



27 August 2025

Senator Deborah O'Neill  
Suite S1.22  
Parliament House

By email: [REDACTED]

Dear Senator O'Neill

**Witnesses before the Parliamentary Joint Committee on  
Corporations and Financial Services**

You have asked for advice about a legal opinion as to the scope of the duties of the Parliamentary Joint Committee on Corporations and Financial Services, which are defined in s.243 of the *Australian Securities and Investments Commission Act 2001*. The opinion is directed at requests made by the committee in the course of its “ongoing oversight” of certain professional services. On my reading, the opinion doubts whether that oversight is within the scope of the committee’s duties – although it is equivocal on that point (see the concessions in paragraphs 8 and 9) – and argues that the committee’s powers and privileges would not operate if the committee is acting outside of the scope of its authority.

Nevertheless, the opinion seems to be suggesting that representatives of the entity attend the committee and take a relatively nuanced approach to answering the committee’s questions.

**Background**

A variety of sources provide for the powers, functions and operations of joint statutory committees, and there can be complexities in determining how they interact. Early models for statutory joint committees placed provisions about their powers and proceedings in the statute establishing the committee. This was intended to address concerns that joint committees may not have inherited the same powers and privileges as committees of either House, but also raised a new concern that the use of statutory provisions made the operations of committees justiciable.

These days, to ameliorate that concern, statutes establishing joint committees generally set out their composition and functions but provide that matters relating to their powers and proceedings shall be determined by resolution of both Houses.

Part 14 of the Act, which establishes the joint committee, follows this model. This means that, while the question of the scope of the committee's duties under s. 243 of the Act might be a matter of legal interpretation, nothing in the Act affects the powers, privileges and immunities of the committee.

As the opinion notes, the committee's formal powers are rarely used. Instead, the committee follows the standard approach flagged in privilege resolution 1 of inviting submissions and requesting the attendance of witnesses, except where witnesses are uncooperative. In those circumstances, however, the committee has extensive powers.

In 2024, I provided the committee with advice about its undoubted powers to compel witnesses and evidence, and suggestions as to how to navigate the refusal of witnesses to answer questions. In part, that advice noted what *Odgers' Australian Senate Practice* says about the relationship between the Parliament's inquiry power and contempt:

The formal power possessed by the Senate in relation to witnesses is very great: witnesses may be summoned to appear to give evidence and produce documents and any failure to do so may be punished as a contempt. [14<sup>th</sup> ed., p. 549]

This relationship was affirmed in *Alford v Parliamentary Joint Committee on Corporations and Financial Services*:

Section 49 of the Constitution provides a source of coercive authority for the two Houses of the Commonwealth Parliament and the members and committees of each House to summon witnesses or require production of documents, under pain of punishment for contempt; a power that can be traced to English practices pre-dating Federation. [[2018] HCA 57 at 16, per Gordon J.]

*Alford* also demonstrates the reluctance of the courts to intervene between parliamentary committees and their witnesses. This suggests that, although there is a question to consider about the scope of the committee's duties, it is difficult in practice to see the matter being brought before and resolved by the courts. This is explored further, below.

### **Scope of the committee's duties**

Paragraph 243(a)(ii) of the Act allows the committee to inquire into the operation of the corporations legislation (other than the excluded provisions). This is supplemented by paragraph 243(a)(iii), which allows the committee to inquire into the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions).

The advice acknowledges there is potentially relevant state legislation, the *Professional Standards Act 1994 (NSW)*. That Act provides for the appointment of voluntary occupational associations (in this case of chartered accountants) with the aim of improving occupational standards, to protect consumers and to allow for schemes that limit the civil liability of professionals (section 3 – objects).

The use of the phrase “appears to the committee” in paragraph 243(a)(iii) of the ASIC Act gives the committee significant scope to come to a judgement about what state laws “affect significantly the operation of the corporations legislation”. If the committee has reached a decision that the

professional standards regime administered by CA ANZ (under the Professional Standards Act) significantly affects the operation of corporations legislation, and it is pursuing evidence on that basis, a court may be unlikely to evaluate that decision but rather say it is within the scope of matters paragraph 243(a)(iii) allows the committee to inquire into.

Arguably the question whether a matter falls within the scope of paragraph a(ii)—the operation of corporations legislation—is a simple matter of statutory interpretation that might be determined by a court. However, it is difficult to see how the question of what “appears to the committee” could be tested by the courts, as evidence going to the question of the committee’s judgement would form part of the committee’s internal deliberations, which could not be tendered as evidence because of the immunities recited in s.16 of the *Parliamentary Privileges Act 1987*.

This leaves the committee in the position that committee members and witnesses may have different views about the scope of its duties.

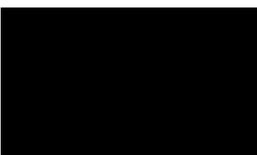
The committee could proceed with its inquiry under its power to consider the operation of a law of a state that affects significantly the operation of corporations legislation and manage any resistance from the witnesses applying the usual principles for considering whether a committee should press for information (including the option of taking genuinely sensitive information in camera). In doing so, the committee might consider suggesting the witnesses seek more detailed advice from the secretariat or the Clerk on the protections available to witnesses under the Privilege Resolutions.

It also seems to me that either House has the power to, in effect, extend the scope of the committee’s duties by way of subsection 243(c), which allows the committee to inquire into any question in connection with its duties that is referred to it by a House. To my mind, this power extends the remit of the committee to related matters. That approach might help to assure the witnesses that the inquiry is on a secure footing, with its powers intact.

Of course, other approaches to information gathering are always available in the Parliament. For example, an order can be made in either House directing an entity to produce information, and matters can be referred to other parliamentary committees, whose terms of reference are not constrained by statutory provisions. Simply drawing the witnesses’ attention to these other avenues of inquiry may be enough to encourage them to comply more fully with the committee’s requests.

Let me know if I can be of any further assistance.

Yours sincerely,

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(Richard Pye)