



UNIVERSITY
OF WOLLONGONG
AUSTRALIA

Parliamentary Joint Committee on Corporations and Financial Services

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

**AN INVITED SUBMISSION TO THE PARLIAMENTARY JOINT
COMMITTEE ON CORPORATIONS AND FINANCIAL
SERVICES**

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Executive Summary

1. Recent revelations of misconduct and conflicting interests in the audit and consulting industries indicates that **problems are systemic**.
2. Evidence indicates that these issues **arise repeatedly**, and **at the same firms**, around the world.¹
3. The evidence indicates strongly that **conflicts of interest** are frequent, and that they cannot be managed. This despite the fact that some of the firms whose conduct is under review, have had in excess of 30 years (in the case of audit firms, such as EY), and almost 100 years (in the case of consulting firms, such as McKinsey), to develop adequate controls to mitigate conflicts of interest. **They have failed**.
4. Where this enlivens acute concerns is the risk of contamination to:
 - 4.1. **Good government**;
 - 4.2. Independence and **credibility of audited statements**;
 - 4.3. The **maintenance of justice** and the preservation of the **rule of law**.
5. Audit and consulting should be **separated**.
6. Audit and legal should be **separated**.
7. Undeclared conflicts of interest must attract a ten-year ban on public-sector work.
8. **Partnerships should be limited in size** to no more than, say, 100 partners. Partnerships of almost 1,000 partners are past due the point where they should be required to **incorporate** as corporations, and thus become subject to reporting requirements and director's duties that typically are enforced against other firms of similar size and revenue.

¹ McKinsey and Co is but one example. In 2018, Kevin Sneader, McKinsey's global management partner, travelled to South Africa to apologise, personally, for corruption (so-called 'state capture') it had facilitated for the State President, Jacob Zuma, and others. In that speech he identified key areas of focus to ensure that McKinsey did not repeat those mistakes. He specifically alluded to how these events were not in keeping with McKinsey's values. (Chanson, Romain, (12 April 2022), "South Africa: Consulting firms, including McKinsey, under fire in 'state capture' probe," *The Africa Report*, available at: <<https://www.theafricareport.com/193472/south-africa-consulting-firms-including-mckinsey-under-fire-in-state-capture-probe/>>; McKinsey & Company, *Speech by Kevin Sneader, global managing partner of McKinsey & Company, at Gordon Institute of Business Science Seminar, 9 July 2018*, 1996-2023 McKinsey & Company, available at: <<https://www.mckinsey.com/za/our-work/speech-by-kevin-sneader-at-gordon-institute-of-business-science-seminar>>). In 2021, almost three years later, McKinsey agreed to pay a settlement of nearly US\$600 million for its role in the opioid epidemic – an epidemic that has claimed more the 500,000 lives in the United States. McKinsey, among other things, advised Purdue Pharmaceutical how to target patients more likely to become addicted to their drugs. They developed a scheme by which drug distributors would be compensated for every customer lost due to an overdose. (Sheelah Kolhatkar, (29 September, 2022), "McKinsey Is a Consulting Powerhouse. But Is It a Force for Good?" *The New York Times*, available at: <<https://www.nytimes.com/2022/09/29/books/review/when-mckinsey-comes-to-town-walt-bogdanich-michael-forsythe.html>>; Jonathan Stempel and Nate Raymond, (5 February, 2021), "McKinsey to pay \$600 million to settle with U.S. states over opioid crisis role," *Reuters*, available at: <<https://www.reuters.com/article/usa-mckinsey-idINKBN2A41X5>>). In a statement, Kevin Sneader, McKinsey's global management partner, acknowledged that this conduct was not in line with his firm's values, and expressed his deep regret. That was two and a half years after his last statement of regret and his assurances that such mistakes would not be repeated. See also: Michael Forsythe, Walt Bogdanich and Chris Hamby, (27 April, 2022), "Lawmakers Dismiss McKinsey's Apology on Opioid Crisis as 'Empty'," *The New York Times*, in 'Business,' available at: <<https://www.nytimes.com/2022/04/27/business/mckinsey-congress-opioids.html>>.

9. Anachronistic gaps in the current framework should be filled. In particular, a **regulator for consulting services** should be created to monitor and enforce the mitigation of conflicts of interest – at least in so far as government consulting work is concerned.
10. The creation and maintenance of **government-funded lobby groups** – such as the Board of Taxation Advisory Panel,² should be **discontinued**. At the very least such panels should be dominated by representatives of civil society and disinterested academics.
11. The phenomenon of the **‘revolving door’** must be addressed.

² Disbanded in June, 2023, after extensive media coverage indicating that it was, effectively, a ruse, by which the *big four* audit firms heavily dominated its membership, and indications that, whatever its original purpose, it had, of late, served as a mechanism by which members of the Panel would advocate for those of their institutional clients whose interests were aimed at minimising their tax liabilities (Australian Government, The Board of Taxation, (29 June, 2023), “Advisory panel,” in ‘About/Advisory panel,’ available at: <<https://taxboard.gov.au/about/advisory-panel-members>>; Anthony Klan, (18 July, 2023), “Gov’t “Advisory Panel” of PwC tax partners axed,” *The Klaxon*, in ‘Governance, News,’ available at: <<https://theklaxon.com.au/ztem-47/>>).



In the beginning, there was audit

12. **Audited financial statements** are a **legal requirement** for all ‘disclosing entities’.³ These represent a *touchstone* for **investors and creditors** and, as such, fulfil arguably the single most **crucial piece of information** available. Without reliable, credible audited financial statements the very foundations of our economy will be thrown into disarray. As such, it is vital that the **credibility** of the audit function be made **inviolable**.
13. Over the past approximately 30 years,⁴ firms which have come to dominate auditing⁵ – especially for publicly listed companies – have assumed profiles in which auditing has played an ever-smaller role as a percentage of their overall activities.⁶ This is especially so in respect of the so-called *big four* audit firms: PwC, KPMG, EY and Deloitte, where **audit contributes a single digit percentage of their revenue**.
14. Evidence from Australia and abroad indicates that auditing has become a ‘**loss-leader**’ – that is to say, an unprofitable side-line, maintained in order to **generate consulting work**.⁷
15. This quite naturally gives rise to risks of **conflicts of interest**. Specifically, that audit quality and probity could potentially be sacrificed in order to keep happy clients who offer the potential of more lucrative consulting work.⁸

³ Chapter 2M, Corporations Act 2001.

⁴ Cris Shore, & Susan Wright, (2018), “How the Big 4 got big: Audit culture and the metamorphosis of international accountancy firms,” *Critique of Anthropology*, Volume 38(3), pp. 303–324, available at: <<https://doi.org/10.1177/0308275X18775815>>.

⁵ Maxim Shanahan, (5 September, 2023), “Big four earn 99.3pc of top companies’ audit fees,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/fairly-optimal-big-four-earn-99-3pc-of-top-companies-audit-fees-20230822-p5dyd6>>.

⁶ The Centre for Public Integrity, (July, 2023), “Opaque big four contracts increase 1276%. The unrelenting rise of management advisory services,” in ‘Briefing Paper’, at p 8, available at: <<https://publicintegrity.org.au/wp-content/uploads/2023/07/Big-4-management-advisory-services-1.0-CW.pdf>>.

⁷ Divesh S. Sharma, “Non-audit services and auditor independence.” In *The Routledge companion to auditing*, pp. 67-88. Routledge, 2014, available at: <<https://www.taylorfrancis.com/chapters/edit/10.4324/9780203094921-8/non-audit-services-auditor-independence-divesh-sharma>>; Hannah Wootton, (9 October, 2019), “Big four’s ‘loss leader’ fees threaten audit quality,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/big-four-s-loss-leader-fees-threaten-audit-quality-20191002-p52wvm>>; Adele Ferguson, (14 August, 2023), “A decline in the big four’s auditing quality stokes fears of an Enron-style corporate collapse,” *ABC News*, available at: <<https://www.abc.net.au/news/2023-08-14/australia-big-four-audit-decline-quality-fear-corporate-collapse/102718744>>; Duncan Mavin, (31 May, 2023), “How to fix the global audit industry? Get rid of it altogether.” *The Washington Post*, in ‘Opinion’, available at: <<https://www.washingtonpost.com/opinions/2023/05/31/audit-conflicts-pwc-ey-books-change/>>; Parliament of Australia, (February, 2020), *Regulation of Auditing in Australia*, Chapter 4, citing Professor James Guthrie AM, Submission 39, p 2, and Professor James Guthrie AM, Distinguished Professor, Accounting, Macquarie Business School, Macquarie University, Committee Hansard, 29 November 2019, p 25, available at: <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing/Interim_Report/section?id=committees%2Freportjnt%2F024330%2F72618#footnote15target>; Parliament of the United Kingdom, House of Lords - Economic Affairs Committee, (2011), *Auditors: Market concentration and their role*, at § 1.1, available at: <<https://publications.parliament.uk/pa/ld201011/ldselect/ldeconaf/119/11011105.htm>>.

⁸ See further: Neil J. Dunne, Niamh M. Brennan, Collette E. Kirwan, (August, 2023), “How the Big Four maintain and defend logic equilibrium at concurrent performances,” *Critical Perspectives on Accounting*, Volume 94, Article 102479, available at: <<https://www.sciencedirect.com/science/article/pii/S1045235422000648>>.

*For starters, auditors are paid by the companies they're auditing. If they find a problem, they risk losing a client. There's plenty of incentive to look the other way.*⁹

16. In response, *big audit* has for decades, and repeatedly, provided assurances that they are aware of these risks, and **have in place robust mechanisms** to ensure that audit remains inviolable.

17. Nonetheless, instances and **examples of failures by *big audit* to manage these conflicts** have been exposed with grim regularity, both nationally and internationally.

*But the conflicts of interest inherent in the work of auditors are deeply entrenched — and very hard to overcome in the way the industry works. Scandals crop up with alarming regularity, yet auditors' behavior (sic) doesn't seem to change.*¹⁰

18. Examples of which are too numerous and widespread to canvass here. But for illustrative purposes the following examples are cited:

18.1. National Australia Bank's (NAB) auditors, EY, were found to have colluded with NAB to **sanitise a statutory report** which EY was tasked with preparing and submitting to APRA. **EY covered-up admissions by Bank leadership of law-breaking.**¹¹

18.2. KPMG was heavily criticised by the NSW Auditor General for its failure to manage conflicts of interest in its consulting work to Transport NSW regarding the **Transport Asset Holding Entity** report.¹² This despite the fact that KPMG provided reassurances to the Parliament of NSW that it had **taken steps to ensure that conflicts of interest would not arise** in its work for Transport NSW, through the creation of a *Conflicts, Oversight and Governance Committee*, which it assured the NSW Parliament would manage the risk of a real or perceived conflict.¹³

18.3. The debacle which gave rise to the present Inquiry: that partners at PwC gained **confidential information** about the Federal government's proposed changes to the **MAAL** taxation regime and then, in breach of their obligations to keep that information confidential, took steps to monetise that information by offering it as advice to PwC clients,¹⁴ some of whom are labelled as members of the *dirty34* – the 34 worst multi-national tax evaders in the world.¹⁵

⁹ Duncan Mavin, op cit.

¹⁰ Duncan Mavin, op cit.

¹¹ Adele Ferguson, (2 August, 2019), "Secret interviews reveal risky business for NAB's top executives," *The Sydney Morning Herald*, available at: <<https://www.smh.com.au/business/banking-and-finance/secret-interviews-reveal-risky-business-for-nab-s-top-executives-20190801-p52czf.html>>.

¹² Auditor-General for New South Wales, (24 January, 2023), *Design and implementation of the Transport Asset Holding Entity*, Audit Office for New South Wales, available at: <<https://www.audit.nsw.gov.au/sites/default/files/documents/Design%20and%20implementation%20of%20the%20Transport%20Asset%20Holding%20Entity.pdf>>.

¹³ Ibid., at p 9.

¹⁴ Tax Practitioners Board, (23 December, 2023), *Peter-John Collins. Individual Tax Agent | Terminated*, at § 5, available at: <<https://www.tpb.gov.au/tax-practitioner/tax-agent/39805002>>.

¹⁵ Colin Kruger, (7 May, 2023), "The 'dirty 34' and PwC's global tax dodge," *The Sydney Morning Herald*, in 'Business, The economy, Tax avoidance,' available at: <<https://www.smh.com.au/business/the-economy/the-dirty-34-and-pwc-s-global-tax-dodge-20230503-p5d5b6.html>>.



19. What this indicates is that **conflicts of interest are now baked in**. They are unavoidable in a profession that no longer offers its core function as anything more than a *foot in the door*. Audit is not profitable, and constitutes a negligible percentage of the revenue generated by the *big four*. As such, audit probity and quality is easily sacrificed at the altar of consulting advice, whose contribution to revenue is far greater and more significant, and therefore more important, than audit. Indeed, **audit has become akin to being merely bait**.
20. Against this backdrop the *big four* ceaselessly attest to their ability to manage conflicts of interest. It is here that an important **distinction must be drawn: what is possible versus what is probable**.
- 20.1. In **theory**, it is **possible to manage conflicts of interest**. However,
- 20.2. in **practice**, the greater the benefit, and the less likely the consequences for breach, the **less probable it is that conflicts of interest will be effectively managed**.
21. In order, therefore, to protect the inviolability of audit, it would be preferable to **compel audit firms to divest themselves of extraneous, conflict of interest-generating consulting services**, and be confined to providing **only audit services**. This has been recognised elsewhere as the only tenable solution, and was the proposed solution to similarly observed and irreconcilable conflicts of interest in, for example, the **United Kingdom**.¹⁶
22. In 2003 **the US** Securities and Exchange Commission enforced a separation between audit firms and the provision of legal and other expert advice, pursuant to s 201 of the Sarbanes-Oxley Act.¹⁷

A RESPONSE TO PROFESSOR GRAEME SAMUEL'S SUBMISSION

23. In his submission to this Inquiry,¹⁸ the learned writer states:

It has been urged on this Committee, in the examination of the Big Four following the PWC tax leak issues, that the major accounting firms should be required to split their audit and advisory practices into two separate firms. I regard this as an extraordinary overreach and practically of limited impact in dealing with conflicts of interest, given the global structures of the firms concerned.

A far simpler and achievable resolution to the conflict dilemma would be to prohibit a firm (and its associates) from providing remunerated services to the same corporation (and its associates) which the firm is auditing. While that could be an Australian regulatory requirement, it would apply in Australia if the global firm satisfied the prohibited criteria.

¹⁶ Financial Reporting Council, (23 February, 2021), *Operational separation of audit practices*, available at: <<https://www.frc.org.uk/news/february-2021/operational-separation-of-audit-practices>>; Rob Davies, (6 July, 2020), "UK's big accountancy firms told to split off audit arms by 2024," *The Guardian*, in 'Business,' available at: <<https://www.theguardian.com/business/2020/jul/06/uk-big-four-accountancy-audit-frc-kpmg-pwc-deloitte-ey>>.

¹⁷ US Securities and Exchange Commission, (22 January, 2003), *Commission Adopts Rules Strengthening Auditor Independence*, 'Press Release,' available at: <<https://www.sec.gov/news/press/2003-9.htm>>.

¹⁸ Submission by Professor Graeme Samuel AC, Monash Business School, Monash University Melbourne to *Parliamentary Joint Committee on Corporations and Financial Services* in relation to its Inquiry into ethics and accountability in the audit, assurance, and consulting sectors (undated), *Parliamentary Joint Committee on Corporations and Financial Services, Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, Submission 1, available at: <<https://www.aph.gov.au/DocumentStore.ashx?id=3ad3b405-2786-496a-b067-48de0a8feb5e&subId=745694>>.

*Interestingly, this regulatory requirement should simply result in advisory mandates being redistributed amongst the accounting firms.*¹⁹

24. I regard Professor Samuel as a ‘regulator’s Titan,’ and so it is with great deference to Professor Samuel that I very respectfully beg to differ: Professor **Samuel’s proposed solution** leaves open, in my view, a **gap**. Specifically, where an audit firm is providing audit services to a government department or agency, and seeks to provide consulting advice, they will be in a position to gain privileged and potentially confidential information, which they can then use to gain consulting work – even if providing consulting work will require them to forego their previous auditing work. Put differently, Professor **Samuel’s solution** would nonetheless **allow an audit firm to use insider knowledge** to replace audit work with more lucrative consulting work. This gives rise to a conflict of interest and, as argued previously, if nothing else, *big audit* has demonstrated a persistent, long-standing, internationally wide-spread, and at times egregious failure to manage conflicts of interest.
25. Consequently, this writer respectfully recommends to the Committee that it deem necessary a **total separation of audit and other advisory services**.

¹⁹ Samuel, op cit., pp. 3-4.



The first thing we do, let's kill all the lawyers²⁰

26. The problems created by the **misuse of legal professional privilege (LPP)** are ones which, it is respectfully submitted, should occupy this Inquiry as a priority.

27. It has long been rumoured that *big audit* has misused the establishment of law firms has departments within their practice to abuse LPP. These allegations are not confined to Australia.²¹

*During 2021–22, our focus will continue to be specialist large market advisors who promote and run tax avoidance schemes, and engage in uncooperative, misleading and obstructive behaviour. This includes the misuse of legal professional privilege (LPP) during our reviews and audits.*²²

28. Allegations included **use of junior lawyers** in meetings or in correspondence so as to “**apply a cloak of privilege**” over advice which would otherwise be actionable as a scheme to facilitate tax evasion.²³

Suzanne McNicol, QC, appearing for the commissioner, accused PwC of calling in its legal services arm on communications and advice largely produced by non-lawyers, so those documents were then protected by LPP... Dr McNicol suggested the inclusion of legal services to clients who typically needed work completed largely by tax advisers or consultants was a “premium” service intended to ensure swaths of documents could be privileged even if they were not predominantly related to legal advice... In JBS’ case, for example, she said the “heavy lifting” of the tax advice was given by non-lawyers, but then a “relatively inexperienced lawyer” – legal partner Glenn Russell – was included in communications “to apply a cloak of privilege”.²⁴

However, [Former ATO deputy commissioner Mark Konza] said the misuse of legal privilege was an issue of long-standing concern... The latest tranche of PwC emails, released last week, show that LPP was routinely applied to all internal discussions on how to exploit information provided by its former head of international tax, Peter Collins, through his role as an adviser to the government.²⁵

²⁰ With apologies to William Shakespeare, Henry VI, Part 2, Act IV, Scene 2.

²¹ In the UK these issues have been enlivened in, among others: *Director of the Serious Fraud Office v Eurasian Natural Resources Corp Ltd* [2018] EWCA Civ 2006; *The Financial Reporting Council Ltd v Sports Direct International plc* [2018] EWHC 2284 (Ch); *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21. See further: Clare Arthurs, (13 December, 2018), “Exorcising the Ghost of Privilege Past - Another Petrifying Blow?” Penningtons Manches Cooper LLP, in ‘News & publications,’ available at: <<https://www.penningtonslaw.com/news-publications/latest-news/2018/exorcising-the-ghost-of-privilege-past-another-petrifying-blow>>.

²² Australian Government, Australian Taxation Office, (8 September, 2021), *Tax Avoidance Taskforce highlights 2020-21*, Tax avoidance taskforce, at p 7, available at: <<https://www.ato.gov.au/misc/downloads/pdf/qc52477.pdf>>.

²³ Hannah Wootton, (7 September, 2021), “PwC accused of misusing legal privilege to stop ATO scrutiny of clients,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/pwc-accused-of-misusing-legal-privilege-to-stop-ato-scrutiny-of-clients-20210906-p58p5h>>.

²⁴ Ibid.

²⁵ Michael Pelly, (7 May, 2023), “Former ATO deputy flays ‘abuse’ of legal privilege,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/former-ato-deputy-flays-abuse-of-legal-privilege-20230507-p5d6em>>.

29. In *Commissioner of Taxation v PricewaterhouseCoopers & ors* [2022] FCA 278, Mr ML Robertson QC for the respondents stated that it was “unimaginable” that a pure law firm would face claims that its communications with clients were not privileged.²⁶ Which is the point, exactly.

30. In that case PwC claimed LPP over a staggering 44,000 documents. His Honour, Mr Justice Moshinsky, reviewed a sample of 116 documents. Of those His Honour determined that **only 42 per cent were covered by LPP, and that 58 per cent were either not covered by LPP (53 per cent), or only partly covered by LPP (five per cent).**²⁷

30.1. While LPP is a matter of interpretation, and while it may be expected that one, two, or possibly as many as five per cent of documents over which LPP is claimed may be interpreted by a court as having been incorrectly deemed to be covered by LPP, when the percentage is just below 60 per cent, in this writer’s view, what that indicates is a **systematic abuse of LPP.**

30.2. To that end His Honour stated;

*I have concluded that the communication does not satisfy the dominant purpose test, that is, I have concluded that the document is not (and does not record) a communication made for the dominant purpose of giving or receiving legal advice.*²⁸

31. In this respect, not just *big audit*, but indeed PwC, in particular, has form. In 2009 PwC was accused of facilitating tax evasion by Prudential Plc in the **United Kingdom**. At the time PwC and Prudential attempted to hide behind LPP. This was challenged in the High Court of Justice, and PwC and Prudential’s claims of LPP were rejected.²⁹

*Remember, we’re only seeing the tiniest fraction of the communications in this heist because the firm has carefully constructed an artifice whereby all of its tax advice to clients is subject to legal professional privilege. PwC is quite cynically using legal privilege as an encrypted communications device, like the ANOM system preferred by outlaw motorcycle gangs.*³⁰

32. In assessing this and other matters, Austin Mitchell MP and Professor Prem Sikka (now Baron Sikka) state as follows:

*There is nothing inevitable about the tax dodging industry. It flourishes because governments permit it to. The following steps would help to check the predatory practices of major accountancy firms... The principle of legal professional privilege should not be extended to the tax avoidance industry as major accountancy firms have a history of lying and cheating.*³¹

²⁶ Reported by Hannah Wootton, (8 September, 2021), “‘Horse has bolted’ on PwC rescinding legal privilege: JBS,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/horse-has-bolted-on-pwc-rescinding-legal-privilege-jbs-20210908-p58pvp>>.

²⁷ *Commissioner of Taxation v PricewaterhouseCoopers & ors* [2022] FCA 278, at § 22.

²⁸ *Ibid.*, at § 23.

²⁹ *Prudential Plc & Anor, R (on the application of) v Special Commissioner of Income Tax & Anor* [2009] EWHC 2494 (Admin) (14 October 2009), available at: <<http://www.bailii.org/ew/cases/EWHC/Admin/2009/2494.html>>.

³⁰ Joe Aston, (9 May, 2023), “Tom Seymour, PwC’s fall guy,” *Australian Financial Review*, in ‘Rear Window,’ available at: <<https://www.afr.com/rear-window/tom-seymour-pwc-s-fall-guy-20230509-p5d73c>>.

³¹ Austin Mitchell & Prem Sikka, (2011), “The Pin-Stripe Mafia: How Accountancy Firms Destroy Societies,” *Association for Accountancy & Business Affairs*, at pp. 70-71, available at: <https://www.publishwhatyoupay.no/sites/default/files/import/PIN_STRIPE_MAFIA_ACCOUNTANCY_FIRMS.pdf>.



33. The abuse of legal professional privilege constitutes, in my view, a serious and malicious **attack on the principles of justice, transparency of justice, and the rule of law**. It is a debilitating practice which undermines good government and does sustained and **deep damage to the public good**. It represents a perversion of legal principles, and scandalises the administration of justice. It is an assault on the jurisdiction of properly constituted regulatory authorities and, as such, is contemptuous of their legitimacy and the manner in which that legitimacy is derived: government agencies invested with authority by the democratically elected representatives of *we the people*. As such it is also an attack on the institutions of government, an affront to democracy and an outrage to public sensibilities.

ALL ANIMALS ARE EQUAL BUT SOME ARE MORE EQUAL THAN OTHERS

34. To be clear, this submission raises no objection to the existence of LPP. What it does do is object to the misuse of LPP. It is here that a practical **distinction must be drawn**. To assert that all those who raise LPP are the same, and should be treated the same, is to be blinded to a practical reality: **law firms and accounting firms are not the same animal** and to treat them equally is a false equivalence.

34.1. **Law firms** provide **legal** advice and nothing else. **Accounting firms** provide **all manner** of advice, in which legal advice is a *bolt-on*, and by no means their primary service.

34.2. Moreover, practical experience indicates a **systemic misuse** of the provision of legal advice by accounting firms, specifically to **facilitate tax evasion**.

35. The persistent misuse of LPP by *big audit* must therefore necessitate structural reforms. As such this submission respectfully urges the Inquiry to recommend that **big audit be prohibited from owning legal practices**, and be required to divest themselves of those functions. Put differently, the persistent abuse of a privilege should mandate the withdrawal of that privilege.

Walking both sides of the street

36. The question has been raised as to whether it is necessary to **separate public sector and private sector** work.
37. While doubtless there are benefits and synergies that arise when a consulting firm works in both spheres – and while doubtless the firms that are the subject of this Inquiry will seek to emphasise those benefits – such arguments cannot be sustained where there are **conflicts of interest**, and those conflicts of interest remain un-mitigated.
38. Conflicts of interest between public and private sector consulting work, that **remain un-mitigated**, will have the effect of damaging the public interest, undermining the public good, un-levelling the playing field between those who seek to consult in the public sphere, corrupting government procurements, and diminishing the benefits provided by the state to its citizenry. Put simply, the **benefits and synergies between the two are outweighed by the dis-benefits** of contaminating government consulting work and corrupting government procurements.
39. We have seen overwhelming evidence, spread across multiple jurisdictions, and across decades, that *big audit* and leading consulting firms (such as McKinsey and Co), **consistently fail to mitigate conflicts of interest**, and persistently fail to remediate that failing.
40. Examples of the effects of which abound:
- 40.1. KPMG, while consulting to the **tobacco industry**, was providing advice to the Victorian government’s **department of health on changes to tobacco and vaping laws**.³² The danger to public health from cigarette-smoking is inarguable. The conflicts of interest that arise in allowing a company, that earns significant revenue from tobacco companies, to influence the setting of laws to combat so serious a health risk is indefensible.
- Surely a company that has a long history of working for big tobacco is the last one you’d want to be leading a public consultation on changes to our tobacco and vaping laws.” Geraldine Mellet, the co-chief executive director of the Australian Council of Smoking and Health.*³³
- The documents [obtained by The Guardian] show KPMG would lead discussion around topics including: “What could be done to minimise the possible burden on the industry?”*³⁴
- 40.2. PwC has been advising the federal government by conducting a review of the **price of medical implants** in private hospitals, while **simultaneously advising the manufacturers** of those devices on what prices they could charge for their products.³⁵

³² Henry Belot, (15 September, 2023), “Victorian government hired KPMG to consult on tobacco changes despite firm’s links to industry,” *The Guardian*, available at: <<https://www.theguardian.com/australia-news/2023/sep/15/victorian-government-hired-kpmg-to-consult-on-tobacco-changes-despite-firms-links-to-industry>>.

³³ Ibid.

³⁴ Ibid.

³⁵ Andrew Galloway, (11 June, 2023), “PwC accused of ‘walking both sides of the street’ on inflated medical device prices,” *The Sydney Morning Herald*, in ‘Politics, Federal,’ available at: <<https://www.smh.com.au/politics/federal/pwc-accused-of-walking-both-sides-of-the-street-on-inflated-medical-device-prices-20230608-p5df6k.html>>.



*Medical devices can cost up to three times more in Australia than in other countries, and they are considerably more expensive in private hospitals than in the public system... In a letter sent to Department of Health secretary Brendan Murphy last month, Private Healthcare Australia chief executive Rachel David accused PwC of producing a flawed analysis in 2017 which she says was then relied on by the previous government to set the prices of medical implants... "The use of transfer pricing for medical implants inflates the cost in Australia and minimises the tax payable in this country," David wrote in the letter.*³⁶

40.3. Again, it is inarguable that the provision of healthcare is one of the most essential services that a state can provide to its citizenry. Where that process is corrupted, and the provision of those services made dearer – of the most expensive of their kind in the world – then the disbenefit caused by consultants walking both sides of the street clearly outweighs whatever benefit arises from the synergies derived.

40.4. PwC has had access to protected pricing information, some of which is subject to secrecy provisions, in its consulting work to the **Independent Health and Aged Care Pricing Authority**, while **simultaneously advertising their consulting services to the age care industry**, and offering to “assist service providers to remain viable and accountable to their service costs and pricing”.³⁷

*...senators and unions raised concerns about PwC being paid \$8.7m to collect sensitive commercial data from aged care providers while helping the Australian government set new service prices and simultaneously charging industry players for advice on pricing.*³⁸

40.5. McKinsey and Company, while advising the **US Federal Drug Administration**, over a period of 11 years, which included insights into FDA policies to combat the opioid epidemic ravaging the United States, was advising Purdue Pharmaceutical, the manufacturer of **OxyContin**.³⁹ Not only that, but McKinsey was also advising Purdue Pharma how to boost sales of *OxyContin*, **by identifying demographics most likely to become addicted to opioids**.⁴⁰ They neglected to inform the FDA of their work for Purdue.⁴¹

40.6. And last (as far as this section is concerned), but by no means least, and the malpractice which gave rise to this Inquiry: PwC was providing **tax advice to the Treasurer** on how to address **tax avoidance** by multi-national corporations active in Australia. The sought to, and succeeded in, **monetising that information** almost immediately, by selling workarounds to the **same multi-nationals** that the tax reforms sought to capture.

³⁶ Ibid.

³⁷ Henry Belot, (29 June, 2023), “Federal government suspends major aged care contract with PwC,” *The Guardian*, available at: <<https://www.theguardian.com/business/2023/jun/28/federal-government-suspends-big-aged-care-contract-with-pwc>>.

³⁸ Ibid.

³⁹ Sam Nichols and Kate MacDonald, (16 March, 2023), “Governments are increasingly reliant on consulting firms. Critics says it's often to their detriment,” *ABC News*, available at: <<https://www.abc.net.au/news/2023-03-16/australia-reliance-consulting-firms-high-cost-problem-government/102091810>>.

⁴⁰ Kolhatkar, op cit.; Stempel, op cit.

⁴¹ Nichols, op cit.

*"They've taken that knowledge and then used it to undermine them almost immediately."*⁴²

41. As an implied admission that conflicts of interest between the public and private sector cannot be managed, PwC sold its public sector consulting business to a group of investors for \$1. That new firm will, it is claimed, confine itself to public sector work alone. It will be known as Scyne.⁴³
42. It is recommended that firms that seek work from the federal government be required to show a **ten-year long clean slate**. That would require an attestation that would compel disclosures on a designated range of behaviours, for example:
 - 42.1. "have you paid damages claims in this jurisdiction or any other jurisdiction related to the work you have done there or elsewhere?" That would capture the likes of McKinsey & Co for their work driving opioid addictions, whether they were tried and found guilty, or not;
 - 42.2. "have members of your firm previously, disclosed confidential information?";
 - 42.3. "do you currently, or have you previously, consulted to private sector clients whose business would be affected by the outcomes of the consulting advice you seek to provide?".
43. Should it later transpire that an **attestation was defective**, that alone should be sufficient for the **immediate cancellation of the contract** of work, and a requirement for the **return of any fees** paid, with interest. Thereafter the firm should be added to a **'blacklist' for the next ten years**.

⁴² Daniel Ziffer, (23 May, 2023), "PwC in the firing line and AFP drawn in as Senate asks hard questions about conflict-of-interest drama," *ABC News*, available at: <<https://www.abc.net.au/news/2023-05-23/pwc-in-the-firing-line-as-afp-gets-involved/102376954>>.

⁴³ Edmund Tadros, (4 July, 2023), "PwC \$1 fire sale to Allegro done, new name revealed," *Australian Financial Review*, in 'Companies, Professional Services,' available at: <<https://www.afr.com/companies/professional-services/allegro-completes-1-pwc-government-arm-fire-sale-renames-firm-scyne-advisory-20230703-p5dlha>>.



If it walks like a duck, quacks like a duck, and looks like a duck, it's probably a duck

MULTI-NATIONAL CORPORATIONS MASQUARADING AS PARTNERSHIPS

44. The *big four* accounting firms are structured as partnerships, **avoiding the obligations** and duties created by the *Corporations Act*.
45. As partnerships, the *big four* accounting firms pay little or no **corporate tax**, despite having turnovers which would place each of them in the ASX top 20.⁴⁴
46. The *Corporations Act* creates duties and obligations on corporations, their directors, and officers.⁴⁵
47. These duties and obligations on corporations include the need for audited financial statements,⁴⁶ and bind the directors and officers to a series of duties, well defined in law and practice.
48. The *big four* accounting firms **mimic these structures** through the election or selection of generally long-serving partners to serve as 'Board Members'.⁴⁷ Indeed, they go so far as to describe them as "Board Members".⁴⁸
49. These board members report to the CEO and the firm's executives. Some are relatively junior members of the firm. They are not sufficiently empowered to hold the CEO to account.⁴⁹
50. The internal boards of the *big four* are, as such, **not 'directors'** in the context in which the term is used in the *Corporations Act*, or for that matter, in the context in which the term is generally used and understood. They have no power, independence or authority over the actions of the CEO and executive committees.

⁴⁴ In FY22 PwC Australia had revenue in excess of \$3 billion. Source: "PwC Australia reports revenue growth of 17% to \$3 billion for FY22," in Media, (2022), published by PwC Australia, available at: <https://www.pwc.com.au/media/2022/pwc-australia-delivers-full-year-revenue-fy22.html>. Compare this with Goodman Group Ltd, whose annual revenue in 2022 was \$1.4 billion ("Revenue for Goodman Group (GMG.AX)" *CompaniesMarketcap.com*, (accessed 15 June, 2023), available at <https://companiesmarketcap.com/goodman/revenue/>), and ranked 17th by market capitalisation on the ASX ("Top 50 by Market Cap," *ASX*, (accessed 15 June, 2023), available at: <https://www2.asx.com.au/markets/trade-our-cash-market/equity-market-prices/top-50-market-cap>).

⁴⁵ S 180 ff, *Corporations Act (Cth)*, 2001, (Australia).

⁴⁶ S 988B; 295A; 322; and Chapter 2M, Part 2M.3, Division 6 etc, *ibid*.

⁴⁷ PwC Australia, "PwC's Board of Partners," in 'About us,' (accessed 15 June, 2023), available at: <https://www.pwc.com.au/about-us/pwc-board-of-partners.html>.

⁴⁸ PwC Australia, "PwC's Executive Board," in 'About us,' (accessed 15 June, 2023), available at: <https://www.pwc.com.au/firm-executive.html>.

⁴⁹ See for example: Joe Short, Member of the Board of Partners (see fn 47, above). Mr Short joined PwC as recently as 2017. Prior to that he was a director at KPMG, which is a position junior to that of a partner. Source: LinkedIn, "Joe Short," (accessed 15 June, 2023), available at: <https://www.linkedin.com/in/joeshortpwc/>.

51. The scale, headcount, and important role that accounting firms perform in our economy appear **inconsistent with their avoidance of the *Corporations Act's* controls** that bind other large, private corporations to real governance, and proper financial reporting.
52. As a further consequence of the structure of the major accounting firms as partnerships, their directors and officers **escape the duties** otherwise binding on individuals in similar positions in corporations.
53. The partnership model is designed to facilitate a commercial relationship between two or more people, so that they may have rights and duties against one another, with greatest possible ease of establishment. Indeed, for a partnership to exist all that is required is two or more people, acting together, with the aim of making a profit. There are no formalities that need be complied with.⁵⁰ The arrangement is not intended to facilitate the operations of a global multi-national corporation, with thousands of partners,⁵¹ so that it may masquerade as partnership.
54. As such it is respectfully submitted that this Inquiry recommend that the **current law⁵² be amended**, such that partnerships be limited in size to no more than 100 partners. Above that firms should be required to incorporate under the *Corporations Act*.

RINSE AND REPEAT

55. At the time when the scandal surrounding the un-authorised dissemination of secret tax provisions, initially by Peter John Collins in PwC's tax advisory service, broke, and then later, as it emerged, the un-authorised use of this information across multiple PwC offices and involving in excess of 60 partners, then-CEO Tom Seymour dismissed the scandal as merely one of 'perceptions.'⁵³
56. It would be fair to say Mr Seymour was extensively condemned for so dismissive a response.

*Remember, none of PwC's actions that have to date been subject to scrutiny have withstood that scrutiny... None. Before he was whacked, Seymour blamed this on culture, yet a failure of culture is, by definition, a widespread one. None of the partners spoke up. They may not have known, but they were certainly party to a culture that allowed this to flourish.*⁵⁴

It was all just "a perception issue," [Seymour] said... Seymour seems to have no grasp of what's at stake here, no real sense of how bad this is. His myopia may be the product of

⁵⁰ Section 1, *Partnership Act 1892* No 12 (NSW).

⁵¹ PwC Australia alone has 937 partners. Source: PwC, "PwC Australia admits 67 new partners," (January, 2023), in 'Media, 2022,' available at: <<https://www.pwc.com.au/media/2022/pwc-new-partners-Jan-2023.html>>. Globally, KPMG has 236,000 partners. Source: KPMG Australia, "Overview," (2023), in 'Home, About,' available at: <<https://kpmg.com/au/en/home/about/overview.html>>.

⁵² Section 115, *Corporations Act*, read with Regulation 2A.1.01, *Corporations Regulations 2001*, available at: <<https://www.legislation.gov.au/Details/F2016C00736>>. It should be noted that in PwC's submission, (PwC, (31 August, 2023), "Our response to the Terms of Reference," Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry, Submission 43, at p 3, available at: <<https://www.aph.gov.au/DocumentStore.ashx?id=dac91bbb-0873-47f1-9a54-b19e11988dce&subId=748209>>), they assert that the *Corporations Regulations* are dated 2011. This is incorrect.

⁵³ Edmund Tadros and Neil Chenoweth, (9 March, 2023), "PwC has a 'perception' problem over tax leak: CEO," *Australian Financial Review*, in 'Companies, Professional Services,' available at: <<https://www.afr.com/companies/professional-services/pwc-has-a-perception-problem-over-tax-leak-ceo-20230308-p5cq5h5#>>>.

⁵⁴ Joe Aston, (9 May, 2023), op cit.



*normalisation, of so many years at the highest echelons of a sophisticated influence trafficking and information laundering operation. Firms like PwC are experts in the absolute minimum standard of the law, in pushing it to the limit, in dancing on the edges, because that's where the danger money is.*⁵⁵

*Remember, PwC initially set out to perpetrate a grand lie by omission: that there was only one bad apple, disgraced former partner Peter Collins. When that falsehood was publicly contradicted by the Tax Practitioners Board, Seymour minimised this as merely "a perception problem"... Unfortunately for Seymour, a critical ingredient of plausible deniability is plausibility, and those PwC partners – himself included – have none. They are global experts in tax law. MAAL was, far and away, the single biggest issue in their professional universe at the time. They all knew Collins was advising Treasury. Where did they think the inputs for their MAAL inoculation schemes were coming from when the legislation still wasn't public? Tarot cards?... [according to Seymour] It was just one bad guy – or six to eight, maybe 30 to 40 or possibly 53...*⁵⁶

*Under questioning from columnist Jennifer Hewett, he told The Australian Financial Review Business Summit on March 9 there was "no finding that 30 people got the information ... What was said at the Senate committee was that there is a perceived issue around the 20 to 30 [PwC partners and staff]..." It was just a perception problem. And life goes on... Last Monday night, O'Neill received the TPB's response. Its investigation report, which might have connected more of the dots, was suppressed, but 144 pages of heavily redacted emails painted a devastating picture of how deeply involved many PwC partners were in sharing the confidential information that Collins fed them from Treasury and the Board of Taxation.*⁵⁷

57. What makes the attempt to denigrate and diminish the severity of, not just the misconduct, but the pervasive failure of PwC's culture, by describing the failures as mere "perceptions", so egregious, was that the **CEO was himself implicated**:

*On Friday afternoon, after months of stonewalling questions about what he knew about the leaks of government documents, while PwC privately briefed that none of the senior leadership knew about it, Seymour confirmed in a partners' meeting what had become increasingly obvious: he was in the emails.*⁵⁸

58. In a demonstration of a lack of introspection, self-awareness, or an understanding of where, how and to what extent their governance is broken and their culture bankrupt, **PwC is back, peddling 'perceptions'**:

*We are ... working to address ... **perceived** [emphasis added]... concerns ... with respect to governance and transparency...*⁵⁹

59. Moreover, they have the metrics to prove it: **99.4% of our people completed ethics and code of conduct training.**⁶⁰

⁵⁵ Joe Aston, (4 May, 2023), "Tom Seymour's PwC tax scandal backslash," *Australian Financial Review*, in 'Rear Window,' available at: <<https://www.afr.com/rear-window/tom-seymour-s-pwc-tax-scandal-backslash-20230504-p5d5ra>>.

⁵⁶ Joe Aston, (7 May, 2023), "Tom Seymour conducts PwC's cluster-fiasco," *Australian Financial Review*, in 'Rear Window,' available at: <<https://www.afr.com/rear-window/tom-seymour-conducts-pwc-s-cluster-fiasco-20230507-p5d6g4>>.

⁵⁷ Neil Chenoweth and Edmund Tadros, (5 May, 2023), "The inside story of PwC's tax scandal," *Australian Financial Review*, in 'Companies, Professional Services,' available at: <<https://www.afr.com/companies/professional-services/the-inside-story-of-pwc-s-tax-scandal-20230504-p5d5k5>>.

⁵⁸ Ibid.

⁵⁹ PwC, (31 August, 2023), op cit., at p 5.

⁶⁰ PwC Australia, (2022), *Transparency Report FY22*, at p 9, available at: <<https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy22.pdf>>.

60. Doubtless the crisis that has engulfed PwC has many progenitors: feckless leadership, broken governance, moral and ethical bankruptcy, and a **lack of accountability**. It is that last deficiency which has been exacerbated by directors – directors in name – who **bear none of the responsibilities nor are required to discharge any of the duties of a director**; because they are permitted to masquerade as a partnership.

THE THEATRE OF THE ABSURD⁶¹

61. PwC's 2022 *Transparency Report*⁶² demonstrates the **disconnect** between **PwC's self-assessment** of its governance, culture, transparency, adherence to ethical conduct, and the **evidence**. Key points and assertions include:

61.1. Statements that attest to PwC's ethics, such as:

*Our culture is grounded in our values, which support and celebrate doing the right thing. They are part of our day-to-day conversations and the heartbeat of our business. They guide our decisions and determine our success.*⁶³

*Building trust through our commitment to transparency and accountability, embedded in our day-to-day decision making.*⁶⁴

*We are committed to strong governance, oversight and accountability, with a clear tone from the top on the behaviour we expect from our people. We seek to consistently apply the fundamental principles of objectivity, integrity and professional behaviour which underpin how we make decisions to deliver solutions and sustained outcomes.*⁶⁵

A statement of considerable irony, in light of the circumstances in which their former **CEO**, Tom Seymour stepped down from the role, after it became apparent that he **himself had been in receipt of emails** containing information the dissemination of which was prohibited.⁶⁶

*Our priorities for the coming year include continuing our Speak Up campaign which encourages our people to speak up when they see behaviours that don't align with our values and focusing on training and education around the standards of behaviour we expect.*⁶⁷

*The Tax Policy Panel comprises senior partners and subject matter experts, who determine whether a potential tax project or advice position fits with our values and commitments, and aligns to PwC's Global Tax Code of Conduct... In addition to the PwC Global Tax Code of Conduct, we we (sic) also comply with the Tax Advisory Firm Governance - Best Practice Principles...*⁶⁸

⁶¹ The name given to a genre of theatre that rose to prominence in the 1950s and 1960s, typified by surrealism.

⁶² PwC Australia, (2022), op cit.

⁶³ Ibid., at p 4.

⁶⁴ Ibid., at p 7.

⁶⁵ Ibid., at p 8.

⁶⁶ Commonwealth Parliament of Australia, The Senate, Finance and Public Administration References Committee, (June 2023), *PwC: A calculated breach of trust*, at p 8, § 1.43 and at p 15, § 1.83, available at: <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/RB000169/toc_pdf/PwCAcalculatedbreachoftrust.pdf>.

⁶⁷ PwC Australia, (2022), op cit., at p 9.

⁶⁸ Ibid., at p 10.



*PwC Australia is governed by a set of network-wide ethics and compliance standards, as well as local engagement and workplace policies. We annually conduct a maturity self-assessment on a variety of matters, including ethics and business conduct... PwC sets a strong tone from the top on the behaviours and culture we expect of our people, including following our business requirements and doing the right thing.*⁶⁹

61.2. PwC references their **compliance with the Tax Advisory Firm Governance - Best Practice Principles**, which affirms that PwC will, at all times, adhere to the following principles:

- *acting with integrity*;...
- *working honestly and openly with the Commissioner*;⁷⁰

Again, an attestation of some considerable irony, in light of the **persistent misuse by PwC of legal professional privilege**.⁷¹

61.3. PwC attests to the adoption of a code of conduct.⁷² Key attestations include:

*Regardless of whether confidential information is received verbally, on paper, in an email, or in any other form, our ability to protect its confidentiality is critical to our ability to maintain the trust of our clients, each other, and those with whom we do business.*⁷³

*We all play a role in protecting confidential information entrusted to us in its various forms... 2. We do not inappropriately divulge confidential information... 5. We promptly identify any unintended disclosure of confidential information and escalate within PwC as appropriate.*⁷⁴

An attestation of some irony considering PwC's former **CEO, and upwards of 63 partners, trafficked in confidential tax information**,⁷⁵ with a view to **monetising** that information.⁷⁶

*We never trade on or inappropriately disclose inside information.*⁷⁷

62. What these **attestations** and instances of assurance demonstrate are the triumph of virtue-signalling, box ticking and form over function. They are a **triumph of empty gestures**. At best they demonstrate staggering incompetence by PwC in its assessments of its conduct. At worst, they are purposefully misleading. Considering the complicity in the leak of secret tax information by the former CEO, and upwards of 63 partners, regrettably indications point to the latter.

⁶⁹ Ibid., at p 11.

⁷⁰ *Tax advisory firm governance. Best practice principles*, (August, 2022), at p 4, available at: <<https://www.pwc.com.au/tax/assets/home/tax-advisory-firm-governance-best-practice-principles.pdf>>.

⁷¹ See comments above under heading: *The first thing we do, let's kill all the lawyers*.

⁷² *Living our Purpose and Values. PwC's Code of Conduct*, (April, 2021), available at: <<https://www.pwc.com/gx/en/ethics-business-conduct/pdf/pwc-code-of-conduct-april-2021-v2.pdf>>.

⁷³ Ibid., at p 16.

⁷⁴ Ibid., at p 17.

⁷⁵ Tom McLroy, (20 June, 2023), "Parliament to demand that PwC name 63 staff caught up in tax leak," *Australian Financial Review*, in 'Politics, Federal,' available at: <<https://www.afr.com/politics/federal/parliament-to-demand-pwc-name-63-tax-leak-staff-20230620-p5di0p>>.

⁷⁶ Colin Kruger, (7 May, 2023), op cit.

⁷⁷ *Living our Purpose and Values. PwC's Code of Conduct*, (April, 2021), op cit., at p 18.

63. PwC's **governance**, and by implication, that of *big audit*, is *thin gruel*. They have demonstrated, repeatedly, that they **cannot be trusted**, they do not change, and that greed and the relentless pursuit of profit blind them from learning from their mistakes.
64. As a result, change **cannot be left to an exercise of 'self-regulation'**. If nothing else, to allow that would simply generate a raft of 'evidence' – by way of assurance, compliance with codes of conduct and attestations – that they were indeed engaged in effective self-regulation. None of which could be relied upon to be accurate.
65. As such, change must be imposed upon the industry, and that will require, *inter alia*, **forcing incorporation under the Corporations Act**.



All hat but no cattle

PROFESSIONAL SERVICES SHOULD BE REGULATED LIKE ANY OTHER PROFESSION

66. Consulting firms provide what would be described, and generally regarded as, professional services. In the case of *big audit*, these firms blur the boundaries between professional services properly so-called (such as audit and legal), and consulting. Yet in the case of the latter, they **answer to no professional oversight bodies**.

66.1. PwC, in its submission to this Inquiry,⁷⁸ arguably, and by implication, acknowledges this when it states: *PwC Australia is registered with the US PCAOB [Public Company Accounting Oversight Board] because we perform audits of U.S. public companies (issuers)*. This argument, it is respectfully submitted, is a **canard**, and is inherently disingenuous. The PCAOB is a US government authority and has no jurisdiction in Australia. While it may assert jurisdiction over PwC in respect of the work PwC Australia does for US companies, it **cannot prosecute PwC Australia in Australia or bring against PwC Australia any sanctions or detriment in this jurisdiction**. Consequently, by mentioning this PwC, by implication, acknowledges that they are inadequately regulated in Australia.

67. This represents a glaring and serious deficiency, particularly in light of the impact such consultancy work has on the public good, and on public welfare. Examples are too numerous to canvass comprehensively, but they include the provision of health care; government policy and procurement; matters of national security (in defence and cyber-security); education; transport; infrastructure priorities and development; the composition of the public service; taxation; crime mitigation and prevention; the administration of justice; information collection and retention (such as MyGov); social security et cetera.

68. Such a broad range of activities and the potential for significant impact (and indeed significant harm) to be visited upon the community **demands that there be concomitant oversight and regulation** (analogous to the oversight and regulation imposed on other professions), of individuals and firms that offer professional advice as consultants.

69. After all, if consulting firms wish to cover themselves in the moniker of professional service providers, then they should accept the enhanced scrutiny which that should bring.

70. As such, it is respectfully submitted that this Inquiry **recommend the establishment of a regulatory oversight authority over consultancies** – at least in respect of those firms that consultant to government.

70.1. In enlivening such a recommendation it is further, respectfully submitted, that this Inquiry should propose a framework for the creation and maintenance of such an oversight authority which is **insulated from the firms which it will regulate**. Put differently, it is vital that such a body not fall prey to capture by the firms it will regulate.

⁷⁸ PwC (31 August, 2023), op cit., at p 10.

70.2. 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; and if there is one thing that we have learned about *big audit* and firms such as McKinsey and Co, despite their protestations to the contrary, they are incapable or unwilling to address conflicts of interest.⁷⁹

70.3. 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).

⁷⁹ The truculence with which the Tax Practitioners Board (TPB) addressed the unauthorised dissemination of confidential information relating to reforms to be implemented by the MAAL regime are on point, as is the overwhelming influence over the TPB of the firms over which the TPB has oversight. See for example: Anthony Klan, (18 August, 2023), “PwC probe boss failed to declare ties to firm,” *The Klaxon*, in ‘Governance, News,’ available at: <<https://theklaxon.com.au/ztem-57/>>; Anthony Klan, (16 August, 2023), “Tax agency “investigator” blind on PwC partners,” *The Klaxon*, in ‘Governance, News,’ available at: <<https://theklaxon.com.au/ztem-56/>>; Anthony Klan, (6 August, 2023), “Tax agency’s board meetings held inside PwC,” *The Klaxon*, in ‘Governance, News,’ available at: <<https://theklaxon.com.au/ztem-53/>>.



Foxes consulting on henhouse safety

GOVERNMENT-FUNDED LOBBIES

71. *Big audit* and other professional advisors have hit something of a jackpot in Australia. They have enjoyed the establishment of **government-funded advisory panels**⁸⁰ to advise the federal government on tax policies, which they occupy. One such body was the Board of Taxation Advisory Panel.

71.1. Membership of the advisory panel included disgraced tax advisor and PwC partner, Peter John Collins. Collins was a member of the panel from February 2016⁸¹ until at least January 31, 2020.⁸²

72. After two decades in operation, the **advisory panel was quietly disbanded on 29 June, 2023**, after an **exposé** in *The Klaxon* revealed that the **panel was stacked** with fossil fuel tax specialists and *big audit* tax partners, including four current PwC tax partners.⁸³

*It has now emerged the entire Board of Taxation Advisory Panel — responsible for “advising on the quality and effectiveness of tax legislation”; “contributing to the Board [of Taxation’s] real time policy advice to the Treasurer”; and “recommending improvements to support the general integrity and functioning of the tax system” — has gone the same way.*⁸⁴

At the time when the Advisory Panel was disbanded,⁸⁵ the existing list of Panel members was deleted.⁸⁶ Prior to its disbandment, the Panel **comprised four tax specialists from PwC, four from KPMG, three from EY, and one from Deloitte.**⁸⁷

*There [were] also nine tax partners from other consultancies, including BDO (two tax partners); partners of Grant Thornton; RSM Australia; a group called Transfer Pricing Solutions; and deputy chair of Australian Standfirst Board, a “global investing specialist” which focuses on “Ultra High Net Worth (UHNW) wealth”.*⁸⁸

*... we provide clients with a complete solution that covers wealth structuring, taxes and legal support.*⁸⁹

⁸⁰ Australian Government, The Board of Taxation, (29 June, 2023), “Advisory Panel,” in ‘About,’ available at: <<https://taxboard.gov.au/about/advisory-panel-members/>>.

⁸¹ Australian Government, The Board of Taxation, (February, 2016), “Advisory Panel Members,” in ‘About’. This information has been deleted from The Board of Taxation’s website, but is available at: <<https://web.archive.org/web/20160228151719/http://taxboard.gov.au/about/advisory-panel-members/>>.

⁸² Australian Government, The Board of Taxation, (January, 2020), “Advisory Panel Members,” in ‘About’. This information has been deleted from The Board of Taxation’s website, but is available at: <<https://web.archive.org/web/20200131090754/http://taxboard.gov.au:80/about/advisory-panel-members/>>.

⁸³ Anthony Klan, (25 July, 2023), “PwC’s Peter Collins on Tax Board “Advisory Panel”,” *The Klaxon*, in ‘Governance, News,’ available at: <<https://theklaxon.com.au/ztem-49/>>.

⁸⁴ Anthony Klan, (18 July, 2023), op cit.

⁸⁵ Australian Government, The Board of Taxation, (29 June, 2023), op cit.

⁸⁶ Anthony Klan, (18 July, 2023), op cit.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Australian Standfirst Asset Management Pty Ltd, (2023), “Private Client Advisory,” *Australianstandfirst.com*, available at: <<https://australianstandfirst.com/private-client-advisory/>>.

The question may well be asked, in the case of Australian Standfirst, consulting as they do to “Ultra High Net Worth (UHNW) wealth” individuals, is it more likely that they will succeed in their business by assisting their clients to pay less tax, or more tax? The answer seems intuitively the former. That then raises the question as to their purpose on a government-funded Tax Advisory Panel? And **whether they provided advice that would benefit their clients to pay less tax, or** whether they provided advice to the Treasurer on how their clients were minimising their tax liabilities, and **what the Treasurer could do to counter that?**

73. Of the 47 members of the Panel, approximately **ten per cent** could be said to represent civil society and be at **arms-length** from those who would benefit from further minimising the amount of tax they pay – in some cases minimal to begin with.⁹⁰
74. The advisory panel was, in turn, a division within The Board of Taxation which, in turn, is supported by a secretariat provided by Treasury, and funded by taxpayers.⁹¹ The CEO of The Board of Taxation (BoT), until 31 January 2023, Christina Sahyoun was, throughout the period of her tenure as CEO of the BoT, a tax partner at PwC.⁹² As a result she was, **throughout the period of her tenure as CEO of the BoT, a paid senior employee at PwC.**
75. In addition, she was *“paid an undisclosed taxpayer annual salary in the hundreds of thousands of dollars... likely \$500,000-plus.”*⁹³
76. More disturbingly, **PwC refused to be drawn** on whether **Ms Sahyoun** was one of the 63 partners on the **“list” of current and former partners and staff to have received stolen Federal Government tax policy data;**⁹⁴ and she was joined in the Board by another PwC partner who was in charge of PwC’s “tax transparency” and “tax governance”.⁹⁵
77. After details of the PwC tax **scandal were revealed Ms Sahyoun resigned as CEO of the Board in a matter of days** and, again, the circumstances raise questions: the Board made no announcement of her exit, and in a “CEO Update”⁹⁶ she posted mere weeks prior to her exit, she made no mention of her intention to resign.

*The Board of Taxation on Thursday told The Klaxon the CEO role was “currently being filed by a Treasury employee” in an “acting capacity”, but it refused to say who that was... Sahyoun and the Board of Taxation are refusing to say what Sahyoun’s taxpayer-funded salary was as CEO.*⁹⁷

⁹⁰ Ibid.

⁹¹ Anthony Klan, (23 July, 2023), “Tax Board run by PwC partner,” *The Klaxon*, in ‘Governance, News,’ available at: <https://theklaxon.com.au/ztem-48/>>).

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Australian Government, The Board of Taxation, (December, 2022), “CEO Update – December 2022,” available at: https://taxboard.gov.au/sites/taxboard.gov.au/files/2022-12/ceo_update_december_2022.pdf>.

⁹⁷ Anthony Klan, (23 July, 2023), op cit.



78. On the **same day that he received questions** from the media about his role as a **director of the Board of Taxation, Anthony Klein resigned**⁹⁸ from the Board, halfway through his three-year term.⁹⁹ Mr Klein **confirmed that he was one of the partners at PwC who received leaked, confidential information about reforms to the MAAL.**¹⁰⁰

78.1. During his tenure on the Board of Taxation Mr Klein was **paid a salary** by the federal government **of \$61,230 a year** plus expenses.¹⁰¹

78.2. Prior to his appointment to the BoT, Mr Klein spent some seven years as a member of the BoT's Advisory Panel.¹⁰²

78.3. **Mr Klein, Mr Collins and Mr Paul McNab**, named as having received (or in the case of Mr Collins, having disseminated¹⁰³) confidential tax information from Treasury, have **openly advocated against taxing multi-national** technology companies:

*It will be important that any proposed changes consider any risk of retaliation by other territories whose companies may be unilaterally impacted if the changes are seen as unfair and inequitable. Australia should be careful before deciding that it has the right to tax the proceeds of services and technology that it neither performs nor creates.*¹⁰⁴

79. When Mr Klein resigned from the BoT, the Board quietly removed his name from its website, and made no announcement of his resignation. When pressed on why this was so, their response was:

*The Board does not make media announcements concerning either the appointment of a Board Member or the conclusion of a Member's appointment.*¹⁰⁵

This assertion is **directly contradicted** by the announcement made by the BoT of Mr Klein's initial appointment.¹⁰⁶

80. Not only is the BoT and its now disbanded Advisory Panel **overwhelming stocked with tax specialists from big audit**, including partners **named as having received confidential tax information**, but the Board has regularly held its meetings at PwC's offices.¹⁰⁷

⁹⁸ Anthony Klan, (17 July, 2023), "First public official ousted in global PwC tax scandal," *The Klaxon*, in 'Governance, News,' available at: <<https://theklaxon.com.au/ztem-45/>>).

⁹⁹ Ibid.

¹⁰⁰ Colin Kruger and Rachel Clun, (18 July, 2023), "Former PwC partner resigns from Board of Taxation," *The Sydney Morning Herald*, in 'Business, Companies,' available at: <<https://www.smh.com.au/business/companies/former-pwc-partner-resigns-from-board-of-taxation-20230718-p5dp23.html>>.

¹⁰¹ Anthony Klan, (13 July, 2023), "Gov't tax boss at heart of PwC tax scammers nest," *The Klaxon*, in 'Governance, News,' available at: <<https://theklaxon.com.au/ztem-44/>>).

¹⁰² Ibid.

¹⁰³ Tax Practitioners Board, (23 December, 2023), op cit.

¹⁰⁴ PwC Australia, (2 October, 2018), "Australia's framework questions for a possible digital tax," in 'TaxTalk—Insights,' available at: <<https://www.pwc.com.au/tax/taxtalk/assets/alerts/australias-framework-questions-for-a-possible-digital-tax.pdf>>.

¹⁰⁵ Anthony Klan, (17 July, 2023), op cit.

¹⁰⁶ Australian Government, The Board of Taxation, (25 October, 2021), "The Chair of the Board - Statement on Appointments," Media Release 56, in 'Publications and Media, Media releases, available at: <<https://taxboard.gov.au/publications-and-media/media-release/chair-board-statement-appointments>>.

¹⁰⁷ Anthony Klan, (6 August, 2023), op cit.

*One Board of Taxation board meeting, held in PwC's Sydney offices in February 2017, was arranged by then PwC partner Peter Calleja – who was directly involved in, and has been ousted over, the PwC tax leaks scandal... Another, held at PwC's Melbourne office on August 5 last year, was while disgraced accountant Peter Collins remained employed as a PwC partner — out of that same office.*¹⁰⁸

*"Many thanks to Pete Calleja at PwC for the invitation and his assistant Tracey Williams for organising our arrangements – the Board is very grateful," [BoT CEO Karen] Payne writes.*¹⁰⁹

81. Together, what this indicates is that the Board of Taxation and the Advisory Panel had an unhealthily close relationship with *big audit*, and on exposure of that inappropriately close relationship, the Board of Taxation has been deeply embarrassed, and left scrambling to try to *airbrush history*, in an attempt to sanitise and conceal the manner in which they were thoroughly captured. **Websites have been scrubbed, members have fled, legitimate questions have been ignored, unsustainable denials made and, in the most extreme case, the entire Advisory Panel disbanded.**

GRAND MASTERS OF THE GRIFT

82. What is truly breath-taking in its audacity, is the full magnitude of this grift. To appreciate its full extent it is necessary, first, to debunk an assumption, and second, to observe the full extent of what has been achieved by *big audit*.

83. First, the assumption: **in theory** it is possible that representatives of *big audit* serve on bodies like the Board of Taxation, and the Tax Advisory Panel, so as to use their inside knowledge of tax avoidance practices to **support the federal government** in devising mechanisms to **combat tax avoidance**, and to create a more equitable tax regime. An assumption that, in theory, such individuals will be motivated by altruism and a desire to promote the public good. *Poachers turned gamekeepers* if you will.

83.1. **In practice**, however, this assumption is naïve, and is **demonstrably contradicted** by the evidence. In practice these individuals seek to use their positions to ensure their professional success and the **commercial success of the firms they represent**.

83.2. Those **firms make their money** by advising their clients on **how to pay less tax**; they do **not** make money by encouraging their clients to **pay more tax**. As such they have a deeply vested interest in ensuring that clients, like those designated "the dirty 34", who already pay little or no tax, **pay even less in future**. Certainly, they would endeavour to ensure that those clients *do not pay more* in future. We see evidence of that in their inability to manage conflicts of interest (particularly conflicts that arise from their work for governments at every level in Australia, and their commercial clients), their advocacy¹¹⁰ and, when that fails, we see evidence of that in their willingness to break the law.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ See: PwC Australia, (2 October, 2018), op cit.



84. With that in mind – that representatives of *big audit* serve on these Boards and Panels in order to facilitate tax avoidance – the full extent – the audacity – of what they have achieved is revealed: **first**, they are **permitted to lobby** the federal government to promote pernicious practices that promote a more inequitable society. **Secondly**, and not content with that, they have ensured that they do so not as ordinary, common lobbyists, but **under the imprimatur of a federal government authority**, with direct access to the Treasurer. **Third**, and still not content with what they have gained, they have **duped taxpayers into paying for the establishment and operation of their lobby group**. And **fourth**, in an arrangement in which the grift is honed to its highest possible state, they have **bamboozled taxpayers into paying them a salary for the privilege of being conned**. Credit where it is due, *big audit* has pulled-off the ultimate sting. They are Grand Masters of the grift.
85. It is respectfully **recommended** that this Inquiry recommend that entities like the **Board of Taxation, and an Advisory Panel**, should such an entity be re-established, be required to **appoint only members who do not have a vested interest in promoting or facilitating the interests of those who profit from an inequitable tax regime**. Membership should be confined to individuals who do not work advising clients on how to pay less tax. The *poacher turned gamekeeper* is a myth, and appointments to these entities should not perpetuate that myth.
86. Instead, these Boards and Panels should be reserved for **members of civil society and academics who specialise in tax**. Anyone who works for, or has worked for, *big audit*, or other accounting firms that provide tax advice, should be deemed irreconcilably conflicted, and automatically ineligible from becoming members. So too with representatives of investment firms that serve high net-worth or “ultra-high net-worth” individuals. Here the assumption should be that such firms do not meet the needs of their clients by finding ways to make them pay more tax. They build and maintain a client base by demonstrating their ability to support their clients to pay less tax.
87. In light of the clearly evident embarrassment with which the leadership of the current Board of Taxation has responded to media enquiries, and the unedifying manner in which they have responded, this Inquiry should regard that as evidence that the current Board is conflicted and, it is respectfully submitted, **this Inquiry should recommend that the current BoT be replaced**.

Revolving doors™

88. 'The revolving door' is the name given to a phenomenon in which individuals '**revolve**' from government to industry, and **from industry to government**.
89. In analysing this phenomenon, this submission proceeds from the following assumptions:
- 89.1. **Good government is preferable** to poor or bad government.
 - 89.2. Good government **requires mitigation of corruption**.
 - 89.3. The **revolving door** is, rightly, regarded as a form of **soft corruption**.
 - 89.4. The effects of **unresolved conflicts** of interest can lead to **corruption**.
 - 89.5. Together - conflicts of interest and the revolving door - **diminish the confidence and trust** that the community has in government, and in the institutions of government.
90. The revolving door (as it manifests when individuals revolve from government positions to industry) has long been recognised, and widely so,¹¹² as a means by which **commercial entities seek to influence government**, especially in respect of procurement and consultancy work. Under such arrangements, appointees are hired, specifically, in order to use their existing connections in their previous places of employment, to provide their new employers with an unfair advantage in winning procurement or consulting work, from whichever part of government they were formally employed by.
91. KPMG presents a case in point. In 2019, KPMG recruited senior Defence official Peter Corcoran to run its government cybersecurity business. He was **prohibited from working with Defence for one year**.¹¹³ As reported in the *Australian Financial Review*:

Mr Corcoran denied an allegation aired on the ABC program that he breached a 12-month cooling-off period preventing him from working for Defence in his first year at the firm and out of the department... Four Corners cited an email that stated: "Peter has a further six-month

¹¹¹ This section relies extensively on Andrew Schmulow, Jeff Hauser and Alberto Alemanno, (15 November, 2022), "Constructing an EU Ethics Oversight Authority. A White Paper," prepared pursuant to European Parliament Resolution of 16 September 2021 on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body (2020/2133(INI)), an invited submission to the Parliament of Europe, available at: Schmulow, Andrew and Hauser, Jeff and Alemanno, Alberto, Constructing an EU Ethics Oversight Authority (November 15, 2022). Available at SSRN: <<https://ssrn.com/abstract=4298158>> or: <<http://dx.doi.org/10.2139/ssrn.4298158>>.

¹¹² See for example, South Korea's *Public Service Ethics Act*, Act No 3250, 31 December 1981. Under the provisions of this Act, government officers are required to fulfil a three-year cooling-off period, before accepting work in a private company, whose business is "closely related to" the work that the government officer performed in the five-years prior to their resignation. See further; Youkyung Huh and Jung, Hongjoo, "Regulatory Structure and the Revolving Door Phenomenon in South Korea," Chap 12, in Andrew Godwin & Andrew Schmulow, eds., *The Cambridge Handbook of Twin Peaks Financial Regulation*, 2021, at p 233.

¹¹³ Angus Grigg, Jessica Longbottom, Jonathan Miller and Maddison Connaughton, (7 August, 2023), "Consulting firm KPMG overcharged Defence while raking in billions of dollars, whistleblowers say," *ABC News*, in 'Four Corners,' available at: <<https://www.abc.net.au/news/2023-08-07/kpmg-consultants-overcharging-defence-four-corners/102644518>>.



ban from working directly within Defence”, but a later email noted, “Peter continues to meet Defence personnel on the ‘side’, maintaining relationships and building new relationships”.¹¹⁴

And as reported by *Four Corners*:

Six months into the job, a senior partner congratulated Mr Corcoran in an email titled “Chocks away”, telling staff he was creating a “storm front of work” in other parts of government.¹¹⁵

In response, KPMG stated:

A spokesperson for KPMG said: “We have reviewed this matter and it is clear there was no breach of the contractual cooling-off period.”¹¹⁶

KPMG has not denied the veracity of the emails cited by *Four Corners*. Indicating that either KPMG failed to accurately assess whether a breach had occurred, or took an excessively legalistic approach. Either way, it is respectfully submitted to this Inquiry that continuing to meet with Defence personnel in order to build a commercial relationship, while six months of his 12-month cooling-off period had still to run, is a **breach of the spirit of the undertaking**, and that such conduct be regarded as **unethical, irrespective of whether or not it is illegal**.

92. A snapshot of senior public servants who have revolved to *big audit* is as follows¹¹⁷:

- Michael Cracroft, **Deloitte**, worked as Service NSW chief technology officer;
- Kym Peake, **EY**, worked as Victorian Department of Health and Human Services secretary;
- Simon Phemister, **PwC**, worked as Victorian Department of Jobs, Precincts and Regions secretary;
- Pradeep Philip, **Deloitte**, worked as policy director for prime minister Kevin Rudd, associate director general at the Queensland Department of Premier and Cabinet, and secretary of the Victorian Department of Health and Human Services;
- Tim Reardon, **PwC**, worked as NSW Department of Premier and Cabinet secretary and Transport for NSW secretary;
- Dean Yates, **EY**, former Victorian transport department secretary and special adviser on infrastructure to the Department of Premier and Cabinet;
- Mick Fuller, **PwC**, NSW Commissioner of Police;
- Jamie Briggs, **PwC**, former federal cities minister;
- Jane Quodling, **PwC**, former Australian Signals Directorate executive;
- Andrew Colvin, **Deloitte**, former Australian Federal Police commissioner;

¹¹⁴ Edmund Tadros, (22 August, 2023), “‘We’re value for money’: KPMG boss hits back over Defence bill,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/we-are-value-for-money-kpmg-boss-on-overbilling-claims-20230821-p5dy5a>>.

¹¹⁵ Angus Grigg, Jessica Longbottom, Jonathan Miller and Maddison Connaughton, (7 August, 2023), op cit.

¹¹⁶ Edmund Tadros, (6 August, 2023), “‘KPMG accused of inflating Defence invoices, billing for hours never worked,” *Australian Financial Review*, in ‘Companies, Professional Services,’ available at: <<https://www.afr.com/companies/professional-services/kpmg-accused-of-inflating-defence-invoices-billing-for-hours-never-worked-20230806-p5du9u>>.

¹¹⁷ Source: Peter Gearin and Anton Nilsson, (11 July, 2023), “The Mandarin and Crikey’s ‘revolving door’ list: How power bleeds between politics and the big four,” available at: <<https://www.themandarin.com.au/225003-one-big-happy-family-power-bleeds-between-politics-and-big-four/>>, and Samantha Hutchinson, (1 June, 2023), “Big four hiring ex-MPs, department heads a ‘conflict-of-interest risk’,” *Australian Financial Review*, in ‘Policy, Tax & Super,’ available at: <<https://www.afr.com/policy/tax-and-super/big-four-hiring-ex-mps-department-heads-a-conflict-of-interest-risk-20230519-p5d9qi>>.

- Mike Kaiser, **KPMG**, NBN executive;
- Craig Emerson, **KPMG**, former Gillard and Rudd government trade minister;
- Rodd Staples, **EY**, former NSW transport secretary;
- Christopher **Pyne**, **EY**, former Minister for Defence;
- Tony Canavan, **EY**, served as co-ordinator general in Victoria's Department of Premier and Cabinet;

93. The **Centre for Public Integrity** has advocated in favour of **closing the “revolving door”** while adding post-employment restrictions and other transparency measures.¹¹⁸

*“The consultancies know these [former executives] are very experienced and skilful and that they are very valuable to government, which makes them immediately attractive to the firm which can charge them back to government,” barrister [Integrity expert and former counsel assisting the NSW corruption watchdog, Geoffrey Watson, SC,] said.*¹¹⁹

94. It is respectfully submitted that this Inquiry **recommend the establishment of a working committee to devise a proposed framework for preventing the phenomenon of the revolving door.**

¹¹⁸ Centre for Public Integrity, (1 June, 2023), *Big four hiring ex-MPs, department heads a ‘conflict-of-interest risk’*, in ‘Media’, available at: <<https://publicintegrity.org.au/big-four-hiring-ex-mps-department-heads-a-conflict-of-interest-risk/>>.

¹¹⁹ Samantha Hutchinson, (1 June, 2023), op cit.



Recommendations

95. This submission makes a total of **seven recommendations** which it respectfully puts before this Inquiry. They are as follows:

95.1. A total **separation of audit** and other advisory services.

95.2. **Big audit be prohibited from owning legal practices**, and be required to divest themselves of those functions.

95.3. Firms that seek work from the federal government be required to show a **ten-year long 'clean slate'**.

95.3.1. Should it later transpire that an **attestation was defective**, that alone should be sufficient for the **immediate cancellation of the contract** of work, and a requirement for the **return of any fees** paid, with interest. Thereafter the firm should be added to a **'blacklist' for the next ten years**.

95.4. The **current law**¹²⁰ **be amended**, such that partnerships be limited in size to no more than 100 partners, thereby **forcing incorporation under the *Corporations Act***.

95.5. **The establishment of a regulatory oversight authority over consultancies** – at least in respect of those firms that consultant to government. Steps should be taken to ensure such an authority remains independent, and insulated from capture.

95.6. The **Board of Taxation, and** (if ever there is a re-constituted) **Advisory Panel, appoint only members who do not have a vested interest** in promoting or facilitating the interests of those who profit from an inequitable tax regime.

95.6.1. That the **current leadership of The Board of Taxation be replaced**.

95.7. The establishment of a working committee to devise a **proposed framework for preventing the phenomenon of the revolving door**.

¹²⁰ Section 115, *Corporations Act*, read with Regulation 2A.1.01, *Corporations Regulations 2001*, available at: <<https://www.legislation.gov.au/Details/F2016C00736>>.

Author's expertise

96. The author is an Australian academic, specialising in regulator efficacy; regulatory enforcement; combatting misconduct in retail financial markets; financial system regulation; the 'Twin Peaks' financial system regulatory model; the UK's Treating Customers Fairly framework (located within the UK's Twin Peaks regime); and financial regulatory theory. The author has written and published widely on ASIC. The author has provided advice on these topics to various governments and NGOs (South African National Treasury; New Zealand FMA; UK House of Commons House of Lords APPG; CGAP/World Bank; Parliament of Europe; Parliament of the Republic of South Korea; Ministry of Finance of the Federal Republic of Brazil etc) and, by invitation, to Australian Inquiries (Royal Commission of Inquiry into Misconduct in the Banking, Superannuation and Financial Services Industry; Senate Committees; Australian Law Reform Commission; Financial Regulator Assessment Authority; Commonwealth Treasury).

