

21 August 2024

Parliamentary Joint Committee on Corporations and Financial Services | *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*

Submission¹ of Meredith Beattie

A. Committee invitation

1. I have reviewed the Transcript of the hearing on 2 August 2024 and note that the Chair of the Committee, Senator the Hon. Deborah O'Neill, invited me to:
 - (a) consider and comment upon the Submissions that have been made to the Committee by Professor Allan Fels AO, Professor Graeme Samuel AC and Treasury; and
 - (b) address any matters which I considered would be of interest to the Committee.

In light of this, in this Submission, I have not addressed the evidence given to the Committee by various other witnesses on 2 August 2024.
2. As to 1(a), across all of these Submissions is an acknowledgement that the issues in relation to the recent Tax Practitioners Board (TPB) investigation into the activities of Mr Collins and PwC Australia support the need for something more than self-regulation.² Professor Samuel suggests that what is needed is the imposition by government of regulatory disciplines upon firms and corporations to ensure the profit motive does not override adherence to “*government policy and community expectations*”.³ Treasury has identified that potential areas of improved regulatory oversight could include the conduct and governance of firms and the role of legal professional privilege (LPP) in Commonwealth investigations.⁴ At Section B below, I have outlined some suggested proposals for the Committee's consideration to address issues raised by the Committee and in the Submissions from Professors Fels and Samuel as well as Treasury.
3. As to 1(b), I consider that the matters outlined in 4(a) to 4(c) should be of interest to the Committee in that they reflect the cultural and behavioural problems which existed within sections of the firm's international tax practice.
4. These problems are apparent from:
 - (a) The material that came to light in the ATO's investigation between 2016 and 2020 into the structures on which PwC Australia advised regarding, primarily, the Multinational Anti-avoidance Law. This investigation involved the issuing of Notices by the ATO, the review of over 400,000 documents and the production of over 140,000 documents to the ATO. It gave rise to an investigation into matters under the Promoter Penalty Laws commencing in 2019 and concluding in 2020 without further action.

¹ This Submission has been prepared based on my own recollections, publicly available information and documents (including evidence given and documents lodged in the course of the Committee's Inquiry), and a set of materials made available to me by PwC Australia's lawyers for the purposes of responding to the Summons issued by the Committee on 22 July 2024.

² See, for example, Professor Allan Fels AO, Submission No. 52 to Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, (11 September 2023), page 7.

³ Professor Graeme Samuel AC, Submission No. 1 to Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, (Undated) (Samuel Submission), page 4.

⁴ Treasury, Submission No. 50 to Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, (September 2023) (Treasury Submission), page 21.

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This issue goes to the legality of structures on which sections of the firm's international tax practice advised and the failure to engage proactively with the ATO at the time that the relevant structures were being contemplated.

- (b) PwC Australia's initial failure to produce all relevant material to the ATO in answer to notices issued as part of the investigation referred to in (a) above because of instructions provided by the firm's Tax Group in relation to LPP. This arose because some within the firm's international tax practice had acted contrary to the firm's protocols and the terms of client engagements. As a result, between May 2020 and September 2021, the ATO issued five position papers to which the firm responded between June 2020 and November 2021. In November 2022, the ATO notified the firm that it would apply an administrative penalty for false and misleading statements from one of those position papers. A settlement agreement reflecting this was signed in March 2023.

This issue goes to the appropriate use of LPP.⁵

- (c) The TPB investigation, which started as an investigation in 2021 into the activities of Mr Collins (and others) and PwC Australia regarding potential failures to comply with provisions of the Code of Professional Conduct (**Code**) in the *Tax Agent Services Act 2009* (Cth). As a result of this investigation, the TPB made allegations against Mr Collins and against the firm that they had breached provisions of the Code. The allegations against the firm were set out in Submissions in February 2022 and subsequently revised in August 2022. In October 2022, the TPB's Board Conduct Committee made findings based on the TPB Investigation Team's Submissions and those made by Mr Collins and PwC Australia in response in September 2022.

This issue goes to confidentiality breaches by Mr Collins and the firm's failure to have in place specific systems to monitor compliance with confidentiality agreements of the kind breached by Mr Collins.

5. Each of 4(a) to 4(c) is an example of the cultural and behavioural problems giving rise to the concerns identified by the Committee, Professors Fels and Samuel as well as Treasury.

B. Proposals for reform

6. Having considered the issues raised by the Committee and in the Submissions of Professors Fels and Samuel as well as Treasury, I have summarised at paragraphs 7 to 10 below, some suggestions for regulatory and other reform.⁶
7. **Regulatory oversight:** The Committee may wish to recommend the introduction of regulatory oversight of, or the imposition of annual regulatory requirements upon, large accounting firms which could include:
- (a) An annual regulatory assessment of a firm's conflict of interest management process by a nominated regulator. This would go some way to address some of the concerns raised by Dr Mulino on 2 August 2024.⁷

⁵ Separately, the Federal Court litigation in September 2021 (brought by the Commissioner of Taxation against PwC Australia and others) and determined in March 2022 was a test case highlighting the complexities of LPP claims in the context of a multi-disciplinary partnership involved in the delivery of legal services in a cross-border transaction.

⁶ In doing so, I acknowledge the limitations on the Federal Government's ability to implement some of these reforms for Constitutional and other reasons. These are suggestions which would require further modelling and consideration for the purposes of implementation.

⁷ Evidence to Parliamentary Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Canberra, 2 August 2024, pages 44-45 (Ms Meredith Beattie).

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- (b) An annual certification to a nominated regulator indicating the firm's compliance with a set of standards referable to government and/or community expectations. This would assist in addressing some of the issues identified by Professor Samuel.⁸
 - (c) A mechanism for the regulation of the delivery of consulting services based on a set of minimum performance standards.
 - (d) The establishment of a single body empowered to make determinations regarding investigations conducted by existing regulatory/professional bodies with powers to deal with complaints about professional services delivery by large accounting firms. This may be an efficient means of addressing what Professor Samuel sees as a need for "*activity oversight, transparency and resultant accountability*".⁹
8. **Governance – partnership structure:** In response to Dr Mulino's comments on 2 August 2024,¹⁰ I do not think the partnership model needs to be deconstructed in favour of a corporate vehicle. I believe the Committee may wish to consider recommending that governance bodies of large accounting firms comprise at least 50% external membership (with an independent chair) and be responsible for the selection of a firm's CEO and its management. This would go some way to addressing cultural problems of the kind identified by Dr Switkowski.¹¹
9. **The role of LPP claims in Commonwealth investigations:** The Treasury Submission identifies this as an issue in Commonwealth investigations.¹² Mr Hirschhorn raised concerns in relation to LPP claims in the context of the investigation of "*push*" transactions (i.e. transactions effectively initiated by the adviser for taxation purposes, rather than driven by legitimate commercial needs).¹³ This has been a longstanding issue that needs careful consideration to balance the interests of parties claiming LPP and those of the ATO wishing to access information to determine if "*push*" transactions have occurred.
10. **Consulting services for government:** I do not think it "*should be rare indeed*" for government to require the assistance of external consultants, as suggested by Professor Samuel.¹⁴ There are significant benefits for government in obtaining advice from leading external experts in the field of expertise or discipline that is required. The key issues for government are to ensure they are obtaining value for money and quality delivery that is fit for purpose through the effective use of the terms of any tender process, pre-qualification scheme and/or panel arrangement.

⁸ Perhaps by reference to the "*should I do this*" test referenced in Professor Samuel's supplementary Submission: Professor Graeme Samuel AC, Submission No. 1 (Supplementary Submission) to Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*, (28 February 2024), page 6.

⁹ Samuel Submission, page 4.

¹⁰ Evidence to Parliamentary Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Canberra, 2 August 2024, pages 44-45 (Ms Meredith Beattie).

¹¹ See Dr Ziggy Switkowski, *Review of Governance, Culture and Accountability at PwC Australia* (August 2023), page 4.

¹² Treasury Submission, page 21.

¹³ Evidence to Parliamentary Joint Committee on Corporations and Financial Services, Commonwealth of Australia, Canberra, 22 April 2024, page 54 (Mr Jeremy Hirschhorn, Second Commissioner, Client Engagement Group, ATO).

¹⁴ Samuel Submission, pages 1-3.