



Submission to the
Parliamentary Joint Committee on
Corporations and Financial Services
on Ethics and Professional Accountability:
Structural Challenges in Audit, Assurance and
Consultancy Industry

August 2023

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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: corporations.joint@aph.gov.au

Dear Senator, and Committee Members

**Submission to the Australian Government Inquiry on Ethics and Professional Accountability:
Structural Challenges in the Audit, Assurance and Consultancy Industry**

The Institute of Public Accountants (IPA) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Corporations and Financial Services (Committee) relating to the inquiry on Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry.

IPA is one of the three professional accounting bodies in Australia, having been established in 1923, and represents over 50,000 accountants, business advisers, academics, and students throughout Australia and internationally. Three-quarters of the IPA's members work in or are advisers to small business and Small to Medium Enterprises (SMEs).

IPA acknowledges recent failings within the accounting profession and the consulting industry. In this submission IPA has sought to identify opportunities to rebuild trust through appropriate regulatory frameworks. IPA agrees that sensible reform can improve accountability across these sectors and should be pursued.

We believe the Committee should consider the outcomes and recommendations from other, relevant reviews and inquiries, some of which we mention below. In this regard, it may be preferable to consider reforms which can be implemented as a package across the short, medium, and long term.

IPA strongly believes that any reform proposals should be considered holistically and avoid disproportionate and duplicative regulatory burden, whilst also considering the cumulative burden. IPA further believes the egregious actions of a few should not taint the majority of those who uphold the highest professional and ethical standards.

Specific comments with respect to the terms of reference are contained below in the Annexure.

IPA welcomes the opportunity to discuss with the Committee any of the matters raised in this submission. Should you require additional information or have queries, please contact Vicki Stylianou

Yours faithfully

Vicki Stylianou
Group Executive Advocacy & Policy
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ANNEXURE

Term of reference 1: firm structures

It is the position of the IPA that requiring the separation of audit and non-audit functions of professional service firms would have a major impact on the profession. The egregious and largely isolated behaviour of some individuals does not warrant dramatic government intervention into the professional services market to require the splitting of firms.

Though public attention has been focussed on the inappropriate information sharing that has occurred, it is important to note that there is value in appropriate information sharing in specific circumstances. The efficiencies and shared expertise that result from audit and consulting functions being conducted from within the one firm are designed to improve client service.

Further, in the absence of the identification of a systemic issue that would be remedied by splitting audit and non-audit functions, a dramatic market intervention that would require splitting of firms would be unnecessary, unproductive and costly. It is the IPA's view that Government should be mindful of productivity impacts and not ignore the impact of increased costs merely because these costs may not be directly borne by government.

The pressure on auditors to ensure their work is completed diligently and with integrity is significant. In addition to the presence of regulators (which is discussed below), auditors are keenly aware that in the event of a corporate failure, or even a significant market event, their work may be closely scrutinised, including by class action law firms.

The prevalence of shareholder and investor class actions is increasing,¹ and this puts pressure on auditors who are frequently included as defendants in such proceedings. Accordingly, there is significant pressure on firms to strive for and achieve audit quality and to adhere to relevant professional standards. Notably, the recent issues in relation to professional services firms have largely related to non-auditing services. Separating the non-auditing services from the auditing services would not clearly improve the quality of auditing services.

If more restrictive controls are considered appropriate, it is the position of the IPA that the most obvious solution would be to restrict firms from providing audit services to non-audit clients (and vice versa).

In IPA's submission, a restriction of this type would avoid a perception that commercial pressure from non-auditing revenue might impact the provision of auditing services, without depriving each service of the benefits of co-location in the one firm.

Audit quality

With respect to audit we refer to the 2019 *Parliamentary Inquiry into the Regulation of Auditing in Australia* and to the consequent recommendations, which have been and are being implemented. For its submission, the IPA had the benefit of the research and analysis undertaken by the IPA Deakin University SME Research Centre. The concluding remarks from our submission are still relevant:

The IPA Deakin SME Research Centre focused on outlining four areas that we believe will transform the auditing industry as well as improve the overall quality of auditing in Australia. These four areas are changing the current distorted revenue-driven compensation culture in audit firms by

¹ Parliamentary Joint Committee on Corporations and Financial Services, *Litigation funding and the regulation of the class action industry* (December 2020), [4.5].

introducing alternative compensation schemes as well as through appropriate training; Australian Securities and Investments Commission (ASIC) should be required to reform and introduce a better monitoring and improved enforcement system of auditors and the financial reporting system and government should facilitate this process by assisting in building a suitable electronic lodgment system for the regulator that provides a quick translation of financial information into a proper database; introduce a requirement within the *Corporations Act 2001* (Corporations Act) that requires auditors to be responsible for reporting on the internal control systems of firms as required in the US under SOX404, and; ASIC could introduce a “rating” system of auditors. These four areas are derived from the research literature and from investigations by some members of the Research Centre who have been involved in producing research reports for the Australian Accounting Standards Board (AASB).

Improvements to audit quality would obviate the need to consider imposing statutory restrictions on firm structures.

Term of reference 2: governance obligations and structures

Probity standards

It is the position of the IPA that the goal of improving probity standards within professional services firms is better achieved by focusing on reforms that require greater transparency from these firms. In IPA’s submission this approach is less disruptive, and more effective, than any proposed structural change separating audit and non-audit functions.

IPA’s position is that large professional firms could be subject to clearer and more comprehensive governance standards, such as those which apply in respect of ASX listed companies (modified as necessary to reflect the absence of a need to protect shareholders and capital markets). It would also be possible to mandate requirements for disclosure of partner remuneration and reports of serious misconduct. In IPA’s view, this focus on individual responsibility would facilitate improved probity standards without prejudicing participants. However, we note that the extension of responsibility and accountability to entity membership is a welcome complement to ensure that staff and other entity level participants are subject to appropriate regulatory standards and requirements.

As members of a profession, accountants are individually responsible for their own professional conduct. While governance standards and cultural norms internal to a firm clearly have a role to play, government’s role in ensuring that criminal and civil pecuniary penalties are appropriately framed and consistently applied both supports good culture and deters unlawful conduct. Given this, a well-resourced and effective regulator is essential. IPA has often been critical of the performance and lack of transparency of ASIC.

Corporate regulator

Whilst the ongoing scrutiny of ASIC over a series of reviews, Royal Commission and inquiries is welcome, there is also a need to ensure that genuine progress is made in considering and implementing recommendations. For instance, the December 2015 Panel Report — *Fit for the Future: A Capability Review of ASIC* offered 34 recommendations to improve the efficiency and effectiveness of ASIC across a range of its operations, to a global best practice level.

Since 2015, the IPA, like many other stakeholders, has been involved in consultation on ASIC’s KPI metrics, an assessment of its performance against these KPIs, the Cost Recovery Implementation Statement (CRIS), the Financial Regulator Assessment Authority (FRAA) review, Prime Minister &

Cabinet's regulator performance assessment, 'Hayne Royal Commission', Australian Law Reform Commission (ALRC) reviews and more recently the inquiry by the Senate Standing Committees on Economics, *Capacity and capability of ASIC to undertake investigation and enforcement action arising from alleged misconduct*, with submissions made in February 2023.

Although the Hayne Royal Commission and other reviews have identified clear pathways for improvement in ASIC's capability and performance, these have not been effectively actioned and material issues remain. The industry funding model and CRIS process have resulted in a materially increased financial burden on industry participants, without evidence that those funds are being effectively spent. As the IPA has repeatedly stated in its submissions to various inquiries, greater transparency and accountability are needed from ASIC to properly assess the allocation of funds against its functions, especially supervision and enforcement which make up the bulk of the costs.

Public Interest Advocate

The provision of services to public and private sector clients could also be improved through instituting mandated changes to contract terms. Changes could include requiring consultants to expressly accept fiduciary duties to their clients, and to appoint, if required, a public interest advocate on any major contract. The public interest advocate could be required to be a professional subject to a relevant code of conduct (or another ethical code approved by the Minister), and to be required to report to a central clearing-house regulator of the accounting profession (discussed further below) on adherence to probity standards. The public interest advocate could be an additional pathway through which any concerns about the conduct of an engagement could be raised and would support improved whistleblower policies and programs (discussed further below).

Term of reference 3: mechanisms for monitoring and sanctioning misconduct and poor performance

a. Accountability frameworks for governance obligations

Accountability framework

The Australian accounting profession operates in a co-regulatory environment with multiple regulators and standard setters, including the Accounting Professional and Ethical Standards Board (APESB), AASB, Auditing and Assurance Standards Board (AUASB), Tax Practitioners Board (TPB), Australian Taxation Office (ATO), Financial Reporting Council (FRC), and ASIC. There is also the Professional Standards Councils (PSC) operating pursuant to Professional Standards Legislation. All three professional accounting bodies have a Professional Standards Scheme which has mandatory reporting requirements and provides another layer of scrutiny (see below).

Governance obligations – statutory and professional

IPA Members are regulated under IPA's By-laws and Constitution which include the need to comply with all relevant standards issued by the regulators and standard setters. In addition, the services provided by our Members are also subject to review by applicable regulatory authorities depending on the statutory registrations they hold (which depends on the services they provide). For most IPA Members, this often includes external regulatory oversight by ASIC, ATO, and/or TPB. In some cases, IPA Members may be subject to two or three codes of ethics, including under the *Tax Agent Services Act 2009*, Corporations Act, and the *APES 110 Code of Ethics for Professional Accountants* (Code of Ethics). Members may hold a statutory registration as a Registered Tax Agent, Registered BAS Agent, Registered Liquidator, Registered Trustee in Bankruptcy, financial adviser (including authorised representative or credit provider), Registered Company Auditor, or Registered SMSF Auditor.

Even though the professional accounting bodies do not have the same legislative enforcement powers as ASIC, the objectives of regulating, improving behaviour and culture, increasing professionalism (including integrity and competence), and serving the public interest are all the same. This is essentially a co-regulatory model which we believe should be given due weight. Instead, our Members are subject to overlapping and at times conflicting requirements, creating additional compliance costs.

Accounting Professional and Ethical Standards

All Members of the three professional accounting bodies, being IPA, Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia, are required to adhere to the APES 110 Code of Ethics in addition to their respective Constitutions and By-laws. This applies to all Members regardless of whether they are in practice, work in business, corporates, academia, public sector and so on.

Members of the three professional accounting bodies are required to comply with the full range of applicable professional and ethical standards issued by APESB. These standards relate to quality management for firms that provide non-assurance services, audit and assurance services, taxation, insolvency, outsourcing and numerous others. They cover supervision, management of conflicts of interest, risk management, and so on.

There is also mandatory Continuing Professional Development which includes extensive training in ethics. IPA offers a bespoke ethics course developed by Deakin University, as well as other training across a range of platforms.

IPA also has an extensive quality assurance program which monitors and assesses Member compliance with the standards as well as other regulatory requirements imposed by statutory agencies. The results of the program, as well as improvements, are reported to APESB, FRC and PSC.

Complaints and discipline

IPA has an independent complaints and disciplinary system and processes to enforce compliance. If Members become non-compliant their membership may be suspended or forfeited. These requirements are also monitored and enforced by the International Federation of Accountants (IFAC) and all member bodies (including IPA, CA ANZ and CPA Australia) must comply with the Statement of Member Obligations.

However, as a non-statutory body, the IPA is limited in its co-regulatory function, and this is particularly evident in the operation of our investigation and disciplinary function. We are restrained by the inability to compel evidence from Members in a disciplinary matter. We are able to breach Members under our By-laws for not complying with a request for information, however, this gap enables Members to refuse to disclose what might be incriminating evidence. IPA believes that a reasonably simple amendment to the Corporations Act or the Corporations Regulations could provide a major boost to consumer protection through enhanced regulatory oversight. We are not aware of any disadvantages to this proposed reform.

Professional Standards Scheme and Legislation

IPA operates a scheme under Professional Standards Legislation with mandatory reporting requirements to the PSC, established by the Australian state and territory governments to promote professional standards and consumer protection.

An excerpt from the PSC/ Professional Standards Authority website follows:

Protect consumers.

We demand high levels of professional standards and practices from those that participate in Professional Standards Schemes. We expect associations within our regulated communities to make sure their members uphold these standards through education and guidance, monitoring and enforcement, and other measures. This plays an important role in protecting consumers.

Further information can be found at, [Welcome to the Professional Standards Councils | Professional Standards Councils \(psc.gov.au\)](https://psc.gov.au)

b. Coverage of disciplinary bodies

Gaps in coverage: unregulated professional services workers

Of major concern to the IPA, are the thousands of people who can legally call themselves 'accountant' and provide numerous services to the public, without being subject to any accountability framework or governance requirements. This is a considerable regulatory gap for those who are not members of a professional accounting body and who hold no statutory registration. These people are also able to operate in the consulting industry without regulatory requirements or scrutiny.

One possible model is to define the term 'accountant' at law, which would have the flow on effect of capturing at least some of these people in an appropriate regulatory framework, thereby enhancing consumer protection, accountability for government projects, and improving regulatory efficiency.

With respect to consultants, we note that even though the Institute of Management Consultants has developed an ethical code,² consultants are generally not required to be members and so are largely not subject to any ethical standards. This position is understandable from a historical perspective given that consultants do not present themselves as having particular qualifications and are engaged by a generally sophisticated client base to perform a diverse range of work, to which a single ethical code would not necessarily be appropriate. Clients are free to engage consultants on the contractual terms that are agreed, including terms relating to probity. However, recent issues demonstrate how the reliance upon consultants by the Australian public and private sectors is such that the public interest requires consultants to be subject to stricter standards.

Given the breadth of consulting work, it may not be practicable to mandate that persons providing consulting services must comply with a particular code. However, access to particular kinds of work, such as consulting for government or ASX listed entities, could be restricted to consultants who register with an appropriate professional body or are otherwise subject to regulatory oversight. Any ethical framework could be given legislative force and include penalties for non-compliance.

It may be more expedient to strengthen the government procurement processes rather than to try and regulate such a diverse group of consultants. Consideration could be given to whether the Commonwealth Procurement Rules require further review.

Information sharing

² Institute of Management Consultants, Code of Ethics <<https://imc.org.au/about/code-of-ethics/>>.

As noted above, IPA has a rigorous complaints management system that considers allegations made against our Members relating to their professional conduct. The majority of complaints relate to a client service a Member has provided. Complaints may also originate from other regulatory activities such as IPA's quality assurance program or compliance programs administered by external regulators such as ASIC, ATO and/or the TPB. An IPA Member may also be a member of another professional association such as CA ANZ or CPA Australia.

Where an IPA Member holds multiple professional memberships and/or statutory registrations, their fitness and propriety and professional conduct may be considered initially by IPA and then by another body or vice versa.

At times, there are overlaps and gaps in the coverage of disciplinary bodies. The overlaps are unavoidable as each body has governance requirements for which it needs to consider a professional accountant's ongoing membership or registration. There is opportunity to fill the gaps by enabling better information sharing between bodies that consider a professional accountant's conduct.

Set out below are two representative examples:

1. TPB is able to share the outcome of its investigation findings with IPA where it knows a registered tax agent is an IPA Member. This provides a benefit to IPA in terms of expediency and efficiency, thereby enabling IPA to conduct its own investigation against the applicable Code of Ethics and rules in a timely manner. In addition, IPA Members are required to self-disclose.

A safeguard mechanism to fill this gap would be for TPB to periodically notify all professional associations, regardless of membership affiliations, of the name of the registered tax agents that have been sanctioned. Each professional association can then take appropriate action and/or be alert to risk managing any approaches taken by that person to join their association. We acknowledge that TPB's register has improved in recent times making it possible to more readily identify tax agents that have been suspended or terminated.

2. While TPB is able to share investigation findings with IPA, ASIC is constrained by legislation from being able to do so.

For example, ASIC often issues media releases advising of its regulatory outcomes without necessarily naming individuals. Where names are mentioned in media releases, we search our database to determine whether the individual is an IPA Member. IPA must also rely on self-disclosure in these circumstances or a complaint from the public. We have requested information sharing with ASIC however, we have been advised that ASIC is not able to share information due to privacy issues.

Any proposed reform of information sharing provisions should be informed by the outcome of the Attorney-General's Department's review of Commonwealth secrecy provisions, noting that the secrecy provisions must be balanced against the safety of the public.

Reform options

A stronger accountability and disciplinary framework could build community trust and improve the quality of services. The existing accountability frameworks are complex, largely 'soft' or 'quasi-regulatory' and provide significant opportunities for refinement and improvement.

One option to improve the effectiveness of the overall framework would be to give legislative force to codes of conduct applicable to members of the IPA, CA ANZ and CPA Australia. Under this model, the professional accounting bodies could report directly to the FRC, which would be invested with a function to monitor, regulate and improve conduct. This could improve overall regulatory efficiency

as the professional accounting bodies are already reporting to the FRC (including quarterly, annual and ad hoc reports on our quality assurance of members, disciplinary function, audit and other relevant initiatives). It would obviate the need for overlapping standard setters such as the APESB. We note that the standards promulgated by the APESB do not have the force of law, and in fact are derived from IFAC and its standard setting bodies including the International Ethics Standards Board for Accountants (IESBA). Standards issued by IESBA, including the Code of Ethics, are applied worldwide by member bodies of IFAC. For more information on IFAC, refer to,

[Homepage | IFAC](#)

This approach is consistent with that in the United Kingdom, where their FRC sets accounting standards for the UK and Ireland. In IPA's submission this evolution in Australia is appropriate given the maturity of the accounting profession and the accounting standards. This proposed model could involve the establishment of FRC as the single regulatory clearing-house for the accounting profession, with compulsory information gathering and information sharing powers and a power to sanction non-compliance with information gathering. FRC could then delegate complaint handling to each of the professional accounting bodies, to be undertaken either in compliance with their individual by-laws or a joint approach or joint framework could be considered. By subjecting professional services to more effective regulatory scrutiny, public faith in the profession could be restored and misconduct deterred.

c. Self-reporting policies and practice

In addition to complying with the APES 110 Code of Ethics, IPA By-law 2.1.2 requires Members to conduct themselves in a manner consistent with the good reputation of the IPA and refrain from any conduct which might bring discredit to both the IPA and the accounting profession.

Membership applicants who have incurred a criminal conviction in Australia or overseas are required to declare this information on their membership application and/or Public Practice Certificate (PPC) application, or if already a Member, notify the IPA as soon as practicable. In addition, if a Membership applicant or a Member has had actions brought against them by a professional body or a regulatory body including, but not limited to, ASIC or the TPB, or is an undischarged Bankrupt or has been a Director of an entity subject to any form of external administration, they are obliged to formally advise the IPA in writing as soon as practicable of the nature of the action and any penalty imposed. If already a Member and a Member fails to notify the IPA of such matters, disciplinary action or forfeiture of membership may be actioned by the Board, CEO or delegated officer.

Further, IPA By-law 3.1.16 states that Members must at all times be of good fame, integrity and character. Members who are alleged to not be of good fame, integrity and character, who are alleged to have breached APES 110 shall be subject to the IPA's investigation and discipline process.

d. Whistle-blower policies and established pathways to report

Professional accountants in business and public practice are required to comply with section 260 and section 360 of APES 110 respectively. These sections contain specific requirements relating to Responding to Non-Compliance with Laws and Regulations. This requires all Members to report any actual or potential material breaches of laws and regulations to the relevant public authority (eg ASIC, ATO).

IPA supports its Members with compliance with these requirements through foundation education courses, professional development activities, supporting materials such as IPA's Professional Practice Manual and IPA's Professional Practice Quality and Risk Management Manual. Where required, IPA

staff also assist with guiding Members on their specific circumstances to ensure their privacy and confidentiality obligations to their client/employer are not compromised.

Despite recent reforms to whistleblowing protections, serious misconduct is only belatedly coming to light, in part because the reforms have not sufficiently encouraged whistleblowing.

Whistleblowing is critical because it has the dual effect of halting serious misconduct and creating transparency that engenders good professional conduct. An effective whistleblowing regime builds community trust and confidence by ensuring that misconduct is detected early, prior to serious harm.

There are opportunities to consider improvements to established whistleblowing processes. State and federal whistleblowing regimes overlap and are inconsistent. Recent commentary has suggested that whistleblowing regimes are underutilised and ineffective.³

Given this environment, IPA submits that further consideration should be given to providing rewards/bounties to whistleblowers. The Joint Parliamentary Committee on Corporations and Financial Services has previously recommended reform to provide for the payment of rewards to whistleblowers whose disclosures led to the imposition of a penalty on a body.⁴ In the government response, the payment of rewards was identified as an issue to be considered in the post-implementation review of the reforms that were adopted.⁵

e. Interaction with and self-referral to regulatory bodies

f. Interaction between regulatory bodies

IPA's practice is to provide disclosure of a Member's misconduct to other regulatory bodies where required by law and in the context of considering our privacy obligations to our Members. IPA has published guidance on situations where disclosure of Member information is provided to third parties.

In November 2018, the then Assistant Treasurer requested the FRC conduct an assessment into the adequacy of auditor disciplinary functions in Australia. In March 2019, the FRC published its report, [Auditor Disciplinary Processes: Review](#). Relevantly, the review recommended professional bodies should refer to ASIC all matters relating to registered company auditors where there appears there may be a breach of the law. IPA has reviewed its processes to ensure effective referral processes to ASIC are maintained.

As noted above, IPA's engagement with regulatory bodies is diverse and active and includes representation at numerous forums, committees, and consultations where regulatory and other issues and proposed reforms are discussed.

Term of reference 4: related matters

Government procurement and SMEs

³ <https://www.hrlc.org.au/news/2023/8/28/report-whistleblower-laws-are-failing>

⁴ Joint Parliamentary Committee on Corporations and Financial Services, *Whistleblower Protections* (September 2017), Chapter 11, [11.58]-[11.59] ([link](#)).

⁵ Australian Government Response to the Parliamentary Joint Committee on Corporations and Financial Services report into whistleblower protections in the corporate, public and not-for-profit sectors (April 2019) ([link](#)).

In addition to considering regulatory options noted above, government should seek to address the issue of concentration of accounting, auditing and consulting services through its procurement decisions as a customer.

Currently, SME providers face significant barriers to competing for government work. There may be some work that larger providers are uniquely well placed to perform, but this is exceptional. However, SME firms are generally required to comply with complex tender and panel requirements in order to compete for government works. These requirements are often formulated without due regard for the material administrative burden they impose on providers, and the associated costs that providers naturally seek to recover during the course of the provision of services to government. As larger firms are better placed to invest in tender and panel processes, the result is that these processes prevent government from purchasing from SME providers even where those providers would be able to offer the best value for money.

In an effort to address this, government has established targets for 20% of contracts by value being sourced from SMEs.⁶ However, targets of these kinds have not always been effective, with a report from the Australian National Audit Office finding that two of the Big 4 firms had been classified as SMEs.⁷ Additionally, while this target is an appropriate goal for government to set, it should not distract from the need to ensure that procurement processes should not structurally favour large firms that have well-resourced marketing departments.

It would also be informative to identify how the public sector assesses potential conflicts of interest, especially between entities providing government services and their corporate clients.

⁶ Department of Finance, *Commonwealth Procurement Rules* (13 June 2023), [5.6].

⁷ Australian National Audit Office, *Australian Government Procurement Contract Reporting* (Report No.19 2017-18), [12.8].