capacity

Professor Elise Bant (via videoconference), Private capacity

CA ANZ

- Mrs Ainslie van Onselen, Chief Executive Officer
- Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance
- Mr Simon Grant, Group Executive Advocacy and International Development

CPA Australia

- Mr Andrew Hunter, Chief Executive Officer
- Ms Elinor Kasapidis, Head of Policy and Advocacy
- Dr Gary Pflugrath, Senior Executive Adviser Stakeholder Engagement and Policy

Institute of Public Accountants

- Mr Andrew Conway, Chief Executive Officer
- Ms Vicki Stylianou, Group Executive Advocacy and Policy
- Mr Tony Greco, General Manager Technical Policy

The Australia Institute

- Mr Bill Browne, Director, Democracy and Accountability Program
- Mr Rod Campbell, Research Director [via teleconference]

Ms Rosemary Collington (via videoconference), Private capacity

Friday 3 November 2023

Stamford Plaza Melbourne
111 Little Collins st
Melbourne

Companies Auditors Disciplinary Board

- Ms Maria McCrossin, Chair
- Ms Inge Kindermann, Deputy Chair

Australian Securities and Investments Commission

- Ms Sarah Court, Deputy Chair
- Ms Kate O'Rourke, Commissioner
- Mr Warren Day, Chief Executive Officer
- Mr Greg Yanco, Executive Director Regulation and Supervision

Monday 20 November 2023

Main Committee Room
Australian Parliament House
Canberra

The Ethics Centre

- Dr Simon Longstaff AO, Executive Director

Dr Sarowar Hossain, Senior Lecturer of Accounting UNSW Sydney, private capacity
Professor Gary Monroe, private capacity
Dr Jeffrey Coulton (via videoconference), private capacity
Dr George Tanewski, Professor, Department of Accounting, Deakin Business School, Deakin University, private capacity
Professor Peter Carey, Professor, Deakin University, private capacity

The Institute of Internal Auditors Australia

- Mr Peter Jones, Chief Executive Officer
- Ms Christine Harris, Manager, Public Affairs

McKell Institute

- Mr Edward Cavanough, Chief Executive Officer
- Mr Max Douglass, Policy Analyst

Professor Allan Fels (via videoconference), Private capacity

Tuesday 21 November 2023
Main Committee Room
Australian Parliament House
Canberra

Society of Corporate Law Academics (via videoconference)
- Dr Michael Duffy, Secretary
- Dr Natania Locke, Member

Professor Graeme Samuel AC (via videoconference), Private capacity

Dr Kelli Larson, Private capacity

Community and Public Sector Union
- Ms Beth Vincent-Pietsch, Deputy Secretary
- Ms Emma Groube, Lead Organiser *(via videoconference)*
- Ms Katie Higgins, Organiser/Research Officer *(via videoconference)*

Tax Justice Network, Tax Justice Network Australia, Centre for International Corporate Tax Accountability and Research (via videoconference)
- Dr Mark Zirnsak, Spokesperson
- Mr Jason Ward, Principal Analyst

Thursday 22 February 2024
1R0, Main Committee Room
Australian Parliament House
Canberra

Boston Consulting Group
- Mr Grant McCabe, Managing Partner
- Mr Miguel Carrasco, Managing Director and Senior Partner
- Ms Anna Green, Managing Director and Senior Partner

The Institute of Internal Auditors Australia
- Ms Trish Hyde, Chief Executive Officer
- Mr Andrew Cox, Manager, Technical Services

Australian Accounting Standards Board (AASB)
- Dr Keith Kendall, Chair

Auditing and Assurance Standards Board (AUASB)
- Mr Doug Niven, Chair and Chief Executive Officer

Financial Reporting Council (FRC)

- Mr Andrew Mills, Chair

AASB, AUASB, FRC cont.

Thursday 29 February 2024

Committee Room 2S1
Australian Parliament House
Canberra

Tax Practitioners Board

- Mr Peter de Cure, Chair
- Mr Michael O'Neill, Secretary/Chief Executive Officer
- Ms Janette Luu, Acting Assistant Secretary

Inspector-General of Taxation and Taxation Ombudsman

- Ms Karen Payne, Inspector-General of Taxation and Taxation Ombudsman
- Mr Duy Dam, Deputy Inspector-General of Taxation

Friday 1 March 2024

1R0, Main Committee Room
Australian Parliament House
Canberra

Professional Standards Councils

- Ms Roxane Marcelle-Shaw, Chief Executive Officer
- Mr Darren Holder, Director, Professional Standards Regulation

Australian Competition and Consumer Commission (ACCC)

- Mr Richard Fleming, General Manager - Competition Enforcement and Advocacy
- Mr Tom Leuner, Executive General Manager Mergers - Exemptions and Digital *(via videoconference)*

Accounting Professional and Ethical Standards Board (APESB)

- Ms Nancy Milne OAM, Chairman
- Mr Channa Wijesinghe, Chief Executive Officer

CPA Australia

- Professor Dale Pinto FCPA, President and Chair of the Board
- Mr Warren McRae, Deputy President
- Mr Andrew Hunter, Chief Executive Officer
- Ms Elinor Kasapidis, Interim Chief Learning and Innovation Officer

Public Interest Oversight Board (via videoconference)

- Ms Linda de Beer, Chair

- Dr Martin Manuzi, Acting Secretary General

Tuesday 5 March 2024

1R0, Main Committee Room
Australian Parliament House
Canberra

Accenture

- Mr Peter Burns, Chief Executive Officer
- Ms Louise May, Australia Health and Public Sector Lead

Ms Kristin Stubbins, Private capacity

Chartered Accountants Australia and New Zealand (CA ANZ)

- Mr John Palermo FCA, Chair
- Mr Tinashe Kamangira FCA, President
- Mrs Ainslie van Onselen, Chief Executive Officer
- Ms Vanessa Chapman, Group Executive, General Counsel and Corporate Assurance
- Mr Simon Grant, Group Executive, Advocacy and International Development

McKinsey & Company

- Mr Wesley Walden, Managing Partner
- Mr Damien Bruce, Senior Partner
- Ms Emma Petherick, Head of People

Monday 22 April 2024

1R0, Main Committee Room
Australian Parliament House
Canberra

Department of Finance

- Mr Richard Windeyer, Deputy Secretary, Commercial Group
- Mr Gareth Sebar, Assistant Secretary; Procurement Policy and systems
- Mr Nick McClintock, First Assistant Secretary; Property and Construction Division, Commercial Group
- Mr Andrew Danks, First Assistant Secretary; Procurement Division, Commercial Group

Ventia

- Mr Nathan Munro, General Manager; Workspace
- Mrs Emily O'Rourke, Head of Accounts; Workspace

Colliers

- Mr Micah Manners, National Director
- Mr Nick Evans, State Chief Executive (ACT)

Attorney-General's Department

- Ms Alice Linacre, First Assistant Secretary; Courts, Tribunals and Commerical Division
- Ms Elizabeth Brayshaw, Acting First Assistant Secretary, Integrity Frameworks Division
- Mr Liam Demamiel, Assistant Secretary; Courts and Tribunals Branch
- Mr Stephen Still, Assistant Secretary; Transparency and Administrative Law Branch, Integrity Frameworks Division

Australian Taxation Office

- Mr Jeremy Hirschhorn, Second Commissioner
- Ms Rebecca Saint, Deputy Commissioner; Public Groups Client Experience
- Ms Louise Clarke, Deputy Commissioner; Private Wealth
- Mr Nicholas Shizas, Assistant Commissioner; ATO General Counsel
- Ms Janine Bristow, Chief Finance Officer

Department of the Treasury

- Mr Tom Dickson, Assistant Secretary
- Ms Deepti Paton, Director of Corporate Conduct and Analysis Unit

Bain & Company

- Mr Peter Stumbles, Managing Partner
- Mrs Lucy d'Arville, Partner; Healthcare Lead
- Mr Michael Withers, Partner; Head of People

Wednesday 8 May 2024

Wilarra Room
The Grace Hotel
77 York St
Sydney

International Ethics Standards Board for Accountants (IESBA)

- Ms Gabriela Dias, Chair
- Mr Channa Wijesinghe, Board Member, Firm Culture and Governance Working Group Chair
- Professor Jens Poll, Former Board member, Tax Planning and Related Services Task Force Chair
- Mr Geoffrey Kwan, Director

Institute of Public Accountants

- Mrs Cheryl Mallett, President

- Mr Andrew Conway, Chief Executive Officer
- Mr Tony Greco, General Manager, Technical Policy
- Ms Vicki Stylianou, Group Executive Advocacy and Professional Standards

Associate Professor Andrew Schmulow, Private capacity

UK Financial Reporting Council

- Mr Mark Babington, Executive Director, Regulatory Standards and IESBA Board Member

Friday 2 August 2024

1R0, Main Committee Room
Australian Parliament House
Canberra

PwC

- Mr Kevin Burrowes, Chief Executive Officer
- Mrs Jan McCahey, Chief Risk and Ethics Leader
- Mrs Kylie Gray, General Counsel
- Ms Patricia Carney, Partner, Global Board Member
- Mr Christopher Morris, Partner, Tax and Legal Leader *(via videoconference)*

Ms Meredith Beattie, Private capacity

Dr Ziggy Switkowski AO, Private capacity

Mr Luke Sayers, Founder, Sayers Group

Mr Tom Seymour, Private capacity

PwC

- Mr Kevin Burrowes, Chief Executive Officer
- Mrs Jan McCahey, Chief Risk and Ethics Leader
- Mrs Kylie Gray, General Counsel
- Ms Patricia Carney, Partner, Global Board Member

Friday 20 September 2024

House of Representatives Committee Room 2R1
Australian Parliament House
Canberra

Ms Meredith Beattie, Private capacity

Law Council Australia (via videoconference)

- Ms Juliana Warner, President-elect
- Mr Steven Stevens, Chair, Professional Ethics Committee

- Mr Frank O’Loughlin KC, Member, Taxation Committee, Business Law Section
- Ms Leonie Campbell, General Manager, Policy
- Mr Murray Hawkins, Principal Advisor, Regulation and Professional Standards

Appendix 3
Responses to recommendations of the committee's inquiry into the Regulation of Auditing in Australia

Table 3.1 Responses to recommendations of the committee's inquiry into the Regulation of Auditing in Australia

No.	Recommendation	Action to date
1	The committee recommends that ASIC: • formally review the manner in which it publicly reports the periodic findings of its audit inspection program, giving appropriate consideration to approaches used internationally; and • based on this review, develop and implement, by the end of the 2020–21 reporting period for its audit inspection program, a revised framework for reporting inspection findings, with a focus on the transparency and relative severity of identified audit deficiencies.	'ASIC consulted the six largest firms on a severity categorisation framework…ASIC issued Regulatory Guide 260 explaining its approach to communicating audit quality findings to directors and audit committees…'[1] In October 2023, ASIC completed its first integrated report, covering both audit and financial reporting findings. ASIC also writes to company directors and auditors on the review findings.[2] Financial report reviews decreased from 290 in 2020 to 180 in 2023. Audit inspections decreased from 58 in 2019 to 15 in 2023.[3] In May 2024, ASIC announced an expanded program to review auditors' compliance with independence and ethical standards.[4]

1 EY, *Submission 12.1*, Appendix 1, p. 2.

2 ASIC, *Annual financial reporting and audit surveillance report*, Report 774, October 2023, pp 8–9; see also - ASIC response to Mr Niven's answers to questions on notice 083 and 084, 22 February 2024 (received 26 March 2024), response from ASIC (received 8 April 2024); see also - Mr Greg Yanco, Executive Director, Regulation and Supervision, ASIC, *Committee Hansard*, 3 November 2023, pp 30–32.

3 Mr Doug Niven, *Committee* Hansard, 22 February 2024, pp. 41–42; answers to questions on notice 083 and 084, 22 February 2024 (received 26 March 2024),

4 Australian Securities and Investments Commission, *ASIC announces 30 June 2024 focus areas and expanded program to support financial reporting and audit quality*, Media Release 24-101MR, 15 May 2024.

2	The committee recommends that the Australian Government introduce, by the end of the 2020–21 financial year, through appropriate legislation, a requirement that ASIC publish all future individual audit firm inspection reports on its website once ASIC has adopted a revised reporting framework referred to in Recommendation 1.	Between June 2020 and June 2022, ASIC published individual inspection reports for the six largest firms.[5] Individual firms' results have been reported to international bodies, but since 2022, the firms' results have not been published in Australia.[6] ASIC also noted that there is no legislative requirement for it to undertake these reviews.[7]
3	The committee recommends that the FRC, in partnership with ASIC, by the end of the 2020–21 financial year, oversee consultation, development and introduction under Australian standards of: • defined categories and associated fee disclosure requirements in relation to audit and non-audit services; and • a list of non-audit services that audit firms are explicitly prohibited from providing to an audited entity.	The Australian Accounting Standards Board (AASB) published a report on auditor remuneration in February 2021. ASIC requested the six largest firms to encourage listed clients to align audit fee disclosures with the AASB report. Independence requirements for fee disclosure and prohibitions of non-audit services in APES 110 were increased with effect from 1 January 2023.[8] The FRC agreed to make recommendations to the Minister to pursue legislative change on disclosure of audit fees in directors' reports.[9]

5 EY, *Submission 12.1*, Appendix 1, p. 2; See ASIC, *ASIC reports on audit inspection findings for 12 months to 30 June 2022*, Media release 22-296MR, 28 October 2022.

6 ASIC, *Annual financial reporting and audit surveillance report*, Report 774, October 2023, p. 21; BDO, *Submission 38*, p. 5.

7 Australian Securities and Investments Commission response to Mr Doug Niven's answers to questions on notice 083 and 084, 22 February 2024 (received 26 March 2024), response from ASIC (received 8 April 2024); see also - Mr Greg Yanco, Executive Director, Regulation and Supervision, ASIC, *Committee Hansard*, 3 November 2023, pp. 30–32.

8 EY, *Submission 12.1*, Appendix 1, p. 3; Mr Channa, Wijesinghe, Chief Executive Officer, Accounting Professional and Ethical Standards Board (APESB), *Committee Hansard*, 1 March 2024, pp 22–23. See also - Accounting Professional and Ethical Standards Board, Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards), December 2022.

9 Financial Reporting Council, *Minutes*, 6 September 2023, Item 10.

4	The committee recommends that the Corporations Act be amended so that an auditor's independence declaration is expanded to require the auditor to specifically confirm that no prohibited non-audit services have been provided.	In May 2024, Treasury released a consultation paper on the Regulation of the Big Four firms in Australia, which includes a consultation question on options to improve auditor independence.[10] EY indicated that it has voluntarily adopted the recommendation.[11]
5	The committee recommends that the Accounting Professional and Ethical Standards Board consider revising the APES 110 Code of Ethics to include a safeguard that no audit partner can be incentivised, through remuneration advancement or any other means or practice, for selling non-audit services to an audited entity.	In December 2022, APESB made significant amendments to independence standards under APES 110[12] to prohibit audit partners from being incentivised to provide non-assurance services to audit clients of the firm.[13]
6	The committee recommends that the FRC, by the end of the 2020–21 financial year, oversee the revision and implementation of Australian standards to require audited entities to disclose auditor tenure in annual financial reports. Such disclosure should include both the length of tenure of the entity's external auditor, and of the lead audit partner.	In September 2022, A Periodic Comprehensive Review of the External Auditor – Guide for Audit Committees '… recommended that the incumbent auditor's tenure is publicly disclosed by listed companies…'.[14] The FRC agreed to make recommendations to the Minister to pursue legislative change on disclosure of auditor tenure.[15]

10 Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 25.

11 EY, *Submission 12.1*, Appendix 1, p. 4.

12 Accounting Professional and Ethical Standards Board, Amendments to the Non-Assurance Services provisions of APES 110 Code of Ethics for Professional Accountants (including Independence Standards), Section 600, December 2022.

13 EY Australia, *Submission 12.1*, Appendix 1, p. 4.

14 EY, *Submission 12.1*, Appendix 1, p. 5.

15 Financial Reporting Council, *Minutes*, 6 September 2023, Item, 10.

7	The committee recommends that the Corporations Act be amended to implement a mandatory tendering regime such that entities required to have their financial reports audited under the Act must: • undertake a public tender process every ten years; or • if an entity elects not to undertake a public tender process, the entity must provide an explanation to shareholders in its annual report as to why this has not occurred. The committee further recommends that such a tender process be implemented by 2022 for any entity that has had the same auditor for a continuous period of ten years since 2012.	The Periodic Comprehensive Review of the External Auditor – Guide for Audit Committees recommended that listed companies review the external auditor every five years. Audit tender activity has also increased in the ASX200 market.[16] In May 2024, Treasury released a consultation paper on the regulation of accounting, auditing and consulting firms in Australia, which included issues and questions on auditor tenure.[17]
8	The committee recommends that the Financial Reporting Council oversee a formal review, to report by the end of the 2020–21 financial year, of the sufficiency and effectiveness of reporting requirements under the Australian standards in relation to: • the prevention and detection of fraud; and • management's assessment of going concern.	The International Auditing and Assurance Standards Board is updating standards on fraud and going concern assessment, and the AUASB is issuing related consultations in Australia.[18] The FRC agreed to make recommendations to the Minister to pursue legislative change on directors' declarations about 'assessments of ongoing concern'.[19]

16 EY, *Submission 12.1*, Appendix 1, p. 5.

17 Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024.

18 EY, *Submission 12.1*, Appendix 1, p. 6.

19 Financial Reporting Council, *Minutes*, 6 September 2023, Item, 10.

9	The committee recommends that the Corporations Act be amended such that entities required to have their financial reports audited under the Act must establish and maintain an internal controls framework for financial reporting. In addition, such amendments should require that: • management evaluate and annually report on the effectiveness of the entity's internal control framework; and • the external auditor report on management's assessment of the entity's internal control framework.	The AUASB has been engaging with the Australian Securities Exchange Corporate Governance Council about whether Chief Executive officer and Chief Financial Officer declarations should be enhanced.[20] In May 2024, Treasury released a consultation paper on the regulation of accounting, auditing and consulting firms in Australia, which included questions on governance.[21]
10	The committee recommends that the Australian Government take appropriate action to make digital financial reporting standard practice in Australia.	In May 2024 Treasury released a consultation paper on the regulation of accounting, auditing and consulting firms in Australia, which included a question on digital financial reporting.[22]

Source: Parliamentary Joint Committee on Corporations and Financial Services, Regulation of Auditing in Australia, Interim Report, February 2020, pp ix–x; and other footnotes as indicated for each item.

20 EY, *Submission 12.1*, Appendix 1, p. 6.

21 Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, pp 10–14.

22 Treasury, *Regulation of accounting, auditing and consulting firms in Australia*, Consultation paper, April 2024, p. 38.

Appendix 4
Different whistleblower regimes in Australia

Figure 4.1 Different whistleblower regimes in Australia

		Entities covered									'Eligible whistleblowers'				
	Whistleblower Protection Provisions	Any entity / person	All employers	Corps	Select corporate entities	Core govt entities	GOCs & statutory entities	Entities exercising govt functions	Contracted service providers for govt	Contracted service providers to govt	Officers & employees	Volunteers	Clients	Relatives	Any person
1	Fair Work Act 2009 (Cth)		✓								✓				
2	Corporations Act 2001 (Cth)				✓				✓		✓	✓		✓	
3	Public Interest Disclosure Act 2013 (Cth)					✓	✓		✓		✓	?			
4	National Anti-Corruption Comn Act 2022 (Cth)					✓	✓	✓	✓	✓		✓ (any person)			
5	Public Interest Disclosures Act 2022 (NSW)					✓	✓	✓	✓		✓	✓			
6	Public Interest Disclosure Act 2010 (Qld)		(Any danger to person with a disability or the environment)			✓	✓				✓				(✓)
7	Protected Disclosures Act 2012 (Vic)					✓	✓	✓				✓ (any person)			
8	Public Interest Disclosure Act 2018 (ACT)					✓	✓	✓	✓	✓		✓ (any person)			
9	Public Interest Disclosure Act 2003 (WA)					✓	✓	✓	✓	✓		✓ (any person)			
10	Public Interest Disclosure Act 2012 (SA)					✓	✓	✓	✓	✓					
11	Public Interest Disclosures Act 2002 (Tas)					✓	✓				✓				
12	Public Service Act 1999 (Cth)					✓					✓				
13	NDIS Act 2013 (Cth)								✓		✓		✓	✓	
14	Aged Care Act 1997 (Cth)								✓		✓	✓	✓	✓	
15	Corporations (A&TSI) Act 2006 (Cth)				✓(ATSI)										
16	Fair Work (Registered Orgs) Act 2009 (Cth)				✓(Unions)						✓		✓		
17	Taxation Administration Act 1953 (Cth)	✓									✓	✓	✓		

Griffith University and Your Call, Australia's multiple whistleblowing regimes prove hard to navigate, 2023, p. 3.

Appendix 5
International comparison of regulatory bodies

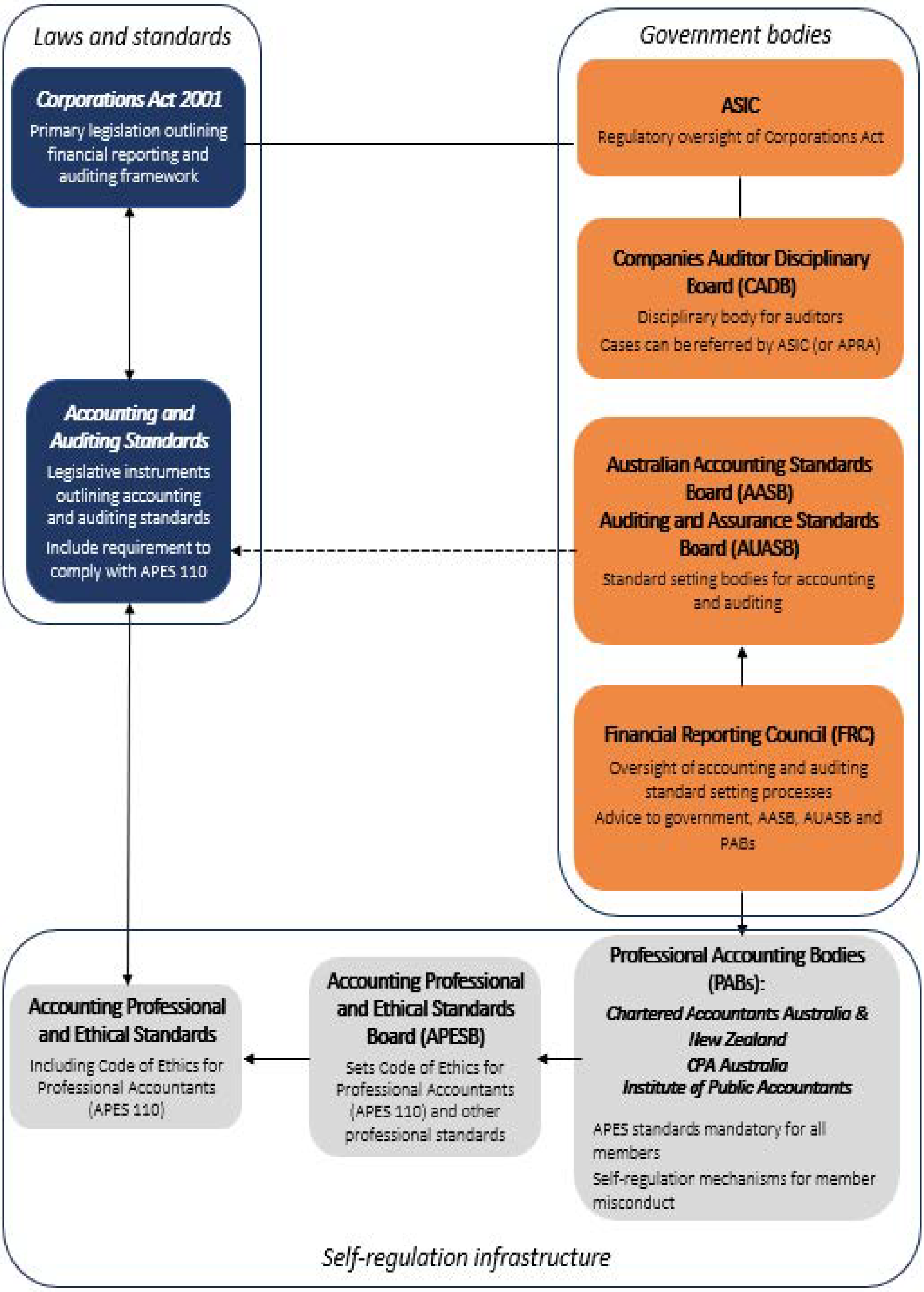
Table 5.1 Bodies performing registration, standard setting, oversight, and enforcement functions in the auditing sector – international comparisons

	US	Australia	UK	New Zealand
Auditor registration	PCAOB	ASIC	UK FRC (for PIEs), professional bodies	FMA, professional bodies
Establishing audit-related standards				
- Auditing	PCAOB, AICPA	AUASB	UK FRC	XRB (via NZAUASB)
- Quality control	PCAOB	AUASB, APESB	UK FRC	XRB
- Ethics	PCAOB	APESB	UK FRC	XRB
- Independence	PCAOB	APESB	UK FRC	XRB
Oversight of audit standard setters	SEC, AICPA, PCAOB	FRC	Government	XRB
Audit surveillance and enforcement				
- Compliance with legislation	PCAOB, AICPA, SEC	ASIC	UK FRC	FMA
- Inspections (Surveillance), investigations	PCAOB, AICPA, SEC	ASIC	UK FRC, professional bodies	FMA, professional bodies
- Disciplinary proceedings	PCAOB, AICPA, SEC	CADB, courts	UK FRC	FMA, courts, professional bodies

Source: Reproduced from the Treasury consultation paper, Regulation of accounting, auditing and consulting firms in Australia, Consultation paper, April 2024, pp. 34–35. PCAOB mean Public Company Accounting Oversight Board, AICPA means American Institute of Certified Public Accountants, FMA means Financial Markets Authority (NZ), XRB means External Reporting Board (NZ), NZAUASB means NZ Auditing and Assurance Standards Board, PIE means Public Interest Entity, SEC means US Securities and Exchange Commission.

Appendix 6
Australian financial reporting and auditing regulatory framework

Figure 6.1 Australian financial reporting and auditing regulatory framework



Source: Treasury, Regulation of accounting, auditing and consulting firms in Australia, Consultation paper, April 2024, p. 31.