



Monday, 4 September 2023

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Parliament House
Canberra ACT 2600

Via email: corporations.joint@aph.gov.au

Dear Committee Secretary

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

Chartered Accountants Australia and New Zealand (**CA ANZ**) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services (**the Committee**) on the Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry concerning 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' (**this Inquiry**).

CA ANZ welcomes [the announcement](#) on 6 August 2023 by the Australian government and looks forward to working with the government on any regulatory reforms which the government considers may be required to address market failure, regulatory failure or unacceptable hazards or risks associated with business structures in the audit, assurance and consultancy sector.

As one of three professional accounting organisations (**PAOs**) with a role to play in oversight of our respective members' compliance with APES 110 Code of Ethics for Professional Accountants (including Independence Standards) (**APES 110 or the Code**) and conduct and discipline, we support all measures government and regulators might take which support PAOs in the performance of their functions and which reinforce the duties of those who provide services to the public and corporate sectors, and to consumers.

In summary, CA ANZ recommends that:

1. In considering the implications of business structures on confidence in the advisory, audit and assurance markets, the Committee have regard to the recommendations of the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the *Regulation of Auditing in Australia*¹;
2. Review of the regulatory framework and governance requirements for consulting, accounting and audit firms be undertaken to identify constructive and proportionate reforms that:
 - address actual or perceived failures or risks that cannot be managed other than by regulation; and
 - are competitively neutral; and
3. existing mechanisms for addressing misconduct be supported, with further steps be taken to strengthen whistleblower protections in Australia to keep pace with international best practice and to support information sharing between regulatory agencies and professional bodies.

Further information about CA ANZ is in Attachment B.

¹https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing/Report

We look forward to engaging with the Committee in undertaking this important work and would be pleased to follow up with any further information that the Committee may find useful and/or meet to further discuss and explain any aspect of this submission.

Sincerely,

Vanessa Chapman

Group Executive, General Counsel & Corporate Assurance

Attachment A

Terms of Reference Responses

1. Global and national firm structures

The law recognises and regulates business structures in the public interest to protect investors, creditors and other stakeholders. Professionals choose structures that meet their business requirements. Accordingly, the CA ANZ By-Laws and membership criteria are agnostic as to the lawful business structures used by members to provide accounting and other services.

In Australia, the Big Four and other large audit firms (partnerships and incorporated audit companies) are regulated by ASIC under the *Corporations Act 2001*, and subject to rigorous transparency reporting requirements, discussed further below, in the service of audit quality and properly functioning capital markets. Confidence in the audit and assurance market for regulatory supervision and accountability to public and corporate sector clients is a function of the effectiveness of ASIC's regulatory oversight. We affirm our support for the recommendations made by the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the *Regulation of Auditing in Australia*. Further, we restate our support for ASIC's auditor surveillance and audit firm oversight programs. We suggest that the review of the regulatory framework also consider the scope of ASIC's audit/audit firm oversight, the industry funding model, and regulatory capability, performance and accountability.

CA ANZ supports the proposition that multi-disciplinary firms are essential to high quality audits of complex public interest entities. This proposition was endorsed by the Parliamentary Joint Committee on Corporations and Financial Services in its *Inquiry into Regulation of Auditing in Australia: Interim Report*². Effective regulatory oversight of audit firms' adherence to quality management standards by Australian and foreign regulators with jurisdiction provides a significant collateral benefit to public and corporate sector clients insofar as it may provide a level of confidence in the firms' delivery of consulting and non-audit services.

The issues giving rise to this Inquiry and related inquiries raise valid questions as to whether additional governance, reporting or other regulatory obligations on the Big Four are in the public interest given the impacts of misconduct within large firms on public confidence and other stakeholders. Accordingly, while CA ANZ cautions against imposing arbitrary restrictions on the use of particular business structures, we support regulatory reforms directed to addressing the particular objective sought, such as regulation to require increased levels of transparency, in relation to those firms. In section 2 below we provide some feedback for the Committee regarding governance and transparency for accounting practices.

2. Governance obligations by business structure

a. Reporting and Transparency and b. Executive Remuneration

The scale and significance of the Big Four are such that regulatory reporting requirements and enhanced transparency are appropriate. The scope of reporting should be examined through detailed policy review and consultation to determine the needs of stakeholders and what specific reporting is likely to best meet stakeholders' needs. It is also important for Government to examine the appropriate quantitative and qualitative thresholds for reporting by large professional services partnerships – this may be established based on the activities, size and/or scale of the entities, for example:

- scale of activity in a particular area, i.e. similar to the audit transparency reporting requirements described below;

² At paragraph 4.143 of the Interim Report.

- the materiality of engagements in the context of government procurement requirements;
- the size of the entities in terms of assets, turnover, and employees; and/or
- the number of partners.

Governance Principles

Incorporated entities are required to comply with the *Corporations Act 2001 (the Act)*. This legislation governs the appointment and removal of directors, the preparation of financial and director's reports, audit requirements and other elements of the entity's constitution. Additional governance and reporting requirements are placed on public interest entities³. An entity listed on the Australian Stock Exchange is required to comply with the [rules](#) of that exchange and many also comply with the [ASX Corporate Governance Council's](#), Corporate Governance Principles and Recommendations. The development of obligations for companies and listed entities has primarily been driven by the need to protect and serve investors that are separate from management, and because companies are separate legal entities and typically have limited liability.

In contrast, subject to the requirements of the relevant state partnership legislation, a partnership deed or agreement will establish the governance principles and obligations of each partner acceding to the partnership deed. The owners of partnerships are integral to their management and governance and are generally able to demand the reporting they need and set out mutual obligations in their partnership agreements. Partners are personally liable for all partnership debts and liabilities; this is clearly not the case for directors (other than for certain statutory liabilities), management and shareholders of a company. Partnership legislation does not establish common governance for partnerships in the same manner that the Corporations Act does for incorporated entities. Therefore, the governance principles applied will vary from partnership to partnership.

CA ANZ encourages the Committee to explore ways in which the governance principles required of, or adopted by, incorporated entities could be applied to partnership structures.

Increased Transparency

Other inquiries have identified that partnerships do not have comparable reporting obligations (financial reports and executive remuneration) to similar sized companies. The purpose of financial reporting is to "fully inform readers about the activities and financial situation of the entity"⁴. It is important that the preparer of a financial report determines the needs of the users of the information. The Act establishes the type of financial reporting for companies.

Directors' reports and financial reports for listed entities prepared in accordance with Australian accounting standards include disclosures of remuneration paid to listed directors and key management personnel.

There is precedent for specific legislation being created to specify reporting requirements designed to meet specific user needs. One example is the Act requires audit firms which audit ten or more listed entities, listed registered schemes, authorised deposit-taking institutions or other prescribed entities to publish an annual transparency report and lodge a copy of the report with ASIC⁵. Such reports are required to include all information prescribed by the Corporations Regulations, including:

- a description of the audit firm's system of quality management and independence practices,
- identification of which entities review the audit firm,
- the audit firm's total revenue, revenue from auditing financial statements and other services,
- the firm's audit clients and

³ A public interest entity is defined in the Code of Ethics as (a) A Listed Entity; or (b) An entity: (i) Defined by regulation or legislation as a public interest entity; or (ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same Independence requirements that apply to the audit of Listed Entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.

⁴ ASIC website - <https://asic.gov.au/regulatory-resources/financial-reporting-and-audit/users-of-financial-reports/#2>

⁵ Section 332A, Corporations Act 2001

- a description of network arrangements if the audit firm is part of a network of firms.

Another example of a reporting regime designed to meet specific users' needs is the regime established by the *Australian Charities and Not-for-profits Commission Act 2012*. This regime requires financial reports and additional supplementary information (number of employees, types of work undertaken by the charity) to be lodged with the [Australian Charities and Not-for-profits Commission](#) (ACNC) annually. Similarly our own annual reporting to the [Professional Standards Council](#) has been developed by them to meet their specific information needs.

An alternative to a legislative response could be to require firms (regardless of structure) to provide details of remuneration policies and alignment to performance and risk, remuneration governance and consequences and other financial information as part of public sector procurement processes. This would enable public sector agencies to request information that meets their needs as a part of a tendering process under the Commonwealth Procurement Rules and be subject of Australian National Audit Office oversight.

Consideration should also be given to reporting of non-financial information. An alternative for consideration could be the Integrated Reporting Framework which "brings together material information about an organisation's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates."⁶

3. Mechanisms available to monitor and sanction misconduct and poor performance

b. Coverage of disciplinary bodies c. Self-reporting policies and practice d. Whistle-blower policies and established pathways to report e. Interaction with and self-referral to regulatory bodies and f. Interaction between regulatory bodies

Coverage of disciplinary bodies

CA ANZ is one of three Australian PAOs whose members, by acceding to the PAOs' By-laws, have contractually agreed to be bound to observe the APES 110 Code of Ethics, which is the APESB's domestic articulation of the IESBA Code of Ethics promulgated by the International Federation of Accountants (IFAC). Every PAO that is a member of IFAC is responsible for upholding its members' adherence to the international code of ethics.

Whilst APES 110 prescribes a common conceptual framework, each PAO sets its own membership eligibility criteria, offences, sanctions and disciplinary procedures. CA ANZ monitors, investigates and disciplines members whose conduct falls within the ambit of the CA ANZ By-Laws. We refer the Committee to the summary of our professional conduct framework, and the steps currently being taken to strengthen the framework, which we provided to the Senate Economics Reference Committee at [Submission 165](#). In FY23 CA ANZ and NZICA (a controlled entity of CA ANZ, with regulatory functions under the *New Zealand Institute of Chartered Accountants Act*) received / opened 416 complaints, of which 252 were resolved by the Professional Conduct Committee (including 153 professional reminders or cautions) or by the Disciplinary Tribunal (26 matters, resulting in 72 sanctions including 5 interim suspensions, 6 suspensions from membership and 8 terminations of membership, and five matters being resolved on appeal to the Appeals Tribunal).

CA ANZ members may also be subject to supervision and disciplinary action by other Australian regulatory bodies such as the Tax Practitioners Board or ASIC, and other professional associations such as CPA Australia, ARITA, the Financial Advice Association Australia or one of the state law societies.

At the same time, whilst the Corporations Act recognises members of the PAOs as 'qualified accountants' for certain purposes⁷, there is no regulatory requirement for professionals who offer general accounting services to

⁶ <https://www.integratedreporting.org/faqs/>

⁷ Section 88B, Corporations Act.

be licensed or to be a member of a PAO. Nor is there a regulatory requirement for general consultants to be licensed or bound by a code of ethics. These are gaps that could be addressed by regulation or by public sector procurement practices. CA ANZ recommends that public sector agencies and Commonwealth procurement and selection criteria include consideration of membership of a professional association and submission to a professional monitoring and discipline regime; and that public sector contract management incorporate protocols and processes for referral of ethical failures and complaints about suppliers/consultants to those professional associations.

Self-reporting policies

Many professional associations require members to self-disclose matters that go to the member's fitness to practise as part of the admission, renewal and promotion processes. The CA ANZ By-Laws create a positive duty on all members to report their own sanctionable conduct to CA ANZ on admission to the profession and on renewal of annual membership, and during membership, to the Professional Conduct Committee (**PCC**)⁸. Sanctionable conduct is set out at By-Law 40(2.1) and includes convictions or indictable offences, offences under the *Taxation Administration Act 1953* and insolvency events, adverse findings by courts and tribunals, and conditions on registration with regulators or other professional bodies, as well as conduct in breach of the ethical standards or which discredits the member. CA ANZ's recently concluded [Professional Conduct Framework Review](#) identified that member awareness of matters that are required to be disclosed as part of membership renewal and to the PCC could be enhanced. Improved guidance to enhance self-disclosures and to improve the level of self-reporting by members is planned as part of member awareness activities and updated member guidance during 2023 and 2024.

Whistleblowers and pathways to report

Whistleblowers play a critical role in bringing light to misconduct and systemic issues across the economy so that problems can be addressed and inform more effective laws and regulation. Importantly, this role extends to whistleblowers in the accountancy profession, and broadly within professional services firms and their corporate and public sector clients. Many of the most important reforms of the profession can be traced back in some form to disclosures made by whistleblowers, often by professional accountants. Bringing light to misconduct and systemic problems is entirely within the letter and spirit of the Code of Ethics.

Although Australia's whistleblower protection regime has at times been world leading, it is now falling behind international best practice on several key fronts and there has been a distinct lack of practical cases where the regime has been of use in protecting whistleblowers at law. We believe the road map presented by the Human Rights Law Centre, Transparency International Australia and Griffith University, [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.

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. Measures to extend the provisions of Part 9.4AAA of the Corporations Act, to unincorporated entities or to enact equivalent protections for whistleblowers who raise serious misconduct issues about such entities, should be considered as part of this Inquiry.

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. Unified national legislation would assist in this regard.

⁸ A committee established by CA ANZ By-Law 40 (1) 1.1(a) to receive, initiate, investigate, and refer complaints against members.

A specific issue exists in relation to the *Corporations Act* whistleblower protection measures relating to auditors, in that members of the audit team are treated as individuals, not entities unlike most other eligible recipients of whistleblower reports under the *Corporations Act*. This means 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. We recommend this issue is addressed in the first instance via amendment to the *Corporations Act*, and in the medium to longer term through consideration of broader reforms such as enacting a single law covering all non-government whistleblowers.

Information sharing between regulators and professional bodies

CA ANZ's By-Laws give the independent Professional Conduct Committee and the Disciplinary Tribunal power to order (by consent, in the case of the PCC) the notification of adverse disciplinary findings to regulators (for example, the TPB in relation to a member who is or was a registered tax agent) and, if applicable, other professional associations. Whilst CA ANZ has a broad discretion to publicise the fact that investigations underway, for natural justice, details of investigations are not proactively made public pending a final determination.

Some legislative frameworks impose conditions on the disclosure of information shared with CA ANZ⁹ which prohibit on-disclosure of the information outside the recipient, for example to legal counsel and experts engaged for the purposes of the disciplinary process.

We note the Attorney-General's [review](#) of Commonwealth secrecy laws and offences. We welcome regulatory reforms to liberalise the exchange of information between regulatory authorities and professional bodies for the purposes of enabling them to perform their respective functions, in the public interest.

⁹ For example, section 127(4), ASIC Act and the disclosure and on-disclosure provisions of the Tax Agents Services Act.

Attachment B

About us

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 137,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Graduate Diploma Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand. Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries.

CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.