

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	001
Hansard Page Reference	Page 8
Topic	Level of ASIC audit inspection findings for 2017-18

Question

Senator WHISH-WILSON: Well, we'll have time to continue to prosecute this over the inquiry, and it comes back to the chair's point about whether these issues are systemic or not. But to me that's probably the most critical thing that this inquiry has to look at. Something like culture would suggest to me that they are systemic issues. Nevertheless, perhaps I could ask a more specific question. For that 2015-16 inspection report, I understand that in 25 per cent of sampled areas the potential problem equated to roughly 50 per cent of sampled files having a potential problem. Is the figure roughly the same for the most recent inspection report that ASIC has done?

Mr Price: I would have thought it was roughly the same.

Mr Niven: Yes.

Senator WHISH-WILSON: And what proportion of the 98 files that you reviewed did the auditors fail to obtain reasonable assurance?

Mr Niven: It was around 50 per cent. I can't recall the exact percentage. We might take that on notice and give you the exact figure.

Answer

In our view, auditors did not obtain reasonable assurance that the financial report was free of material misstatement in at least one respect in 54% of audit files reviewed in our audit firm inspections for the 18 months to 30 June 2018. The equivalent figure for the 18 months to 31 December 2016 was 59%.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	002
Hansard Page Reference	Page 12
Topic	Use of special purpose financial reports by public interest entities

Question

Senator WHISH-WILSON: Can you give us some examples of those public interest entities, where we see corporations like News Limited using special purpose accounts? Large mining companies use special purpose accounts. Can you think of some examples? Glencore, for example?

Mr Price: It might be useful to discuss some of the challenges around the existing standards to do with special purpose—

Mr Niven: I think that's right. The test is a subjective test as to who would produce special purpose financial reports and not be a reporting entity. It's not an objective test based on assets and revenue; it's one based on a view of: are users dependent on financial statements, and can they acquire the information they require? That's been one of the challenges for us.

The other aspect to it is: when we're thinking about where we devote our resources, when we are looking at proactive surveillance—obviously there's also reactive surveillance based on complaints and intelligence—we are going to focus on those entities that are at the larger end. They generally are the ones producing general-purpose financial reports. One of the challenges is, if you're producing a special-purpose financial report, what information is missing that would actually be useful for users of financial reports? The three main areas would probably be around consolidation, financial instruments and related party transactions. But often we see special-purpose financial reports where, had they produced general-purpose financial reports, it might not have made a lot of difference in terms of disclosure.

Senator WHISH-WILSON: Could we get a list—I mean, I don't know if anyone's ever asked you the question before: if you could use the current terminology and definition you've got for public interest entities, and how many of them use special-purpose accounts? I'll quote from one of the submissions that we received, from Michael West. On page 8 of his submission he talks a little bit about Rupert Murdoch's use of special-purpose accounts:

By producing Special Purpose accounts, News is asking Australians to believe that – even though this company employs thousands and affects the course of government in this country – the only parties who have a stake or an interest in seeing these "public" statutory accounts are a couple of Rupert-controlled shareholders overseas.

Do you agree with that statement?

Mr Price: We can take on notice your question about trying to build a list as best we can. I did want to highlight the point that we started this discussion with, which was that I think it is recognised that there are some real challenges with the general purpose/special purpose differentiation, and that's

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

exactly why, with respect to the standards at the moment, they're consulting on changing the rules. We fully support the consultation, I've got to say.

Senator WHISH-WILSON: If that's underway, I'm going to be very interested in the outcome of that. I'll put my other questions on that issue on notice.

Answer

We have used the term “public interest entity” to refer to entities that have large numbers of investors and other users of their financial reports. This definition is subjective and there is no identifier in ASIC’s registry records as to which entities on our registers would be regarded as public interest entities.

The accounting standards determine when an entity must prepare a general purpose financial report rather than a special purpose financial report. General purpose financial reports must comply with the full disclosure requirements of the accounting standards. Accounting standards currently permit entities that are not reporting entities to prepare special purpose financial reports. A reporting entity is an entity in respect of which it is reasonable to expect the existence of users of their financial reports who rely on an entity’s general purpose financial statements for information that will be useful to them for making and evaluating decisions about the allocation of scarce resources.

There is no identifier in ASIC’s registry records for those companies that prepare special purpose financial reports. Whether a financial report has been prepared as a special purpose financial report would need to be ascertained by accessing that report and reading the accounting policy notes contained therein.

As a result of all these factors, it is not practicable to prepare a comprehensive list of public interest entities that are preparing special purpose financial reports given the subjective definitions, likely differing views as to how to apply the definitions, and that there are no relevant identifiers in ASIC’s registry records.

We do note that the last financial reports lodged with ASIC by the following Australian companies referred to in the submission to the Inquiry by Michael West were special purpose financial reports:

- SABMiller Australia Pty Limited (now SAB Australia Pty Ltd) (year ended 31 December 2016) – a new Australian holding company ABI Australia Holdings Pty Ltd lodged a general purpose financial report (Reduced Disclosure Regime) for the year ended 31 December 2018;
- William Hill Australia Holdings Pty Limited (now TSGA Holdco Pty Limited) (year ended 26 December 2017); and
- Pfizer PFE Australia Pty Ltd (year ended 30 November 2018).

All other Australian companies mentioned in Mr West’s submission most recently lodged general purpose financial reports, including some following the Reduced Disclosure Regime.

In December 2015, amendments were made to the tax legislation to require certain entities that are part of globally significant groups to lodge general purpose financial reports with the ATO or ASIC from the tax year commencing 1 July 2016. The financial reports can be of the entity or for a consolidated group that includes the entity. If lodged with the ATO, the ATO would provide the reports to ASIC. All reports appear on ASIC’s public database.

**Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia**

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

We also note that the Australian Accounting Standards Board is now consulting on changes to the accounting standards that would remove the ability of companies to prepare and lodge special purpose financial reports altogether. We support this consultation.

A recent doubling of each of the size criteria for determining which proprietary companies are required to prepare and lodge financial reports is also likely to reduce the number of financial reports lodged, including special purpose financial reports, but this is unlikely to affect reporting by public interest entities.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	003
Hansard Page Reference	Page 14
Topic	Disclosure to ASIC by NAB on CPS 220 review

Question

Senator O'NEILL: To be clear then: NAB did not disclose or explain any of these interactions that I've put on the public record here again today? They did not advise you of anything with regard to the CPS 220 review?

Mr Price: I'm not sure that they did, but we'll take that on notice to be absolutely sure.

Answer

After making all relevant inquiries within ASIC and searching our records, for the period from 1 July 2017 to 26 November 2019, NAB did not disclose or explain to ASIC any matters relating to Ernst & Young Australia's (EY's) CPS 220 review, including any interactions between NAB and EY or the 'no surprises' approach and the methodology of consultation (see also QoN 005).

Over this period, NAB lodged 339 breach notifications with ASIC. Our systems capture all breach notifications but do not separately categorise matters outside of ASIC's jurisdiction.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	004
Hansard Page Reference	Page 14 and 15
Topic	CPS 220 review by EY at NAB

Question

Senator O'NEILL: Thank you, Mr Price. I refer to paragraph 18 of your submission:

Directors and management should not unduly influence auditors.

Mr Chronican, the NAB chairman, indicated to the House Economics Committee last Friday, 15 November, that NAB agreed to EY performing the CPS 220 review on the basis that it was an extension of their existing audit remit. There were also concerns about the risk of other firms reviewing their own work if they performed the CPS 220 review given the consulting work they perform for NAB. Given EY classified the CPS 220 review as audit related work, does the approach adopted by EY for the review give ASIC cause for concern?

Mr Niven: In terms of being audit related, my understanding was—and this is just from reading the press, so I can't say it's independently verified—that the work was conducted by a different team in EY from the audit team. It is around risk management. There would be some overlap in similarities in methodology. I probably don't know enough, but I would hesitate to call it audit work per se. Having said that, it is a form of assurance work, which would be more closely aligned to audit than, say, some tax consulting work or something of that nature.

Senator O'NEILL: Have you seen any of the transcript from the hearing on Friday?

Mr Price: You raise a good point. If you allow us to take that question on notice, I would like to look at the transcript and get some further information.

Senator O'NEILL: I can provide a copy of the relevant section.

Mr Price: I appreciate that.

Senator O'NEILL: Again, it's this question of independence. That's really at the heart of it. The point I'm making is that you're trying to tell me to be very careful, and now we've got people in the audit firms saying, 'No, this isn't.' So I think that it's a pretty messy space, by the looks of things.

Mr Price: I'm not suggesting at all that anything you say is wrong, Senator. I'm just saying that there are different legal obligations that apply to you depending on what you're doing. If you're doing the consulting work under CPS 220, that's a different set of independence requirements to those that apply if you're the company auditor and you need to be bound by the Corps Act and the APESB pronouncements.

Ms Armour: Senator, your question is: does doing that APRA work colour your independence from the corporation?

Senator O'NEILL: Exactly.

Mr Price: Please let us look at the transcripts, and we'll come back to you.

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

Answer

Transcript

The following extract from pages 25 and 26 of the Proof Hansard for the House of Representatives Economics Committee on 15 November 2019 covers the relevant questions asked of Mr Philip Chronican, Group Chief Executive Officer, National Australia Bank and his responses:

“Dr LEIGH: In a report by Edmond Tadros on 3 August this year, he discussed the decision that NAB made to engage EY, your auditor, to perform a statutory report about NAB's risk management function—something which led some to argue that there was a conflict of interest between asking an auditor to perform non-audit roles. How does NAB justify the decision to select EY for that task?

Mr Chronican: The risk management declaration that was the underlying body of work is a declaration by the board to APRA about the state of our risk management systems. The role of the external party in this case is to do a testing and assurance piece of work over the robustness of the underlying systems that came up with that report. The work is assurance in nature, so in fact the work is effectively an audit of the risk management declaration, and that's why we formed the view that the organisation best placed to provide that assurance work was the organisation that was doing the assurance work on the production of our annual accounts, which is the auditor.

Dr LEIGH: My understanding is that other banks didn't take that approach and—

Mr Chronican: So APRA did not require it to be the auditor. We felt it was worthwhile that the auditor did it. My understanding was—and I might be stretching this a bit—that at least one other bank felt that EY independently was better placed to do it and chose EY for other reasons. But our conclusion that we came to was effectively that we saw it as being assurance in nature and that our auditor was the best placed firm to provide that service.

Dr LEIGH: I wasn't so much having a go at EY as your decision to engage your auditor to do that project, unlike other banks.

Mr Chronican: I understand that. When you engage advisory work like this, you have to go through the test of asking that because, generally speaking, you would not employ your auditor to do work that is discretionary. There are some things that you do that aren't part of the audit but which it's almost impossible for a firm to do that isn't the auditor. For example, if we're doing debt raisings offshore and we need to have a clearance certificate signed by a firm, the auditor's the only firm that's really in a position to do that. When looked at through that lens, we felt that this work was assurance in nature and that the same processes that would be tested to support the annual financial report were the ones being tested to support the risk management declaration. But I am aware that other banks came to a different conclusion.

Mr Lennon: There is an additional dimension to this. We do engage the other accounting firms to do a whole range of work, including assisting with developing some of our risk and controls et cetera. It was certainly within our thinking as well that other firms could be argued to be more compromised than EY, because they could be in the position of trying to assess their own work. Under our policy, that is what you don't want; you don't want someone doing an audit review potentially auditing the work they have helped set up. Many of the other accounting firms were potentially in that position.

Dr LEIGH: I'm not the only one to have raised concerns about this. Reportedly, the finance minister, Mathias Cormann, also called on the bank to explain it. In retrospect, do you think it was a mistake? Would you do the same thing again?

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

Mr Chronican: No, I don't think we've seen it as a mistake. We continue to believe that the work was assurance in nature. As Gary's just pointed out, the reality is that employing another firm that we have had a lot more discretionary business activity with to do it probably presents an even bigger conflict."

CPS 220

Paragraphs 11 and 12 of APRA's Guide 220 *Risk management* say:

- "11. The third line of defence comprises the function(s) that, in accordance with CPS 220, provide to the Board and its committees:
- a) at least annually, independent assurance that the risk management framework has been complied with and is operating effectively; and
 - b) at least every three years, a comprehensive review of the appropriateness, effectiveness and adequacy of the risk management framework.
12. The application of the third line of defence would vary depending on the size, business mix and complexity of an APRA-regulated institution. The independent assurance function could, for example, include internal audit, a third-party assurance provider or a combination of the two. A key consideration would be appropriate independence, technical knowledge and experience."

Independence in providing audit services

The relevant facts and circumstances of any case need to be taken into account in considering whether the general independence provisions of the *Corporations Act 2001* and the profession's Code of Ethics are complied with in connection with the provision of the assurance CPS 220 services by the auditor. This may include consideration of fee dependency questions or concerns if the risk management work was found to be deficient in the external audit.

There can be synergistic benefits to the quality of the risk management and audit work from one firm providing both services. Although the risk management work is focussed on processes and non-financial systems, the auditor might be informed as to some risks relevant to the audit through the CPS 220 work.

An article by Ms Adele Ferguson in The Sydney Morning Herald of 2 August 2019 indicates that the CPS 220 assurance services were provided to NAB in 2018 by a separate team in Ernst & Young Australia (EY) from the team that audited NAB's financial report. We note the perception of auditor independence and objectivity may be strengthened where there are separate teams as is the case here.

Note 33 to the financial report of NAB for the year ended 30 September 2018 shows the fees paid to EY by NAB:

Service	Remuneration paid by NAB Group \$'000
Audit services	10,382
Audit-related services	5,388
Non-audit services	354

**Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia**

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

Any CPS 220 assurance services should be small compared to the fees for the audit services and these figures suggest that is the case.

There might not be perceived to be a significant reason for a firm to compromise the audit of the financial report under the *Corporations Act 2001* (the Act) to protect the relatively small fee for CPS 220 work.

While there is no requirement for the auditor to provide the CPS 220 risk management opinion, there is no necessary incompatibility in the auditor providing such an opinion under the *Corporations Act 2001*.

The possible impact of the provision of services of the type described in CPS 220 on the auditor of the financial report is also not specifically addressed in the auditor independence provisions on non-audit services in the profession's current Code of Ethics. As outlined at the hearing on 19 November 2019, the current Code of Ethics has indirect force of law through a reference in the auditing standards that in turn have force of law under the Act (refer page 20 of the Proof Hansard). When we referred to the Code as providing guidance (pages 13, 21 and 33 of the Proof Hansard), this was simply noting the relatively principles-based nature of the Code, the application of a largely threats and safeguards approach to independence matters, and the importance of guidance material in the Code.

A new Code of Ethics is planned to apply from 1 January 2020 but it does not currently have indirect force of law under the Act. That will require amendments to the auditing standards. In addition to the current prohibition on the auditor of a public interest entity providing bookkeeping services, the new Code will not permit some other specific types of non-audit services, but generally subject to a subjective materiality exemption. However, those specified non-audit services will still not cover the CPS 220 services.

We note that the specified non-audit services in the new Code are still not as extensive as the prohibitions in the US *Sarbanes-Oxley Act* of 2002 and there is no materiality exemption in the US. The Code is based on a Code developed by the International Ethical Standards Board for Accountants and that Board intends to consider removing the materiality exemption in the future.

The extent to which the provider of CPS 220 work should be independent of a bank is a matter for the directors of that bank and APRA. For example, CPS 220 permits the use of internal auditors who may be employees of the bank to conduct the work.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	005
Hansard Page Reference	Page 15
Topic	Notice re attempt to influence EY

Question

Senator O'NEILL: I have concerns there. Could I just go to your indication that auditors are required to report attempts by any party in the audited entity to influence their opinion or approach. With regard to the matter that I cited at the very beginning, about EY, NAB, the 'no surprises' approach and the methodology of consultation, was there a report from NAB with regard to that at all?

Mr Niven: The answer is no. We answered that in a question on notice. In 2018, when these events were reported to have occurred, we did not receive any notification from the auditor under section 311 about suspected contraventions of the Corporations Act in relation to this particular matter.

Senator O'NEILL: Did you receive any information about the matter in any form?

Mr Price: We'd better take that on notice. I must say I'm not aware that we did, but let us take that on notice.

Senator O'NEILL: You indicated that there was only one possible breach reported by an auditor in this area in the two years to 30 June 2019 and that you would conduct further work to consider whether the level of breach reporting reflects actual practice. Which auditor reported the possible breach?

Mr Niven: I'm trying to recall what you're referring to. We did respond to a question on notice—oh, sorry. It's in our submission. Apologies. I thought you were referring to a question on notice.

Senator O'NEILL: No, sorry. It is paragraph 18.

Mr Niven: We do have the details of those matters, but we would have to come back to you on what those were.

Senator O'NEILL: You can't recall which. So it's one of the big four, but which one?

Mr Niven: I can't recall. Sorry.

Mr FALINSKI: Sorry, was it one of the big four, or is it that you can't recall?

Mr Price: We can't recall.

Mr FALINSKI: So it could be any accounting firm?

Mr Price: It could be, yes. So we will come back.

Answer

**Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia**

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

In relation to EY's CPS 220 review at NAB, the 'no surprises' approach and the methodology of consultation, refer to our response to QoN 003.

The one possible breach reported to ASIC by an auditor regarding attempts by the audited entity to influence their opinion or approach (see paragraph 18 of ASIC submission) was reported by EY on 26 July 2017 under section 311 of the *Corporations Act 2001*. The audited entity is no longer listed.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	006
Hansard Page Reference	Page 16
Topic	CPS 220 services provided to NAB by EY

Senator O'NEILL: In terms of the exposure of the process that went on between EY and NAB, there's a bit more in the book that describes what happened with the report. It says: 'Whereas the report to APRA was written in neutral, passive style laden with jargon, which had the effect of downplaying some of the challenges that NAB faced, the private observations were much more frank. For example, the draft report rated NAB's risk management framework design as "adequate and appropriate", and assessed its application of the RMF as "partially effective". It concluded that overall NAB "largely" met APRA's regulatory requirements and noted approvingly that "NAB has made significant improvements."'

In contrast—now a matter of public record—EY's confidential notes stated that, when issues were identified internally by NAB or raised by the regulator, there seemed 'to be inadequate analysis (by NAB) of the root cause of these identifiable weaknesses', despite the fact that proper analysis would have allowed NAB to put in place a suitable long-term plan that would help close these issues. Even more damningly, the notes concluded: 'The bank focuses only on addressing the issues through bandaid fixes rather than investing in long-term solutions.' It then goes on to talk about the draft CPS 220 report and praise the introduction of divisional value-change risk-management committees that were set up to break down divisional silos. But the internal note says that feedback has been mixed around the effectiveness of these committees.

I'm putting this on the record again because it shows a picture of the kind of relationship between NAB as the purchaser of services from what's supposed to be an independent auditor—

Mr Price: Senator, what you're talking about is the provision of consulting services. I suppose the question is: to what extent is that in any way relevant to the company auditor independence obligations? It goes back to the point I mentioned earlier, that you've got two bookends of independence here: the APRA requirements around 'operationally independent' that go to all of the CPS 220 work, and then the question is: is any of that relevant to the question of whether or not the company auditor has been independent? As I indicated, I think you raise an excellent issue, and we're happy to take that on notice and do some more analysis, but it is really important to make that distinction.

Answer

Please refer to our response to QoN 004 above.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	007
Hansard Page Reference	Page 17
Topic	Reporting by NAB to ASIC

Question

Senator O'NEILL: Thank you. Could I go to a record of interview with Dr Henry, the NAB chairman. There were reports in *The Age* and *The Sydney Morning Herald* on 2 August that Dr Henry advised EY, in an interview with EY partners on 13 June, that he is 'confident' that:

there are products currently being sold now that they will need to remediate in the future—

They were his words. An example was highlighted of self-managed superannuation funds, SMSFs, borrowing to invest in managed funds. Did NAB alert ASIC that there was a problem with these products?

Mr Price: We will have to take that on notice. I think the—

Senator O'NEILL: Or, if they did, could you provide that date?

Mr Price: obligation would be on NAB as a licensee and whether they formed a view that that is a breach or a significant breach of the corporations legislation, so it's a licensee obligation.

Answer

After making all relevant inquiries within ASIC and searching our records, from 1 July 2017 to 26 November 2019, we can find no record that NAB alerted ASIC that there was such a problem with these products.

NAB has publicly stated that they are reducing the number of customer products from approximately 600 products in 2017 to approximately 300 products by the end of the year ending 30 September 2022 (see NAB's 2019 Full Year Results Investor Presentation).

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	008
Hansard Page Reference	Page 31
Topic	List of auditors of concern

Question

Senator O'NEILL: Thank you very much. I'll go to the last part of that article that I read to you, basically about a blacklist:

We just won't go near a company that is using one of these audit partners.

We're not talking about junior staff here; we're talking about audit partners that investors are reporting to the media. Investors are being reported by *The Australian Financial Review* as saying, 'We can't rely on this,' and they've got a blacklist. That's very concerning to me. Are you aware of that list?

Mr Price: That's very concerning to me as well, and I would encourage any such investors who have that concern to approach us with any information they have. We, of course, will do our best to keep the—

Senator O'Neill: This is a report that was in the public place in January. You were aware of this one?

Mr Price: I read that report by Mr Tadros, but, as I said, it's very challenging without knowing the specific investors to really get a handle on who may or may not be on the list. What I would encourage investors to do, if they're aware of such a list or if they have concerns about particular audit partners, is to raise that matter with us. As I said, we have—

Senator O'NEILL: What happened when you became aware of this article? There were two lines of inquiry there that you could have approached.

Mr Price: Yes.

Senator O'NEILL: Did you speak to Mr Radzynski?

Mr Price: I'm not aware that we did, but I'll take that on notice.

Senator O'NEILL: He has already come forward. I don't mean to be petty here, Mr Price, but if this is a concern, and the information is already there, I would wonder why ASIC wasn't following that up?

Mr Price: Proactively going out after it?

Senator O'NEILL: Yes, because it's akin to whistleblowing. It's like how warm and welcoming is the face of ASIC when you have something important to tell them?

Mr Price: Understood. I don't have the full background briefing in relation to that in front of me. Perhaps I'll take that on notice and we'll—

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

Senator O'NEILL: Please, I'm genuinely interested. I would like to know if there is such a blacklist, and I encourage anybody who is interested in this to provide the list of partners who they think aren't doing the right thing.

Mr Price: As am I; I would like to see that happen.

Senator O'NEILL: How would such a report be delivered to ASIC, and how could people be confident that the information would be retained confidentially so that they aren't compromised?

Mr Price: Yes. In terms of information that comes to ASIC: ASIC staff are bound by section 127 of the ASIC Act. Basically, if an ASIC staff member lets confidential information out into the marketplace it can result in criminal prosecution. But what I would say, of course, is that were there litigation about any particular issue it would be an open question about whether that document would have to be provided on subpoena or through various other legal processes. It becomes a question of law.

Answer

An article by Mr Edmund Tadros and Ms Vesna Poljak in the Australian Financial Review on 24 January 2019 and titled *Auditors 'compromised' by providing consulting work: ASIC says:*

“Fund managers watch the audit relationship closely.

“Alarm bells go off at Ophir if the audit firm changes outside of a five-year term. It’s not too dissimilar to when a CFO unexpectedly resigns,” said Andrew Mitchell, a senior portfolio manager.

“It is also important to follow who the audit partner is. We have a list of audit partners who have been involved with questionable audits. We just won’t go near a company that is using one of these audit partners””

The article does not appear to suggest that Mr Gabriel Radzyminski of Sandon Capital maintains a list of audit partners who have been involved in questionable audits.

We have contacted Mr Andrew Mitchell of Ophir Asset Management to get an understanding of how Ophir identifies “questionable audits” and the source of the information they use for this purpose. There are third parties in the market that provide reports on a subscription basis containing third party analysis of individual company performance and reporting. We understand that Ophir uses one of these services and that is what the article was referring to.

We again encourage those who have identified concerns with the quality of audits conducted by individual auditors or audit firms and authorised audit companies to report those concerns to ASIC.

ASIC staff are aware of their obligation to maintain the confidentiality of information received in accordance with section 127 of the Australian Securities and Investments Act. This includes regular mandatory eLearning modules on information security requirements.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	009
Hansard Page Reference	Page 32
Topic	Cross-selling between audit non-audit services

Question

Senator O'NEILL: And we will have Treasury coming before us. Are you aware of any cross-selling that is occurring between audit and non-audit work and whether the cross-selling is tied to KPIs of any partners of any of the firms?

Mr Price: It's a great question. Mr Niven?

Mr Niven: We are undertaking a review which is flagged in the submission, which covers, as I mentioned before, culture, talent, governance, accountability and conflicts of interest, and we have commenced the conflicts of interest work and, as you may be aware, obtained quite a lot of information from the firms. We are still undertaking that review. I couldn't say definitively, but so far we haven't seen evidence of, for example, cross-subsidisation between audit and the other service lines, but there is more work still to be done on that, so that's work in progress.

Mr Price: Senator O'Neill, I wonder whether, if you wish to put that as a question on notice—

Senator O'NEILL: Please.

Mr Price: to report back on, once we've done the analysis—

Senator O'NEILL: What sort of timing are we looking at for that?

Mr Niven: That work runs into January-February next year, so—

Senator O'NEILL: That's great. We will still be continuing our inquiry at that stage, so that would be really helpful.

Answer

As suggested by the Proof Hansard, we will report back to the Committee in approximately late February 2020 as to whether our reviews on conflicts of interest at the largest six firms reveal any instances of cross-selling of non-audit services to audited entities and whether any cross-selling is tied to KPIs of any audit partners or leaders of any the firms. For this purpose, the largest six firms are Deloitte Touche Tohmatsu, Ernst & Young Australia, Grant Thornton Australia Limited, KPMG Australia, PricewaterhouseCoopers Australia and the firms on the BDO Australia Network.

Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry into the regulation of auditing in Australia

Public hearing - Tuesday, 19 November 2019

ASIC responses to Questions on Notice

QoN Number	010
Hansard Page Reference	Page 36
Topic	EY's role in identifying fraud at NAB

Question

Senator O'NEILL: I want to double back to my opening line of questioning about NAB and EY. Was EY's role questioned in regard to identifying and fixing the miscalculation—given that they were the auditor—and whether NAB had to restate their results?

Mr Price: Can we take that on notice. I'd like to go away and double check that.

Answer

We understand that this question relates to the alleged \$40 million fraud that involved the former Chief of Staff to NAB's Group Chief Executive Officer.

Under ASA 240 *The auditor's responsibilities relating to fraud in an audit of a financial report*, the auditor is responsible for obtaining reasonable assurance that the financial report taken as a whole is free from material misstatement, whether caused by fraud or error. Auditors are not required to detect every fraud.

The alleged \$40 million fraud is immaterial to NAB's group financial statements (2018 – net assets of \$52.71 billion, net profit after tax of \$5.95 billion). On this basis, ASIC did not question EY in regard to identifying and rectifying the matter.

There was no disclosure in either the 2018 or 2019 financial reports of NAB as to whether the amount was restated. Restatement is only required where the amount is material given the relevant financial statements. NAB disclosed in its 2018 financial report that the control failings and breach of policy in the office of the CEO, which related to the alleged fraudulent conduct, have been resolved to the Board's satisfaction.
