

BCA responses to Questions on Notice for 23 February 2024 hearing

Senate Standing Committees on Finance and Public Administration – Inquiry into management and assurance of integrity by consulting services

Question

CHAIR: ... We also have to consider that you have four big organisations, and perhaps a couple more, that are effectively operating in an environment with very little regulatory oversight as a consultant but using the infrastructure of someone else. I am happy to use the existing infrastructure; I am not looking to create new regulation where I don't need to. I am happy to use existing infrastructure and systems. In fact, that would be my first choice. How might we use the existing systems to deal with some of the issues we have, particularly in scale of some of these organisations? Is a thousand partners, which is the way that the partnership law is structured now, an appropriate number? For legal professions it's limited to 500, for example. That's why I'm asking those questions. I think it's a question to ask in the context and scale of these businesses, which have grown very rapidly. We have had evidence to indicate that. And they are important for your members to provide service.

...

CHAIR: I will take you to one of your recommendations. The last dot point says:

Greater transparency to improve individual, organisation and industry accountability for performance and conduct, understanding the procurement process and treatment of potential conflicts of interest.

That's point 5 in the overview of your submission. It goes to the point I've just been making about the structure of the organisations. Rather than take up a whole heap of time now, I'll give this to you as a homework item. You've heard my questions and, hopefully, understand the reason I'm asking them. You're a business organisation. You are there to represent the perspectives of business. You've got a range of different membership types and structures. I would expect that you would have a perspective on those sorts of things. If you could provide that to the committee in the context of the questions I've been asking, I would really appreciate it.

Mr Black: That would be a pleasure. I am happy to do that.

Answer

All firms must meet their legal obligations and where arrangements do not keep pace with community norms, they should be reviewed.

The BCA submission to this inquiry makes 11 recommendations.

One of those recommendations includes a formalised process for managing conflicts of interest in government procurement processes.

The BCA also considers that there should be a publicly available register for serious breaches to the proposed conflict of interest management process. This will help uphold accountability, safeguard integrity and maintain public trust in procurement.

If the Committee or Parliament were to propose additional regulatory oversight of partnerships that consult to government, the BCA would recommend thorough and open public consultation with respect to what form this might take.

Question

Senator BARBARA POCKOCK: It is okay, Mr Black. I am going to take that as a no. My time is short. Do you support publication of the full general purpose financial reporting requirements by the big four, in line with what is required of other large entities?

Mr Black: Again, I'm happy to take that question on notice.

Answer

Fundamentally, the BCA favours transparency.

Large auditors, including Deloitte, EY, KPMG and PwC, prepare transparency reports which must include financial information around total revenue, audit-related revenue and revenue from other services provided by the auditor.

If the Committee or Parliament were to propose enhanced financial reporting requirements for large firms, the BCA would recommend further consideration of what form this should take and the information to be disclosed.

Question

Senator O'NEILL: Thank you. Mr Stojanovski, what is your role, and can you answer the same question?

Mr Stojanovski: I'm deputy chief economist. I would prefer not to if that's okay.

Senator O'NEILL: Just take that on notice and you might want to provide it in confidence to the committee.

Answer

Mr Stojanovski is neither a member of the BCA executive nor in a public leadership position. Therefore, the BCA requests that the Committee does not press this matter. If the Committee were to resolve that it still required this information, we would request that it be treated in a confidential manner.

Question

Senator O'NEILL: You're relying on your incidental interaction with the business community?

Mr Black: No, it's not incidental interaction. We deliberately sought the views of non-consulting members because that's a key part of all of the policy that we—

Senator O'NEILL: From which sectors?

Mr Black: From as many sectors as we could. I think it's fair to say from across the length and breadth of our broad membership.

Senator O'NEILL: Could you take that on notice. Whether you need to provide that to us in confidence, we will discern at a later point of time, but I'd like a sense of that level of consultation. I will take you now to the Di Stefano article. Can you provide us with a list of the people who are in the room and the firms that were represented at that meeting?

Mr Black: I'm happy to, obviously, confirm that the people who are listed in the article were present.

Senator O'NEILL: Okay. That means that PwC's representatives were Mr Sam Garland and Sean Berry, the banking capital markets leader and the director of strategy, risk and reputation. Is that correct?

Mr Black: I believe that's correct, yes.

Senator O'NEILL: Do they have any particular responsibilities about ethics and the reform of PwC's culture?

Mr Black: You'd have to put that question to PwC.

Senator O'NEILL: You didn't check that before they became the participants? Did you just accept the nominations of the individual seven conglomerates?

Mr Black: We did, yes.

Senator O'NEILL: So they just sent who they wanted?

Mr Black: They did.

Senator O'NEILL: It would be interesting for us to look at that.

Mr Black: I should just make a point in that regard. What we always do when we're preparing submissions and we have a meeting of that nature is that we go to a senior source—and I couldn't tell you off the top of my head where we went.

Senator O'NEILL: You went to Mr Burrowes?

Mr Black: I assume that was the case but I can't verify that. We ask that person either to attend or to send an appropriate delegate.

Senator O'NEILL: If that was your process, if you could confirm it, that would be helpful. I understand there was a draft version of the submission that you ultimately made to this committee that was provided to attendees.

Answer

BCA consultation with respect to any formal submission extends across the BCA membership base. In this scenario, our consultation spanned accommodation and food services; construction; financial and insurance services; information, media and telecommunications; manufacturing; mining; professional, scientific and technical services; and retail trade industries.

With respect to the 6 February meeting, which was attended by the firms referenced in the relevant newspaper article, the BCA contacted Chief Executives to request a meeting to discuss the BCA submission. Chief Executives were welcome to appoint a delegate if they were unavailable.

Question

Senator O'NEILL: We can take that concern on board and give it our proper consideration as a committee. Thank you, Mr Black. Did any of the member advocates' recommendations that were in the draft—would you consider any of them were watered down or removed as a consequence of the Zoom meeting with the big seven?

Mr Black: No, I would not say that. Ultimately the recommendations that we made were made on our view as to what the evidence—the information that we'd been provided across multiple consultations with multiple members, consulting and non-consulting, but also our own views internally as to what we thought the best submissions were. Now, there are changes, and I'm happy to talk you through those changes because I think some of them are quite important.

Senator O'NEILL: I don't think we're going to have time but I'd be really happy to seek further information.

Mr Black: Can I just take—

Senator O'NEILL: I'm afraid I've got to get on to other things because I know the chair is going to wind me up any moment.

Mr Black: But this is quite important because it goes to—

Senator O'NEILL: I know it is. Everything I want to ask you is also important, Mr Black. Can I ask you to give me the information you're offering but please do it on notice in a document, and I commit to you that I will read it carefully.

Mr Black: Certainly.

Answer

The BCA tabled a copy of the referenced draft submission with the Committee at the hearing. The final BCA submission seeks to respond directly to the terms of reference. Changes to recommendations are a new recommendation 5 and changes to recommendations 1 and 6 to 11.

Question

Senator O'NEILL: With the meeting that is reported, it is indicated that there were complaints about this inquiry's hunger for firms to disclose executive and partner pay details. Is that correct or incorrect?

Mr Black: Again, that goes to a point—I don't feel it is appropriate for me, as somebody who relies on the quality and candour of information that is given to me in confidence by members, to disclose that. It will affect my capacity to give evidence before future inquiries if members are going to take that concern.

Senator O'NEILL: Can I put you, Mr Black, that if we don't get clear and unadulterated evidence from you, we are crimped in our capacity as representatives of the Australian people here in the Senate to do our jobs. I will put to you, Mr Black, that while your relationships with your business members and the big seven are important, they don't trump the national interest and the public interest. So I'm going to leave you with the question that I've asked and ask you to, on notice, reply if you feel that you don't want to give an answer now.

Mr Black: Okay. But I would stress that we agree the overarching interests of the Australian people and the Australian public are what drives our preparation of policy. We've put together a submission that we genuinely believe is the right submission.

Answer

The BCA submission to this inquiry responds directly to the terms of reference, with commentary incorporating perspectives from across the broad spectrum of the BCA's membership.

Question

Senator O'NEILL: Yes, and I want to come to your submission, thank you. On notice, could you have a look at the submission from the APESB Board, where they've clearly indicated a very significant shift in the nature of the big seven, and the big four in particular, as to how they operate—80 per cent of their revenue coming from consulting. Now, while that might address the issue of the need for experts, 30 to 50 per cent, the structural separation that was proposed by Mr Samuel was that if a company wanted to do audit work, they should not provide consultancy work. It doesn't preclude consultants operating within an audit service. I'll ask you for your consideration of that view. I don't think I'm verballing Mr Samuel there, but that was one of the ways in which—

Mr Black: That was his position.

Senator O'NEILL: some probity might better be embedded in the structure. So if you do audit, yes, you can bring in your experts. That's the first thing: can you consider that. And can you consider those experts now also in light of the submission to us from the APESB board. In their opening statement, they encourage the inquiry to consider the opportunity to establish a rigorous code of ethical behaviour based on APESB 110 to be applicable to all consultants that contract with and provide any form of professional service to the government, which would then capture ethical behaviour of those who are not necessarily covered by audit and accounting standards.

Mr Black: We're happy to take that on notice and have a look at it.

Senator O'NEILL: Thank you for your submission. It was indeed fulsome, and I will read the draft and the final copy with some interest. But my main critique, as far as I can tell, is that every single one of the recommendations, as considered as they are, is about something that you're asking the government or regulators to do better. I didn't actually see in here recommendations for firms, for conglomerates, for companies, for partnerships to reform their internal governance structures and cultural practices to create a more ethical range of industries, if we're going to talk about the entire scope of what the BCA represents. And that goes to my opening comments about ethical disposition. Yes, there are strong recommendations here about government response. What's the public entity challenge? Where do you see that? What are your recommendations about businesses and ethical behaviours in consultancies?

Mr Black: Again, what we've done in terms of these recommendations is respond to the terms of reference that we were presented with.

Senator O'NEILL: I see that and I appreciate it.

Mr Black: I'm happy to take on notice any question that you've got in that regard and consider it further.

Answer

Independent and high-quality audits are critical for capital markets. There are strict requirements around the services that auditors can provide to audit clients, as set out in the APES 110 *Code of Ethics for Professional Accountants (including Independence Standards)*. Prohibited services include accounting and bookkeeping services, certain tax services, recruiting services, and corporate finance services. These prohibitions are legally enforceable for audits performed under the *Corporations Act 2001*.

Independence requirements are also contained in the *Corporations Act 2001* and Australian Auditing Standards (ASQC1). There are strict requirements for companies to ensure the independence of their auditors, including around audit partner rotation and ensuring any non-audit services do not undermine the independence of the audit. Australian Accounting Standard AASB 1054 requires auditor fee reporting.

The ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* require (on an 'if not, why not' basis) listed entities to have an audit committee, comprising an independent chair (who is not also chair of the board) and majority independent directors. The audit committee

considers matters that include appointment/removal of the auditor; fees payable to the auditor for audit and non-audit work; audit engagement partner rotation; scope and adequacy of the external audit; the independence and performance of the external auditor; and any proposal for the external auditor to provide non-audit services and whether doing so might compromise the independence of the external auditor. The ASX Corporate Governance Council is currently consulting on proposed changes to the *Corporate Governance Principles and Recommendations*. The consultation draft proposes that listed entities also disclose an entity's auditor tenure, when the engagement was last comprehensively reviewed and the outcomes from that review.

When considered together, these measures represent a comprehensive set of checks and balances that seek to support independent and high-quality audits. The Parliamentary Joint Committee on Corporations and Financial Services inquiry into the regulation of auditing in Australia examined these issues further and made several recommendations. Some of these recommendations have been implemented and some require changes to legislation.

The BCA supports the Department of Finance's development of a Commonwealth Supplier Code of Conduct outlining standards expected from suppliers as part of procurement contracts. This includes expectations of ethical behaviour; corporate governance and business practices; and health, safety and employee welfare. To the Senator's query regarding a code "applicable to all consultants that contract with and provide any form of professional service to the government", the Supplier Code of Conduct provides a valuable approach to address supplier conduct as it relates to government procurement.

Question

Senator O'NEILL: You've got powers. I want to hear about what your powers are, Mr Black.

Mr Black: The powers that we've got are to consider any type of misconduct and to take action essentially as is considered appropriate in relation to that misconduct. But of course the exercise of any power of that nature, not just by the BCA but by any organisation, has to be considered in the context of what is being done to address the concerns.

Senator O'NEILL: So if somebody else is doing the job, you don't need to waste your energy on it?

Mr Black: No, that's not what we're saying at all. What we're saying is that it's clear that—and that's why we're here. We're here at the invitation of the Senate because we wish to provide some support in relation to what are serious issues.

Senator O'NEILL: Maybe you could take on notice what your powers are, to make them explicit and clear to the Senate, and then take on notice if you're giving any consideration to individuals who are now named in the public place as responsible. Finally, if I can, Chair—

Answer

The BCA constitution allows the Board to censure, suspend or expel a member.



Question

Senator O'NEILL: On notice, have any of your members spoken to you in the way that they've spoken to me about concern that detailed access to their business and their business models and their innovation is actually being taken by some of the big four, who then go off and spin off their own consultancies in those sectors? Have any of your members raised that with you, Mr Black? They've certainly raised it with me.

Mr Black: No, I haven't had that issue raised with me.

Answer

I refer to my answer provided before the Committee.

Question

Senator BARBARA POCOCK: I have a question going to Senator O'Neill's questions. Could you tell us when you have exercised your powers in relation to any misdemeanours by BCA members?

Mr Black: I would stress in that regard that I've been in the role for four months.

Senator BARBARA POCOCK: Yes but I'm sure you have records.

Mr Black: I have not in that period of time exercised those powers.

Senator BARBARA POCOCK: My question is—let's say over the last five years.

CHAIR: Let's say the organisation rather than you, Mr Black.

Mr Black: I'll take it on notice.

Answer

We have not located evidence of the exercise of the powers to which reference was made.