31 August 2023

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600
Via email to corporations.joint@aph.gov.au

Dear Committee Secretary

Inquiry into recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms (including but not exclusive to the 'Big Four')

PwC Australia welcomes the opportunity to participate in the Parliamentary Joint Committee on Corporations and Financial Services ("Committee") Inquiry ("the Inquiry") into recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms (including but not exclusive to the 'Big Four'). We acknowledge the Committee's invitation to Bob Moritz, Global Chairman, PricewaterhouseCoopers International Limited, to provide a submission to the Inquiry. Our submission contained in the following pages has been prepared with input from our global network colleagues and with consideration given to the global structure and operations of PricewaterhouseCoopers.

Professional services firms play an important role in the functioning of capital markets in Australia and around the world. These markets underpin economic prosperity. Our assurance services play a critical public interest role in delivering trust in information reported to those markets whilst our advisory practices help businesses solve problems, grow and create jobs. We recognise the privilege and responsibility that comes with this critical role that we play in society. We acknowledge that there have been a number of recent matters involving our profession attracting significant media coverage, some of which have highlighted historical weaknesses in our own governance and processes and focussed debate on the regulation of the sectors we operate in. This has undermined trust in our profession as a whole.

The Inquiry presents an opportunity to reflect on these recent matters in the profession and consider the root causes. We agree it is timely to revisit and rethink the governance and regulation of professional services firms in Australia to consider whether reforms are needed to address the needs of stakeholders now and in the future.

We are open to change and support a robust governance and regulatory framework to underpin a rebuild of trust in the system and advance the public interest. We want the most effective framework encompassing all aspects of the professional services ecosystem. A strong framework with significant oversight powers brings benefit to the capital markets and the wider public interest.

We are listening to our clients, stakeholders and the broader community and are committed to evolving PwC Australia to deliver against that public interest test. As a firm we are already underway with significant change to overhaul our governance, culture and our approach to accountability – and we will continue to take the appropriate action to restore the trust of our stakeholders.

As you may know, we have commissioned an independent review to be conducted by Dr Ziggy Switkowski AO which we will release publicly in September. The Terms of Reference for this Inquiry go to many of the issues that Dr Switkowski is considering, and our point of view will be heavily influenced by his recommendations. We have not sought to preempt them in this submission.

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We also note that since the establishment of this Inquiry, the Australian Government has announced a package of reforms and a review of the regulation of the profession by the Treasury. We commit to contributing to that review openly and constructively.

Our submission, addressing the Inquiry's Terms of Reference, is set out in the pages that follow.

Yours faithfully

Kevin Burrowes
Chief Executive Officer
PwC Australia

Our response to the Terms of Reference

1. The global and national firm structures

1.1. PwC in Australia

PricewaterhouseCoopers (**PwC**) ABN 52 780 433 757 is structured as a general partnership established under the laws of the Australian Capital Territory and operates a professional services business throughout Australia under a partnership agreement dated 8 April 1997 (as amended).

The partnership provides a range of professional services including audit, accounting, taxation, legal, insolvency, consulting and transaction services. As we have publicly announced, we have entered into an exclusivity agreement to divest our Federal and State Government business to the Australian private equity firm, Allegro Funds for A$1. We have now signed a heads of agreement and are working towards concluding the deal by the end of September.

Being a partnership, the Australian firm of PwC is owned by its partners. Some professional services firms in Australia are structured as corporates and are owned by shareholders, which in many cases are partner-equivalent employees e.g. senior executives, managing directors.

The general partnership structure means that under the general law, there are fiduciary obligations between partners that foster a sense of trust and confidence between them. Among them, the partners have duties of good faith and honesty, and duties to provide full accounts of all information and assets in their possession and control, preserve confidence, avoid conflicts of interest and to avoid profiting personally from partnership opportunities and information. These obligations are reinforced and to some degree expanded by the terms of the partnership agreement.

A general partnership structure allows for partner participation in governance and management of the partnership. This includes the participation of partners in elections for the Country Senior Partner (**CSP**) and Board of Partners (**BoP**), and direct involvement of partners in partner votes on some significant matters such as amendments to the partnership agreement and major investments.

The *Corporations Act 2001* (**the Corporations Act**) limits the size of the firm, because the number of partners in an accounting firm is limited to 1000 under s.115 of the Act (as prescribed by reg. 2A.1.01 of *Corporations Regulations 2011*).

It should also be noted that while PwC is structured as a general partnership, PwC in Australia also operates aspects of its overall business through corporate entities. For example PricewaterhouseCoopers Securities Limited (ABN 54003311617), a controlled entity of the partnership, is the provider of any services for which an Australian financial services licence is required (e.g. relating to corporate transactions). PricewaterhouseCoopers Securities Limited is classified as a large unlisted company, as well as a significant global entity, and must comply with all applicable governance and reporting obligations (this is outlined in more detail in Section 2 below).

1.2. Partnership Agreement

The partnership agreement is the "constitution" of the Australian firm. It outlines the respective responsibilities and powers of the CSP, the BoP and partners; sets out procedures for meetings and voting; deals with the arrangements for the calculation and division of profits and losses; the admission and retirement of partners; partner evaluation and income; the post termination payment arrangements; and the firm's membership of the PwC Global Network. Each partner is required to comply with the terms of the partnership agreement and the firm policies applicable to partners.

A copy of our Partnership Agreement is available in **Appendix A**.

1.3. Partnership governance

The PwC partnership has a governance structure under which decision-making is vested in firm management (the CSP and individuals appointed by the CSP (known within PwC as the **Executive Board**). Certain decisions are, however, reserved to the firm's BoP (known as the **Governance Board**) or to a partner vote. For example, the BoP has powers and duties in respect of the admission and retirement of partners, partner remuneration, the firm's Post-Termination Payments scheme, the election of the CSP, and approval of certain firm investment decisions.

An equity partner vote (by two-thirds majority) is required for certain decisions including for example any amendment of the partnership agreement and approval of certain investments. Equity partner votes are also required in relation to election of both the CSP and members of the BoP.

1.4. Limitation of liability scheme

Chartered Accountants Australia and New Zealand (**CA ANZ**) is the professional body with whom PwC Australia is registered as a chartered accounting firm. A limitation of liability scheme approved under professional standards legislation applies to members of CA ANZ to limit the occupational liability of CA ANZ members. The CA ANZ limitation of liability scheme in force in NSW (Scheme) is given effect under the *Professional Standards Act 1994* (NSW). The Scheme also operates outside NSW, in all other Australian states and territories, by way of mutual recognition under professional standards legislation applicable in those other states and territories.

As members of CA ANZ, the Scheme limits the liability of PwC partners, in relation to the firm's provision of specific kinds of services set out in the document establishing the Scheme. PwC's services include services under all categories of "Occupational Liability" covered by the Scheme, that is "Category 1 services", "Category 2 services" and "Category 3 services" as defined in the Scheme document[1].

The Category 1 monetary ceiling (relating to audit services) is:

a) $2 million, where the claim arises from services in respect of which the Fee is less than $100,000; OR

b) $5 million, where the claim arises from services in respect of which the Fee is $100,000 or more, but less than $300,000; OR

c) $10 million where the claim arises from services in respect of which the Fee is $300,000 or more, but less than $500,000; OR

d) $20 million where the claim arises from services in respect of which the Fee is $500,000 or more, but less than $1,000,000; OR

e) $50 million where the claim arises from services in respect of which the Fee is $1,000,000 or more but less than $2,500,000; OR

f) $75 million where the claim arises from services in respect of which the Fee is $2,500,000 or more.

The Category 2 monetary ceiling (relating to insolvency services) and the Category 3 monetary ceiling (relating to "general" services) are similar to (a) – (d) for the Category 1 monetary ceiling.

1.5. The PwC Network

The Australian partnership of PricewaterhouseCoopers is part of the global network of PricewaterhouseCoopers firms by virtue of its membership of PwC International Limited (**PwCIL**), a company limited by guarantee incorporated in the United Kingdom. PwCIL works to develop and implement policies, standards and initiatives to create a common and coordinated approach for member firms in key areas such as strategy, brand, risk, and quality.

Member firms can use the PwC name, and the resources and methodologies of the PwC network are made available to them. In return, member firms agree to abide by certain common policies and to maintain the standards of the PwC network. PwC member firms share knowledge and skills. Membership of the PwC network therefore helps individual firms work together to provide high-quality services on a global scale to international and local clients, while retaining the advantages of being local businesses – including knowledge

[1] https://www.charteredaccountantsanz.com/member-services/being-in-public-practice/insurance-and-liability/liability-capping-scheme

of local laws, regulations, standards and practices. In many countries, firms providing audit and accountancy services are required by law to be locally owned and independent.

PwC firms in different countries, including PwC Australia, are separate legal entities. PwC member firms do not and cannot operate as a corporate multinational. The PwC network is not a global partnership, a single firm, or a multinational corporation.

1.6. PwC Australia's tax obligations and contribution

A general partnership (such as PwC Australia) is required to lodge a partnership tax return each income year. A partnership distributes its net income to each partner. Each partner includes their share of the net income of the partnership in their personal tax return. Therefore, partners pay tax on their share of the income, at personal income tax rates. By contrast, a corporation is taxed directly on its profits, at company tax rates. The average rate of personal income tax paid by PwC partners over the past 5 years is approximately 38 per cent.

This year, we contributed $659m in total taxes, up 5.6% from FY22. Total tax contribution is comprised of:

- Fringe Benefits Tax
- Payroll Tax
- Pay As You Go Withholding tax
- Stamp Duty
- Insurance Duty
- Corporate Tax
- Foreign taxes
- Non-recoverable GST
- Estimated taxes payable by PwC Partners

1.7. Impact of structures on confidence in professional services firms

Our partnership model has its origins in our own history and we believe that it is the structure that allows us to deliver for our clients, our people and wider stakeholders in Australia. The direct ownership of our business by our partners, drives greater performance and commitment from our leaders. Similarly, partners' own capital is at risk in this model; they are accountable for the liabilities and risks of the business. We believe that this model drives a collective focus on service quality.

However, we recognise the challenges raised by some stakeholders as to whether this is the right structure for a professional services firm to adopt, principally citing concerns as to the transparency and governance structures within this model. While we are open to change, we don't agree that the partnership model itself is fundamentally incompatible with reforms that may be required to address stakeholder concerns in this area. Indeed, a form of partnership structure is adopted by the significant majority of large professional services firms, including PwC member firms around the world.

As highlighted by the difference in reporting and governance obligations on partnerships among jurisdictions, there are means available with regards to legislation and regulation to enhance reporting/governance obligations. For example, in territories such as the UK, Limited Liability Partnerships exceeding a certain size threshold are required to file audited financial statements. In addition, in the UK, and as discussed further in Section 2, a specific Audit Firm Governance Code has been introduced to place obligations on audit firms that apply to the firm as a whole.

We recommend that the Committee consider the laws and regimes in jurisdictions such as the UK, the EU, and South Africa which could provide examples to be drawn upon. Any proposed reforms should be subject to consultation with relevant stakeholders to ensure that they are appropriate for the Australian market and circumstances and would address the needs of stakeholders.

We are committed to working to address the perceived structural concerns of our partnership model with respect to governance and transparency, through both engagement on appropriate regulatory, reporting and governance reform and by enhancing our own voluntary reporting where we believe this is the right thing to do.

2. The extent to which governance obligations applying to a professional services firm may vary depending on the structure adopted, such as a partnership, a company, a trust, or other structure. Consideration of any gaps and international best practice

2.1. Governance obligations applying to professional services firms

As discussed above, we acknowledge concerns that have been raised by stakeholders and the community about the suitability of the partnership model for large professional services firms.

While it is true that partnerships are not bound by the external governance and reporting requirements under the Corporations Act in the same way that companies are, there are a number of external governance obligations that apply to professional services firms regardless of the structure adopted. The key governance obligations are set out in the table below. The regulatory framework, including sanctions available for misconduct, is discussed in Section 3.

In addition, and while not required under a general partnership structure, PwC Australia has been on a journey of increasing transparency to our people, clients and community. In 2018 we disclosed our gender pay gap, and in 2019 our audit quality balanced scorecard and the average effective tax rate of our partners. We have also disclosed that we are carbon neutral in each year since 2008.

We were the first of the big four to publish our ASIC audit inspection results and released the only Audit Quality Balanced Scorecard in Australia, which put PwC's ASIC audit inspection results on the public record, along with the firm's internal audit quality inspection results and restatement rates. In 2020 we established the PwC Australia Audit Quality Advisory Board (**AQAB**). The AQAB provides external advice, guidance and challenge regarding PwC Australia's approach to audit quality, specifically on matters related to the quality of statutory (external) audits performed by the firm.

In FY21 we released our first annual firmwide Transparency Report (see our FY22 report here) - note this report is separate and different to the Audit Transparency Report discussed in the table below. The firmwide Transparency Report is a report prepared voluntarily by PwC Australia to provide our people, clients and the broader community with details of our operations and to demonstrate our ongoing commitment to transparency, accountability and sustainable performance. This report is prepared based on the World Economic Forum International Business Council (WEF IBC) Stakeholder Capitalism Metrics. As a professional services firm, not all WEF metrics are material for us and we provide explanations where this is the case. We are committed to improving our reporting year on year and will seek to report on additional metrics where relevant to our activities in the years to come.

Table 1: Governance obligations applying to professional services firms

Accounting Professional and Ethical Standards (APESB)	All Australian accountants, including those who provide tax services, are required to abide by the Australian Professional and Ethical Standards Board Code of Ethics, APES 110. APES 110 is consistent with the International Code of Ethics for Professional Accountants (including International Independence Standards) produced by the International Ethics Standards Board for Accountants (IESBA), which has been adopted by the vast majority of accounting ethics standard setters around the world. There are five fundamental principles of ethics within APES 110 (consistent with the international code) which must be complied with, these are integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. All Australian accountants who provide tax services are also required to abide by APES 220 *Taxation Services* which specifies the professional obligation of all members who provide taxation services in relation to a client's or employer's taxation obligations. These standards apply to the members of the three major Australian professional accounting bodies, CA ANZ, CPA Australia and the Institute of Public Accountants (**IPA**). All PwC partners are members of CA ANZ thus compliance with APESB standards is mandatory and breaches may result in CA ANZ bringing disciplinary proceedings against the member concerned.

	The requirement to apply APESB pronouncements is extended to accounting firms established by members and all professional services they provide to clients, including those in the public sector. Our PwC Code of Conduct, as well as our policies and procedures, apply to all partners and staff and have been designed to be consistent with the principles of APES 110. The consequences for any partner or staff member who has breached the Code range from being required to exit the firm, through to verbal warnings and additional training.
***Tax Agent Services Act 2009* (TASA)**	All registered tax practitioners must comply with the TASA, including the Code of Professional Conduct and the civil penalties provisions. The Code sets out principles under five separate categories: Honesty and integrity, Independence, Confidentiality, Competence and Other responsibilities. Section 20-15 of the TASA sets out the criteria that the Tax Practitioners Board (TPB) must consider in determining whether it is satisfied that an individual is a fit and proper person for the purposes of registration as a tax practitioner. This 'fit and proper' requirement applies to each individual tax practitioner, each director (in the case of a company tax practitioner) and each individual partner and director of any company partner (in the case of a partnership tax practitioner).
Audit transparency reporting	In Australia, an audit firm that audits 10 or more significant entities such as listed companies, listed registered schemes, authorised deposit-taking institutions, and insurance companies is required to disclose a transparency report annually (Corporations Act 2001 s332A and Regulation 2M.4A and Part 3 of Schedule 7A in the Corporations Regulations 2001 in Australia). Aspects of the information required to be provided relate to the firm as a whole. A summary of the requirements for audit transparency reports is set out by ASIC here. See here PwC Australia's FY22 Audit Transparency Report.
Management of conflicts of interest	• Provision of non audit services to audit clients: A combination of provisions in the Corporations Act and in APES 110 limit the services auditors can undertake for audit clients. Collectively they seek to protect against the auditor being put in a position of auditing their own work, acting in a management capacity or acting as an advocate for the company. • Former partners in board roles and certain other roles at clients: The Corporations Act requires a two year cooling off period before a partner can become a board member of a company the firm audits, where they were previously a member of the audit team. Further, the Corporations Act specifies additional requirements for audit firm independence where a former partner of the audit firm is a board member or audit critical employee of an audit client and has a financial arrangement with the audit firm. • APESB 110 provides overarching requirements for the management of conflicts of interests, however this is only compulsory for members of the three major Australian professional accounting bodies.
Significant Global Entity reporting (SGE)	An entity is a Significant Global Entity (SGE) for an income year if it is: • a global parent entity with annual global income of A$1 billion or more, or • a member of a group of entities consolidated (for accounting purpose) where the global parent entity has an annual global income of A $1 billion or more. PwC Australia meets this criteria, and as a result the firm's trading corporate entities e.g. PricewaterhouseCoopers Securities Limited, are required to prepare General Purpose financial statements which are lodged with the ATO.

Modern slavery	The *Commonwealth Modern Slavery Act 2018* establishes a national modern slavery reporting requirement for certain large businesses and other entities in the Australian market to report on risks of modern slavery in their operations and supply chains.

2.2. Examples of governance schemes in overseas jurisdictions

As we mention above, a form of partnership structure is adopted by the significant majority of large professional services firms, including PwC member firms around the world. However, the governance arrangements required in specific jurisdictions can differ substantially. In some jurisdictions, including Australia, the US and Canada, there is relatively little prescription in terms of mandated governance arrangements for a partnership that practises public accounting.

We understand that this approach reflects the fact that the owners of a partnership, being the partners themselves, already have a high level of access to management of the organisation, and that therefore there is little information asymmetry between the owners and the management. This contrasts to a listed company, where the shareholders have limited access to management, and therefore rely on good governance, and reliable financial reporting, in order to address their information deficit.

However, in other jurisdictions, certain partnerships are required to have specific governance arrangements in place and even in some cases to publish audited financial information. In our experience, the drivers behind this type of policy approach can include:

- A view that in return for some form of limited liability (such as offered in a Limited Liability Partnership structure (**LLP**), in the UK), the public interest is served by a minimum standard of governance and transparency; and
- A view that for a partnership with particular public interest responsibilities (such as the right to perform audits), the public interest has a right to minimum standards of governance and transparency.

In preparing this submission we have considered the governance frameworks in other jurisdictions and have found the UK framework to have most relevance for the Australian market. The UK has been on a journey of reflection in the regulation of the auditing and professional services sector, not dissimilar to what we see in Australia. We outline below for the Committee some elements of the UK framework that could be considered in the Australian context.

Reporting requirements of LLPs in the UK

LLPs in the UK are subject to a number of additional reporting requirements, designed in part to align aspects of the reporting of such LLPs with corporates of a comparable size. For example, LLPs exceeding certain size thresholds are required to file audited financial statements. Large LLPs in the UK have also been brought into the scope of additional reporting requirements, such as disclosures based on the Task Force on Climate Related Disclosures.

Audit Firm Governance Code in the UK[2]

The UK introduced its Audit Firm Governance Code (**AFGC**) in 2010, which has seen further revisions since it was first introduced. The AFGC applies to firms that audit Public Interest Entities (**PIEs**). The concept of a PIE was first introduced into the International Code of Ethics for Professional Accountants in early 2000. In adopting this concept, the IESBA concluded that other than for listed entities, determining which entities should be treated as PIEs should be largely left to local regulators or other authorities, although firms were also encouraged to consider whether additional entities should be treated as PIEs, taking into account guidance provided in the Code.

In Australia PIEs are determined by considering factors including the nature of the business, such as holding of assets in fiduciary capacity for a large number of stakeholders, its size and number of employees. There are also a number of entities listed which will generally satisfy these conditions, including authorised deposit-taking institutions.

[2] Source FRC: Audit Firm Governance Code (Revised 2022)

The UK Financial Reporting Council (**FRC**) encourages all audit firms who audit UK defined PIEs to adopt the Code voluntarily and expects firms to apply it once they audit 20 or more PIEs or if they audit one or more FTSE 350 companies.

The Code applies to the firm as a whole, not solely to its audit practice. The objective of the Code is to promote good governance and ensure that firms have appropriate levels of oversight and are taking account of the public interest in the way they operate. Similar to how the Australian ASX Corporate Governance Principles and Recommendations are structured, the AFGC is principles-based, supported by "comply or explain" provisions.

A key feature introduced by the Code is the requirement for independent non-executives (INEs) within the governance structure. It provides that they are to regard themselves as being accountable to the public interest, assessing and promoting the public interest in firm operations and activities. The Code requires that these INEs are also embedded within other relevant governance structures of the firm.

The Code also requires transparent reporting on the firm's governance structure and management team, as well as how it has applied the Code's principles in practice and the Code's provisions (the "comply or explain" reporting).

The Code creates a more level playing field with regard to governance requirements, seeking to strengthen the regulatory regime by achieving greater transparency and effective governance without disproportionate regulation. The flexibility allowed by 'comply or explain' provisions also remains an important characteristic of the Code.

The Code only applies to professional services firms who audit PIEs and meet the scope of the Code and does not apply to non-audit consulting firms. However, in 2022 the UK Government announced that following its consultation on reforms aimed at 'Restoring trust in audit and corporate governance', the UK PIE definition is to be expanded to include those private companies, AIM listed companies, LLPs and third sector organisations, which have 750+ employees and £750M+ annual turnover. There is no current timetable for when the legislation is to be enacted. However, if implemented, the definition would capture large audit and non-audit professional services firms that are companies or LLPs and that meet the threshold.

PIEs face a number of legal and regulatory requirements over and above those that apply to other companies. These cover corporate reporting, audit and governance requirements. While not yet finalised, it is expected that the UK Government will require that these "new PIEs" face the same requirements as existing PIEs with the exception that they would not be required to have an audit committee and will not be subject to mandatory firm rotation.

European Union audit firms Annual Transparency Report

In the European Union (the "EU"), audit firms performing statutory audits of public-interest entities are required by statute (Article 13 of EU Regulation 537/2014) to make public an annual transparency report within four months of the end of each financial year. The regulation sets out prescribed mandatory content, including (but not limited to) a description of the legal structure and ownership of the audit firm (and its wider network), a description of the governance structure, a statement on the firm's independence practices and compliance and certain specific financial information. This requirement is similar to the Australian requirement for an Audit firm Transparency Report, as discussed in Section 2.1 above.

3. Mechanisms available to governments, government departments, statutory authorities, professional standards bodies, regulators, and non-government clients to monitor and sanction misconduct and poor performance

3.1. The regulatory framework

Recent misconduct has highlighted that the profession has failed to meet the expectations of the government and the community and has put a spotlight on the regulatory framework in which we operate. We agree that it is timely to consider the overall regulatory framework for professional services firms and this becomes more important as time goes on and firms progress into new areas outside traditional accounting and auditing fields.

Multidisciplinary firms, such as the 'Big 4', have been inherently hard to regulate as a whole as there are considerable differences in the services each offers. This has led to the current situation we face where there is a patchwork of co-regulation with regulators, professional bodies and standard setters all playing a part.

The framework that exists around the audit profession is in many ways strong and robust, grounded in the law through the Corporations Act which imposes obligations on both individuals and firms alongside professional and ethical standards consistent with major international jurisdictions. For example, an auditor must be registered, have certain qualifications and can be subject to disciplinary measures. A similar framework, with legal obligations, applies to the provision of tax services. However, there are other services offered where such a framework isn't as robust.

To assist the Committee, in this section we have outlined the key legislative, regulatory and professional standards frameworks applicable to PwC Australia. Other professional services firms may be subject to some or all of the legislative and regulatory frameworks described below, depending on the type of services they provide.

3.2. Regulators

Australian Securities and Investments Commission

ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC has a wide remit and unlike in some other international jurisdictions, while ASIC regulates auditors, it is not a stand-alone audit or professional services regulator.

ASIC regulates services provided by PwC Australia with respect to:

- Registered auditors/ external audit services
- Registered liquidators/Insolvency services
- Services requiring an Australian financial services licence e.g. deals services /applicable to PricewaterhouseCoopers Securities Ltd and its representatives

Penalties available for misconduct include criminal penalties and civil penalties in relation to contravention of the Corporations Act.

With regard to audit services, under the general partnership structure in Australia, individual partners who undertake statutory audits must be registered company auditors and the partnership (as an "audit firm") is the appointed auditor. The partnership does not itself hold a separate audit authorisation. Therefore, ASIC essentially regulates the individual, not the firm. This is different to the US and UK where the Public Company Accounting Oversight Board (**PCAOB**) and UK FRC respectively have regulatory oversight of audit firms and individual practitioners.

As part of its monitoring responsibilities, ASIC annually inspects the quality of PwC Australia's work as statutory auditors. We note that some concerns have been expressed publicly that ASIC has reduced the number of audit files it reviews annually. We support its risk-based approach to identifying where to focus attention on financial reporting and audit matters. However, we are conscious that ASIC has a very wide regulatory remit and faces significant challenges in allocating its resources across its many functions.

Public Company Accounting Oversight Board

PwC Australia is registered with the US PCAOB because we perform audits of U.S. public companies (issuers).

In addition to the above-mentioned reviews performed by the local regulator ASIC, the PCAOB inspects PwC Australia on our system of quality control and a sample of issuer audits every three years. The most recent inspection was in March 2022.

Companies Auditors Disciplinary Board

The Companies Auditors Disciplinary Board (CADB) is an independent statutory body which receives and reviews applications made to it by ASIC and the Australian Prudential Regulation Authority (**APRA**) in respect of the conduct of registered company auditors. The primary role of CADB is to act as an expert disciplinary tribunal to consider applications for the cancellation or suspension of the registration of auditors under the Corporations Act. Penalties available include cancellation or suspension of the registration of auditors where the panel makes a determination against the auditor e.g. that the auditor has failed to carry out their duties and functions adequately and properly or is not a fit and proper person to remain registered.

Tax Practitioners Board

TPB regulates tax practitioners to ensure that tax practitioners meet appropriate standards of professional and ethical conduct. The TPB is responsible for the registration and regulation of tax agents and BAS agents, as well as for ensuring compliance with the Tax Agent Services Act 2009 (TASA), including the Code of Professional Conduct. As outlined in Section 2.1, to be eligible for registration, applicants must satisfy a fit and proper person requirement. The fit and proper person requirement applies to both individual applicants and each partner and director in respect of partnership and company applicants.

With regard to enforcement and compliance, the TPB investigates conduct that may breach the TASA, including non-compliance with the Code, and breaches of the civil penalty provisions. The TPB can impose administrative sanctions for non-compliance with the Code as well as apply to the Federal Court in relation to contraventions of the civil penalty provisions in the TASA.

On 16 November 2022, after completing an investigation, the TPB imposed an Order on PwC Australia under section 30-20 of the TASA. The full details of the Order are publicly available and amongst other things require PwC to provide a compliance statement to the TPB every 6 months from the date of the Order confirming compliance with the Order.

Australian Tax Office

Whilst the TPB has the primary responsibility for registering and regulating tax agents, we routinely engage with the Australian Taxation Office (ATO) and are subject to regulation by the ATO in relation to both the firm's own tax compliance and the tax services we provide on behalf of our clients. PwC Australia works collaboratively with the ATO as part of their Key Agent Program and complies with a number of ATO protocols including the ATO's Tax Advisory Firm Governance - Best practice principles.

One of the key areas of regulation is the promoter penalty laws that can apply to tax advisers who are involved in improperly promoting arrangements that avoid or evade tax. Under the promoter penalty laws, an entity must not engage in conduct that results in:

- it or another entity being a promoter of a tax exploitation scheme
- a scheme that has been promoted on the basis of conformity with a product ruling being implemented in a way that is materially different from that described in the product ruling.

The Australian Government has announced it will increase maximum penalties for advisers and firms who promote tax exploitation schemes from $7.8 million to over $780 million. The proposed reforms also expand tax promoter penalty laws so they're easier for the ATO to apply and increase the time limit for the ATO to bring Federal Court proceedings.

Tax Advisers can also be subject to penalties and offences for making a statement that is false or misleading to the ATO. The ATO prosecutes offences under the *Tax Administration Act* and works with other agencies on tax-related fraud cases.

Other regulatory / oversight bodies

In addition to the above, there are several other bodies that provide regulatory oversight to other professional services provided by PwC Australia. These are set out below:

- **Legal services regulators e.g. Office of the NSW Legal Services Commissioner, Victorian Legal Services Board & Commissioner** - Legal services (regulated by each State and Territory). Administrative/disciplinary sanctions in respect of breaches of professional rules applicable to legal practitioners, including for example suspension or cancellation of a legal practitioner's practising certificate.
- **Australian Property Institute (API)** - Valuations of real property and plant, machinery and equipment. Disciplinary sanctions in respect of breaches of the API Rules of Professional Conduct or other unprofessional conduct, including suspension or cancellation of API membership, or membership of the Australian Property Institute Valuers Limited (APIV) (the limitation of liability scheme applicable to API valuers).
- **Australian Competition and Consumer Commission (Commonwealt**h) - Broad range of services regulated by the Commonwealth including professional services, except to the extent covered by a more specific regulatory regime (e.g. financial services which are regulated by ASIC). Sanctions for breach of competition and consumer laws including criminal penalties, civil penalties, civil claims.
- **Fair Trading regulators (State/Territory)** - Broad range of services regulated by the States/Territories including professional services, except to the extent covered by the Commonwealth (e.g. financial services are regulated by the Commonwealth). Sanctions for breach of consumer laws including criminal penalties, civil claims.

In addition, we are subject to very extensive client contractual obligations which are in practice a significant source of regulation of the firm's operations. For example, client master service agreements can often be in the range of 80 to 100 pages or longer and deal with a very extensive range of obligations applicable to provision of services, including but not limited to warranties and remedies relating to the standard of services, reporting requirements, confidentiality, privacy (including Australian privacy laws and frequently GDPR), data security, Modern Slavery, anti-corruption and bribery, anti-money laundering, sanctions regimes, export controls, security of critical infrastructure requirements, client codes of conduct and policies, and APRA regulations such as CPS 231 and CPS 234 (for clients in the financial services sector).

3.3. Standard setters

Accounting Professional and Ethical Standards Board

The APESB is the Australian national standard setter for professional and ethical standards. CPA Australia and CA ANZ established the APESB in February 2006. The IPA became the third member of the APESB later that year. The APESB is equally funded by CPA Australia, CA ANZ and IPA.

As discussed in Section 2, the APESB sets the code of ethics and professional standards with which accounting professionals who are members of CPA Australia, CA ANZ or IPA must comply. APESB also sets standards that relate to quality management for firms, for example APES 320, Quality Management for Firms that provide Non-Assurance Services, specifies obligations of a firm in respect of establishing and maintaining a system of quality management for non assurance services performed by the firm.

APESB has no role in monitoring and enforcing its standards. Any breach of ethical standards by accountants who are members of the professional bodies is a matter for the professional bodies or a relevant regulatory body to investigate and take action according to their findings.

Auditing and Assurance Standards Board (AUASB)

Other standard setters include the AUASB and the Australian Accounting Standards Board (AASB). The AUASB is responsible for developing, issuing and maintaining auditing and assurance standards. ASQM 1 and ASA 200, issued by the AUASB but aligned to the global equivalents, requires a firm to design, implement and operate a system of quality management for assurance and related services engagements performed by the firm, to provide it with reasonable assurance that the firm and its personnel comply with AUASB standards, relevant ethical requirements, and applicable legal and regulatory and requirements, and the engagement reports are appropriate in the circumstance. ASQM 2 establishes a firm's requirements for the appointment and eligibility of an engagement quality reviewer and the engagement quality reviewer's responsibilities for assurance engagements.

3.4. Professional bodies

As discussed in Section 2, the three major professional bodies play an important role in the overall professional services regulatory and oversight ecosystem, their roles include:

- Enforcing ethical and professional standards
- Education and continuing professional development of members
- Representing and advocating for the accounting profession

Chartered Accountants Australia and New Zealand

CA ANZ has a Disciplinary Framework to oversee the management and determination of alleged breaches by members which sits under their overall Professional Conduct Framework. The disciplinary bodies are independent decision makers whose processes are defined by the CA ANZ By-Laws.

Under the by-laws where certain criteria are met CA ANZ requires its members (and in some cases the practice entity) to inform it of those events. Some of these events include a finding against the firm or individuals, or where there has been conduct likely to discredit the profession. Under the By-Laws, the Professional Conduct Committee can investigate all individual members who are partners of any firm that has had an adverse finding made against it, or that has had a condition placed on its registration. Disciplinary sanctions for breaches of ethical standards include fines, removing the member from the register of members, suspending the member for up to five years, cancelling or suspending a member's Certificate of Public Practice.

We are aware that CA ANZ's Professional Conduct Committee is investigating the matter in respect of the Tax Practitioners Board order against PwC Australia.

In June this year, CA ANZ released the findings of an independent review of the Professional Conduct Framework, including recommendations to extend the existing features of the Disciplinary Framework, for example by increasing fivefold the maximum fines for events involving firms.

PwC is also subject to periodic review by our professional body. The CA ANZ review programme monitors whether members have the necessary quality control policies and procedures to comply with professional standards and legal requirements.

3.5. International experience

In preparing this submission we have considered the regulatory regimes in different parts of the world and have prepared observations for the Committee set out as follows. Principally, this commentary focuses on regulation which derives from our role as auditor; this is the service that we deliver that results in the greatest level of regulation. We have highlighted below some of the key structural features of different regimes.

Self-regulation vs independent regulation

In much of the world, the accounting and audit professions began as "self-regulated" professions, with a degree of regulation oversight provided by a local professional body. Today, we see diversity globally, with some countries continuing with a largely self-regulatory model and others establishing some degree of independent regulation. Over the last decade, we have seen a trend towards independent regulation in many more mature economies. Often, independent regulation is focussed on public interest entity audits, with the audit of smaller, private entities remaining under the oversight of professional bodies.

For example, in India the National Financial Reporting Authority (NFRA) was established in 2018 as an independent regulator of auditors providing services to certain classes of companies, with the profession previously having maintained a self-regulation model through the Institute of Chartered Accountants of India. The NFRA is responsible for making recommendations to Government in respect of accounting and auditing standards adopted by companies and auditors respectively, enforcing compliance with those standards and supervising the work of auditors.

Focus of regulation

We also observe evolution in the focus of regulators. Initially, regulation tended to focus on the performance of individual audits, with the responsible engagement leader therefore falling into the remit of the regulator. Under this type of model, where there is a quality failing, enforcement action would be brought against that audit partner.

Some regulators are now seeking to extend their remit to the firm, as well as to the responsible audit partner. This not only changes the outcome of enforcement action (with sanctions being awarded against the firm as well as against individuals), but has also influenced the nature of supervisory activity. Regulators with this type of approach not only inspect individual audits, but also seek to understand and evaluate firm-wide activities, including training and culture programs. For example, in the UK the FRC has recently started to broaden the nature and extent of the thematic work it undertakes during its supervisory activity and plans to further increase its supervision of audit firm culture. We believe that a firm's system of quality management is foundational to the delivery of high quality audits, and therefore we support regulatory approaches that reflect this.

Some regulators have gone further and have set jurisdictional standards applying at a firm level. The most notable example is again in the UK, where the UK FRC has introduced an Audit Firm Governance Code as discussed in Section 2.3. Recently, the UK FRC has gone still further, and published "Principles of Operational Separation[3]". These have been introduced on a voluntary basis and have the objectives of ensuring that audit practices are focused above all on delivery of high-quality audits in the public interest, and that no material, structural cross-subsidy persists between the audit practice and the rest of the firm. These principles also include enhanced governance requirements with respect to the audit practice, including independent oversight of the audit practice by audit non-executives.

Regulating the corporate reporting ecosystem

As auditors, we play an important role in ensuring that users have access to high quality corporate reporting which can be trusted. However, others also have key parts to play, including those charged with governance at reporting entities and the management responsible for preparing high quality reporting.

Regulatory regimes around the world differ in terms of whether a single regulator maintains oversight of the entire corporate reporting ecosystem, including all of these different players, or whether different regulators oversee different participants in the ecosystem.

In the US, for example, the PCAOB supervises public accounting firms and their associated persons. It also has responsibilities for setting auditing, quality control, ethics and independence standards in relation to audits of public companies. The PCAOB's scope does not extend to reporting issuers or their directors. The US Securities and Exchange Commission (SEC) supervises SEC registrants, including in respect of their reporting responsibilities. The SEC supervises the work of the PCAOB and has the power to review and approve PCAOB rules and standards. The SEC can also conduct its own investigations and take disciplinary action against auditors and audit firms if they fail to comply with federal securities laws or the SEC's rules. Therefore auditors in the US are subject to a dual level of oversight.

As a comparison, in the UK, the ARGA, which is proposed to be the successor entity to the current UK FRC, is expected to have new powers to supervise and, if necessary enforce against, public interest entity directors in respect of their responsibilities for corporate reporting and audit.

Regulation of public interest entity audits

As we mention above, in jurisdictions where independent audit regulators have been established, those regulators tend to focus on audits of entities of the greatest public interest or "public interest entities". These usually include audits of listed companies, but some regulators have extended the definition of "public interest entity" to include other non-listed entities which are deemed to have a significant public interest. As explained in Section 2, the UK is expected to expand its definition of PIEs further, and as a consequence, this will also expand the number of audits subject to regulatory supervision

Sanction regimes

We also observe variability in the sanction and enforcement powers of audit regulators. We commend to the Inquiry a recent report[4] released by the International Forum of Independent Audit Regulators (IFIAR) which summarises enforcement regimes around the world. IFIAR is a global member organisation which brings together independent audit regulators from 54 jurisdictions. We observe a recent trend towards the use of non-financial sanctions, such as mandating specific oversight of parts of the practice or the imposition of specific training, to complement financial sanctions.

[3] Source: FRC - Principles for operational separation of audit practices
[4] IFIAR Report on 2022 Survey of Audit Regulators' Enforcement Regimes

3.6. Choice and competition in the audit market

The Australian audit market is mature and the audit product, as defined by law and standards, has not changed significantly over several decades. With only minimal growth in the number of companies and organisations that require audits, the market for audit services is more constrained relative to the growth for other professional services such as business consolidation, cyber security, tax, and transformation.

Our experience is that the Australian audit market is very competitive. This is supported by research conducted in Australia by Professor Elizabeth Carson of UNSW Sydney and published in 2019 as Audit Market Structure and Competition in Australia[5] which showed that, over the period 2012 to 2018, on average 8.34 per cent of listed entities changed their auditors in any given year.

Professor Carson's analysis also demonstrates that:

"Unlike other jurisdictions where the Big 4 audit more than 70% (United States) or 84% (United Kingdom) of listed companies, in Australia the market share of Big 4 auditors is now less than 40%, declining from 40.71% in 2012 to 37.70% in 2018. Splitting the market into four categories based on client size, my analysis demonstrates that the very large company audit market is highly concentrated … for large clients, the market is moderately concentrated…for medium clients, the levels of concentration are low."

We spend significant amounts of time competing for audit appointments in the large listed company sector. Purchasers are sophisticated buyers, who seek evidence of our commitment to high quality work and expect to see us bring new technologies and tools to our audit work. Our competitors in the large listed company market are generally the other "Big 4" firms. This is often because these clients require a firm with global reach, access to a range of skills in the audit which a multi-disciplinary firm can provide, as well as the capital to be constantly investing in the latest technology and processes.

Some company boards have also begun to apply the new guidance set out in the Australian Institute of Company Directors' (AICD) guide *Periodic Comprehensive Review of the External Audit*[6] as they assess the quality of the work undertaken by their external auditors.

Where there is a small number of large participants in a market, there is a risk that the participants will exert their power to inflate prices in an unwarranted fashion. If that were the case, a regulatory response to mitigate this might be warranted. We are not aware of any evidence to show this has been the case in Australia. In contrast, the outcome of the very competitive market has often been to put downward rather than upward pressure on price.

Outside the large listed company market, competition for audits is also high but there are also more participants. This is because these companies generally operate in a smaller number of jurisdictions and need less 'global reach' from their audit firm, or operate a less complex business model and so require a more limited range of industry expertise.

We also note that this issue was comprehensively considered as part of this Committee's Inquiry into the Regulation of Auditing in Australia[7]. The interim report stated that *multidisciplinary firms with specific expertise in specialised areas are best placed to deliver high-quality audits that address the needs of modern businesses.*

[5] AUASB Research Report 3: Audit Market Structure and Competition in Australia: 2012-2018 Professor Elizabeth Carson, UNSW Sydney
[6] https://www.aicd.com.au/risk-management/enterprise/reports/audit-quality-guide-2022.html
[7] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing

Appendix A: PwC Australia Partnership Agreement