



7 March 2025

Senator Deborah O'Neill, Chair
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: corporations.joint@aph.gov.au

Dear Senator O'Neill

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation – public hearing 4 March 2025

We refer to the hearing of the Committee held on 4 March 2025 in Sydney and the request made by Senator Scarr, during Ms Wydell's evidence, for further information in relation to our reservation about the scope of parliamentary privilege applicable to her evidence. We also refer to our letters to the Committee dated 18 September 2024 and 22 November 2024, which we attach again for reference (**Attachment 1 - Letter dated 18 September 2024** and **Attachment 2 - Letter dated 22 November 2024**).

For context we note that the Committee Secretary's request, by letter dated 13 September 2024, was for CA ANZ to provide a copy of our **Annual Professional Standards Report 2023** to the Professional Standards Councils and complaints and membership data, redacted of confidential and commercially sensitive information, for publication. The Annual Professional Standards Report 2024 is currently being finalised for approval and submission to the Professional Standards Councils by 31 March 2025.

As noted in our correspondence, we are supportive of the Committee having an oversight role with respect to the professional accounting bodies' performance of their functions. As we have seen in the last two years, the effective oversight of the audit and accounting sector requires strong regulatory institutions and frameworks, and we are gratified that the important role that professional accounting bodies play in having professional disciplinary arrangements for their members, whether in public practice or in the corporate sector, public sector or academia is given weight and recognition.

However, we are concerned to ensure that the recommendation of the Senate Finance and Public Administration Committee to that effect (**Recommendation 10**) is implemented in a manner that is clear to all stakeholders and that protects disclosures made by our representatives in appearances and the rights of witnesses in relation to the provision of particularly sensitive information that could, if made public, compromise investigations or disciplinary proceedings or provide grounds for members to initiate legal proceedings to challenge disciplinary outcomes.

The *Australian Securities Investments Commission Act 2001 (Cth)* (**ASIC Act**) establishes the legislative framework for the Committee's oversight of, relevantly, ASIC and the Financial Reporting Council (**FRC**). The FRC has powers under section 225A(1)(b) and (c) of the ASIC Act to issue notices to compel professional accounting bodies to provide information about planning or performance of quality reviews and details of investigation or disciplinary procedures. These powers are confined to information pertaining to audit work done by Australian auditors. Statutory qualified privilege applies to disclosures made in response to the FRC's notices. This framework gives professional accounting bodies a clear basis for disclosures relating to their co-regulatory oversight of members practising in the audit sector.

The implementation of Recommendation 10 by legislative amendment of the ASIC Act would, we respectfully submit, provide a sound basis for representatives of professional accounting bodies to provide information pertaining to their oversight of a broader category of members, that is members in public practice, which we understand to be of interest to the Committee given the ethical failures in the accounting and consulting sector. Some potential options for amendment were offered in our letter dated 18 September 2024. We consider the better option would be to amend the ASIC Act to extend the Committee's powers to inquiring into the operation of the professional standards legislation, since our legal advice suggests that the *Professional Standards Act 1994 (NSW)* and cognate legislation is not legislation that significantly affects the corporations legislation and that in, the case of voluntary appearances before the Committee, a disclosure may not be protected by parliamentary privilege. We attach a copy of the legal advice for the Committee's reference (**Attachment 3 - Counsel's Advice**). The advice is subject to legal professional privilege and provided to assist the Committee. We note the Committee's offer to carefully consider legal professional privilege claims and would be very grateful if the Committee accedes to our request that Attachment 3 be treated as confidential and privileged.

In relation to the Committee's request for a breakdown of complaints data for CA ANZ members employed by or in partnership with BDO, Deloitte, EY, Grant Thornton, KPMG and PwC (the Big 6), we note that we provided aggregated data to the Committee in November 2024, on the basis that we do not report complaints data to the PSC on a firm-by-firm basis. The

publication of complaints data for some firms will disclose the scale of Professional Conduct Committee (**PCC**) preliminary investigations which may not have been communicated to the firm/s in question or to the Disciplinary Tribunal members who may be required, in due course, to impartially consider a referral from the PCC. Given the resource intensive nature of PCC investigations, we are particularly concerned to keep confidential any information which might undermine investigations, the availability of evidence or which could prejudice current proceedings or provide grounds for members to challenge disciplinary outcomes in the courts. We would be very happy to provide a breakdown of the aggregated data requested subject to the Committee's consideration and assurance of confidentiality to minimise these risks.

Please note that we are also very happy to meet *in camera* to discuss any of the information provided, and our position on the opportunities for strengthening the co-regulatory framework for the sector, if that would be of assistance to the Committee, and we look forward to continuing to work constructively with the Committee, Treasury and other stakeholders to enhance public confidence in Chartered Accountants and the broader profession.

Yours sincerely



Vanessa Chapman
Group Executive, General Counsel and Corporate Assurance

Eora Country
P +61 (2) 9058 5945
GPO Box 9985
NSW, 2001

Sydney
33 Erskine Street
New South Wales
Australia

CA ANZ – response to requests from Parliamentary Joint Committee on Corporations and Financial Services

Background

1. I have been briefed with letters from the Chair of the Joint Committee dated 13 September 2024 and 10 October 2024 as well as Observations dated 18 October 2024.

Joint Committee

2. The “duties” of the **Joint Committee** on Corporations and Financial Services are set out in s 243 of the *Australian Securities and Investment Commission Act 2001* (Cth) and relevantly include to inquire into, and report to both Houses on:
 - (ii) the operation of the corporations legislation (other than the excluded provisions); or
 - (iii) 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)
3. The Joint Committees’ powers and proceedings must be determined by a resolution of both Houses: ASIC Act, s 242. The **Resolution** was made by the House on 26 July 2022 and Senate on 27 July 2022 and includes:
 - (k) the committee or any subcommittee have power to:
 - (i) call for witnesses to attend and for documents to be produced;
 - (ii) conduct proceedings at any place it sees fit;
 - (iii) sit in public or in private;
4. The “requests” for appearance and a report in the letter dated 13 September 2024 are not expressed to be pursuant to these powers. In practice, these powers are rarely exercised.

Joint Committee’s requests

5. In the letter dated 13 September 2024, the Joint Committee states it “agreed to undertake ongoing oversight of the professional standards regimes administered by CAANZ, CPA Australia and the IPA, pursuant to...[s 243(a) of the ASIC Act]”. This appears to be a political or executive decision in response to a recommendation in the Senate Finance and Public Administration Committee’s report *Management and Assurance of Integrity by Consulting Services*. It has no apparent statutory source.
6. The recommendation recognised the Commonwealth Government may need to work with state and territory governments to implement this recommendation. According to the 10 October 2024 letter, the Joint Committee has taken the view that it is within its duties in s 243 of the ASIC Act.
7. I think it is doubtful that undertaking ongoing oversight into professional standards regimes is sufficiently connected to the “operation of the Corporations legislation” within the meaning

of s 243(a)(ii). The Corporations legislation (being the *Corporations Act 2001* and ASIC Act: ASIC Act, s 5) regulates, very generally speaking, the activities of corporations and financial markets. Other legislation, such as the *Tax Agent Services Act 2009* (Cth), regulates the industry that provides services to corporations and financial markets.

8. It is more arguable that the Joint Committee is inquiring into the operation of a law of a State that appears, to the Joint Committee, “to affect significantly the operation of the corporations legislation” (s 243(a)(iii)). The law would be the *Professional Standards Act 1994* (NSW) which regulates self-regulatory schemes which, in turn, on a voluntary and contractual basis, regulate the profession(s) which advise on matters relating to the corporations legislation. The connection remains tenuous because it is difficult to see how the Standards Act can, especially given the voluntary and contractual basis of CA ANZ’s authority, “significantly affect” the operation of any law. I think it is worthwhile maintaining a general reservation about the source of the Joint Committee’s authority, particularly given the potential for further expansion of its “ongoing oversight”.
9. Whether the Joint Committee’s requests are authorised by s 243 of the ASIC Act has to be determined on a question by question basis.

Parliamentary privilege

10. The *Parliamentary Privileges Act 1987* (Cth) confirms that both the giving of evidence before a committee and the submission of documents to a committee (even if outside the formal hearing for the reception of evidence) are absolutely privileged. The effect of absolute privilege is that a witness cannot be made the subject of any sanction for giving evidence before, or submitting documents to, a committee, apart from any penalty for the offence of giving false or misleading evidence to that committee.
11. There is an important caveat. If the Joint Committee is acting outside the scope of its authority, it is unlikely to be conducting “proceedings in Parliament” and the protections in s 16 of the Privileges Act would not apply. For this reason, care should be taken not to disclose sensitive or confidential information if the Joint Committee’s authority to ask a question or request information is unclear. The safest course is to provide all information and answers to questions on a *voluntary* basis. In the absence of compulsion, any material that CA ANZ is not authorised to disclose to the public for any reason can be withheld.

Options to respond to questions

12. If CA ANZ is pressed to answer a question which it considers requires the disclosure of information it is not authorised to disclose, there are a couple of options which may be raised

Liability limited by scheme approved under professional standards legislation.

in accordance with order (10) of the *Procedures to be observed by Senate committees for the protection of witnesses* (Resolution 1 of 25 February 1988)¹:

- a. If the question is outside the scope of s 243 of the ASIC Act, query the relevance of the question.
 - b. If a question demands disclosure of confidential information, raise the voluntary nature of the appearance, explain the source of confidentiality and the need for lawful authority in the form of a summons to lawfully disclose the information.
13. For information which is not protected by some legal obligation but CA ANZ would prefer not to disclose, the same options are available but it is less likely to Joint Committee will withdraw the question.
14. Once a ground of objection is raised, if the question is pressed, consistent with order (10), the Joint Committee should move to a private session. If the Joint Committee decides to press the question, the question will be asked in the private session unless the Joint Committee decides it is essential for the question to be answered in the public session.



Melita Parker

Eleven Wentworth

20 November 2024

¹https://www.aph.gov.au/Parliamentary_Business/Chamber_documents/Senate_chamber_documents/standingorders/c00/c01.