Actions taken by the Department of Finance are a clear sign public service leaders want to improve the management of contractual relationships. (Wikipedia)

Everybody wants better behaviour from professionals involved in supplying goods or services to government. The challenge is tweaking departmental and other regulatory guidance — even legislation — to achieve that aim.

An Office of Impact Analysis guide says all available tools should be evaluated to deal with policy problems that don't always require new laws to help solve.

"Impact analysis needs to demonstrate there is a genuine need for government to take responsibility for the problem," the guide says. "Have governments – commonwealth, state or local – attempted to fix this problem before? What success did they have? What was learnt from the experience?"

There is also a reminder for those who might be tempted to satiate crowds in the media or on social media screaming for government action.

"Not taking action can be just as valid a policy solution as any other, and a rigorous cost-benefit analysis should always include 'business as usual' as a benchmark," the guide says.

The document contains a range of commonsense prompts for policymakers. It asks people to evaluate issues as best they can without allowing white noise to impair their judgment.

The guide further considers the form of any policy proposal and whether, for example, one solution is suited to all entities or individuals considered to be part of the target population.

What the guide provides is a neutral analysis of the way policy development should be conducted. Importantly for those watching the government procurement debate, it calls for any considerations to be practical and be an effective means to a policy end.

How might this play out in the saga of government procurement and large accounting and consulting firms with a global presence?

No action is not an option in procurement

Actions taken by the Department of Finance and others regarding procurement processes are a clear sign public service leaders want to improve the management of contractual relationships.

Those actions are taken in the context of procurement processes so departments — not legislators — can effectively manage contractor relationships.

The draft suppliers code of conduct, which is the subject of community consultation, is one document that assists in regulating the providers of goods and services to government.

That does not mean a code of conduct solves all of the challenges that have been apparent throughout multiple committee hearings chaired by senator Richard Colbeck, but such a code allows departments to measure service providers against a set of criteria.

Professional accounting bodies appearing before the Colbeck committee have outlined how the profession's code of ethics — known as APES 110 — is applied in practice.

Modifying or using an existing code already recognised globally by a significant profession is an option policymakers are considering as part of a basket of measures to improve the conduct of service providers who might be in a large firm with members of accounting bodies.

Something else that must be remembered in this context is easily forgotten. Big Four accounting firms and the three consulting practices – McKinsey, Boston Consulting Group and Accenture – might be paid to do government work but somebody in government needs to authorise payment.

A large firm is dependent on an official in a department authorising a contract or series of contracts or a contract extension.

This is why a supplier code of conduct will not simply exist in a vacuum. It requires bureaucrats involved in overseeing the contractors and their work to monitor what is going on and detect misconduct.

Tricky conduct by firms as revealed by whistleblowers to senators would be more closely scrutinised. This is not just because a firm has a benchmark with which to comply. It is also that public servants will have a code of conduct they must enforce.

Senate estimates hearings would not be a pleasant experience if it ever emerged a code of conduct proposed, consulted on and implemented by the Department of Finance was not being used effectively to police contractors.

How do we get people to be more transparent?

A constant debate throughout the parliamentary inquiries has been how lawmakers can ensure the transparency of partnerships and other consulting firms' practices.

You can argue this is a self-regulatory initiative and that firms such as PwC, for example, will voluntarily publish sets of financial statements out of the goodness of their heart because it is the right thing to do. This is especially true if your firm does essential public interest work such as external audits.

But if it's such a good idea, why wasn't a decision to make a practice more transparent taken much earlier? Does it need a crisis of confidence in an organisation's credibility to persuade people of the appropriateness of preparing full financial statements for public consumption? What prevented a practice of PwC's size from entertaining the publication of financial statements in previous years?

It also raises the question of how governments and parliaments regulate the transparency of firms and individuals that provide government services. Can you capture all of the kinds of entities that the committees chaired by Colbeck and senator Deborah O'Neill have been thinking about in one regime?

Floating an idea

Assume for the purposes of this exercise that the Department of Finance's supplier code of conduct is implemented, management of contractors is strengthened, and any cheeky buggers are sternly dealt with by bureaucrats. What is a possible solution for transparency for accounting and consulting firms that just might fit the bill?

Let's define the population to be regulated as having three categories: individuals and entities contracted to provide services to the commonwealth; individuals and entities that make themselves available via procurement panels to provide services to the commonwealth; and individuals or entities that provide regulated professional services.

These three categories are scoped by the function organisations or individuals perform rather than whether they are, for example, a company or a partnership.

Entities and individuals providing services to the commonwealth under an existing contract are self-explanatory. They are a de facto part of the public service by being contracted so therefore it is appropriate that transparency rules of some kind apply to them.

Should entities and individuals available to provide services to the commonwealth via procurement panels such as the Management Advisory Services panel be required to be captured? There ought to be no doubt that they should because the government and the community should be able to know that they are going concerns and would be able to fulfil the terms of any contract they sign.

What of the third category?

Firms such as the Big Four accounting practices provide services such as audit, tax, insolvency and financial services that are regulated by commonwealth law. They are services that would provide them with revenue, but they are also services provided in the public interest of the public good.

These entities in the third category should also be captured by a regulatory regime so that any disclosure is provided on a comparable and consistent basis by all practices falling into that category.

Are they public interest professional service entities?

The one thing linking the three categories is entities and individuals are either doing or intending to do work with a strong public interest attached.

Creating a term for those three groups such as 'public interest professional services entities' captures all of them.

Once you have defined the three groups in this way, you can set a basic level of disclosure everyone must comply with. This might include entity name, location, key management personnel and some key financial data, allows people to compare total revenue from services rendered to the commonwealth government as an indicator of fee dependency.

A basic level of disclosure might be fine for small- to medium-sized firms and sole traders that win government work, but what do you do with larger entities such as the Big Four accounting practices?

Legislators would need to determine a threshold for the lodgement of audited financial accounts by practices deemed large or sufficiently significant to justify demanding the lodgement of full sets of financial statements.

Should the Corporations Act thresholds for proprietary companies be replicated for the purpose of determining which public interest professional services entities lodge audited financial statements with a relevant regulatory authority or government department?

Those require private companies to be at or exceed two out of three thresholds related to revenue, assets and the total number of employees before they are required to lodge audited financial statements.

That is one way to resolve the issue of which entities should be required to provide full sets of audited financial statements to a register accessible to politicians, the media and the community.

It is by no means the only criteria that could be created to define lodgement obligations. But it is at least familiar and understood by firms operating in Australia that advise clients on how to comply with reporting and lodgement rules.

This is one way to create a regulatory solution that ensures greater transparency of entities providing services to government or doing work regulated under law, such as audit and taxation.

A further bonus of the regime outlined above is that it would not require firms to change their structure. The rule would be based on the function performed by an entity or individual rather than whether they work as a sole trader private company, publicly listed firm or partnership.

READ MORE:

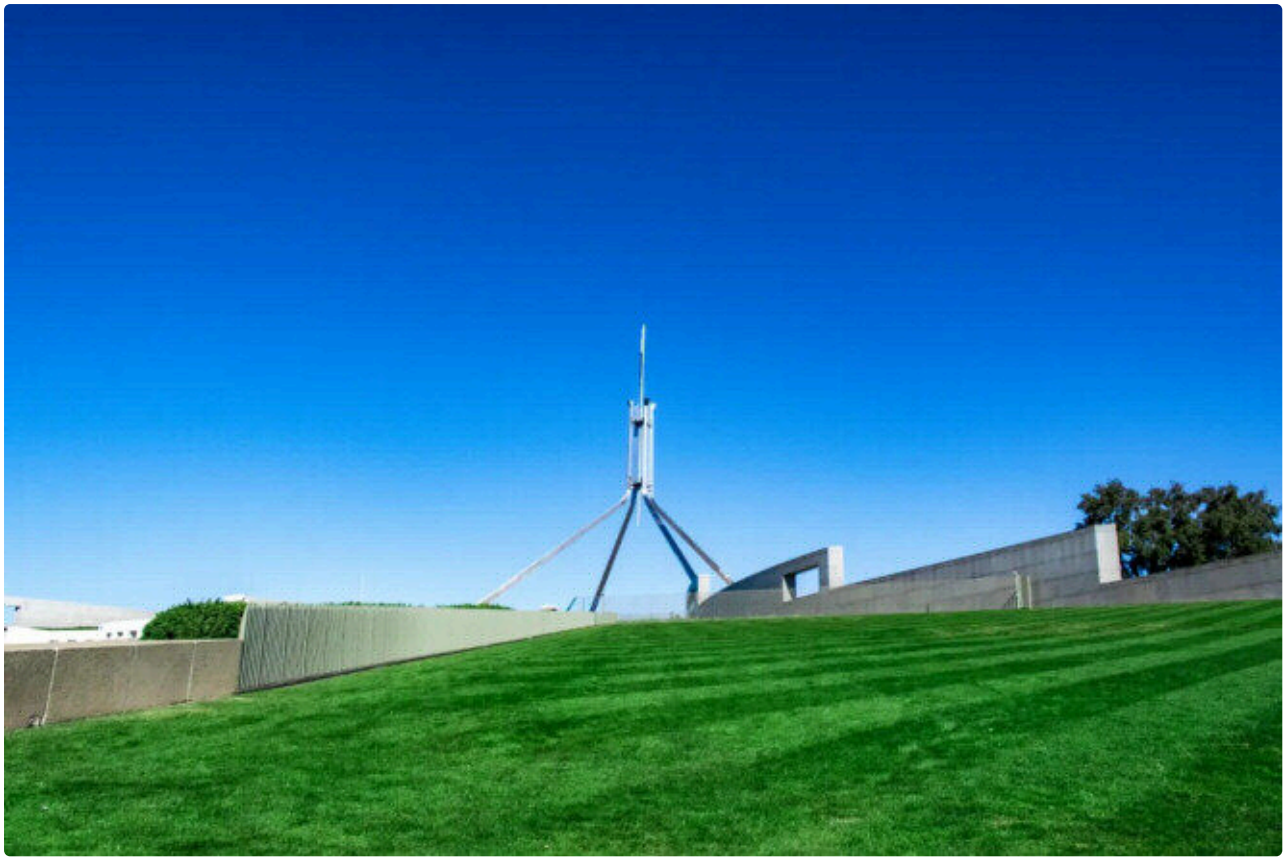
Is it OK for policymakers to ignore Office of Impact Analysis guidance? (https://www.themandarin.com.au/235878-is-it-alright-for-policymakers-to-ignore-office-of-impact-assessment-guidance/)

About the author

(/author/tom-ravlic)

By

More Premium Content



History rather than histrionics of outrage and controversy will assist in delivering reasoned policy outcomes. (Suthee Creative/Adobe)

Some people are fascinated by genealogy and have an insatiable curiosity about discovering the history of their families.

That personal history offers them a certain perspective on where they fit as individuals when viewed through the lens of their family tree.

This does not mean that present personal challenges with immediate or extended family are unimportant — the present is the lived experience — but the historical background speaks to where their background, traditions and even inherited perspectives on issues might come from.

Exploring personal or family history provides perspective and insight similar to exploring the history of political or regulatory institutions would provide politicians, academics and others seeking to resolve problems related to human behaviour.

Take the two current inquiries that capture the accounting profession within their scope being chaired by senators Richard Colbeck and Deborah O'Neill.

The senators in the box seat are confronted with a range of controversies — confidentiality breaches and exam cheating among them — within a profession that needs to be explored. But there are topics within professional regulation that have a very long history and are being amplified in present discussions.

It should be remembered that debates in and around accounting regulation are a little like the remake of a Hollywood classic: new actors, same script.

Hang around long enough and you'll be able to recite the script word for word in the same way as a Star Wars tragic could mouth the dialogue from *Episode IV: A New Hope*.

Take the expectation gap in auditing, for example, that continually comes up in debates about the value or purpose of audit and what an audit engagement team does when it goes into an entity to do its work.

Auditing is, by any definition, a specialist, jargon-laden discipline with standards that would be considered by those not required to understand and comply with the content as a non-chemical cure for insomnia.

That expectation gap was recently referred to by O'Neill during a hearing of the Parliamentary Joint Committee of Corporations and Financial Services into structures and professionalism of accounting, auditing and consulting firms.

It featured in the final report of the same committee's inquiry into the regulation of auditing in Australia, which was issued in November 2020 during the coronavirus pandemic.

"Contention persists around the expectation gap between what users of financial reports expect an auditor to provide and what auditors are required to provide under statutory obligations with respect to the auditor's role in: preventing and

detecting fraud and misconduct, and assessing a company's economic viability as a going concern," the 2020 report says.

Auditing standard-setters domestically and internationally are still dealing with fraud and going concern and the recent visit to Australia by Tom Seidenstein, the chair of the International Auditing and Assurance Standards Board.

Seidenstein told *The Mandarin* during a wide-ranging chat that the standards are being fashioned so that the language around what an auditor is obliged to consider in the context of their work is clear, as opposed to what the auditor cannot be expected to achieve.

Activity by standard setters in the improvement of guidance related to fraud and going concern has merit as continuous improvement of guidance governing any discipline is necessary.

History does repeat itself

It would, however, be folly for legislators, policymakers in the bureaucracy, and other members of the commentariat to think that standard-setters, regulators or legislators have not gone to draw water from this well before in Australia and other jurisdictions.

Accounting bodies in Australia looked at issues of reforming aspects of accounting regulation following the various collapses of the 1980s.

A taskforce formed by the larger professional accounting bodies at the time, the Institute of Chartered Accountants in Australia and the Australian Society of CPAs, produced a report in 1994 called "A research study on financial reporting and auditing — bridging the expectation gap".

That report examined a range of reforms to the profession and other parts of the community to build greater trust in the business sector. A follow-up, 'Beyond the Gap', was issued in 1996.

The crisis that enveloped the accounting profession in the United States within a decade of that report when Enron bellyflopped in 2001 also hit the business and accounting community in Australia.

Professor Ian Ramsay from the University of Melbourne completed a report on the independence of Australian company auditors in 2001. It raised the issue of firms being in a position to amend their internal policies and procedures related to independence, and community expectations changed.

Then senator Ian Campbell, parliamentary secretary to the treasurer, told a conference on 'New Directions in Australian Auditing and Accounting Standards' on June 12 the following year that the accounting profession had homework to do when it came to grappling with explaining the mystique to audit to the folks on the street.

Campbell proposed three things that the accounting profession could do to offer leadership in the audit and accounting regulation discourse by contributing ideas to audit reform and recognising the international nature of the discourse at the time.

The third, according to Campbell, was for the accounting profession to "debate internally ways the profession can safeguard its strong ethical tradition and also ways it can help address the audit expectations gap by better educating market participants about the meaning of audit reports, risk/return trade-offs and the role of auditors".

A profession that had already (in 1994) contemplated what it needed to do to bridge the expectation gap in its own right was being asked by a government minister to talk some more eight years later.

Regulators also mention issues of expectation gaps from time to time, with former ASIC commissioner John Price contributing to the discourse in November 2015.

Speaking at an Association of Certified Fraud Examiners Melbourne Chapter event, Price mentioned the auditing standard on fraud in force at the time and the notion of an expectation gap.

Overseas perspectives

Audit expectation gap debates are not simply a local phenomenon. A glance through the addresses by the various commissioners of the Securities and Exchange Commission indicates that the expectations investors and the broader community have of auditors have been front of mind for a rather long time.

An address delivered in December 1978 by SEC commissioner John Evans referred to the expectation gap in the context of a report done by the AICPA Commission on Auditors' Responsibilities.

Evans told the audience of accountants in Florida that the commission's report said that the burden of closing the gap between practitioner activity and financial statement user expectation "falls primarily on auditors and other parties involved in the preparation and presentation of financial information".

SEC commissioner Charles Cox again used the theme in a speech delivered to a conference of accountants in January 1986, almost a decade later.

"There is the 'perception gap' or 'credibility gap', as some have called it. Essentially, this means that the public does not understand exactly what accountants and auditors do and what their opinions mean," Cox said.

A further address — this time from former SEC chair David Ruder in 1988 — referred to the expectation gap and a project to improve auditing standards at that time to deal with the understanding gap.

Ruder outlined an Auditing Standards Board project in the United States at that time called the 'expectation gap' project that resulted in 10 exposure drafts being issued to help improve the quality of auditing standards to — you guessed it — attempt to close the gap.

"Examples of proposals from the 'expectation gap' project include, among other things: a proposal to make the standard auditor's report more explicit and to remove overly technical language; a proposal to clarify the auditor's responsibility

to detect and report financial fraud; and a proposal to require auditors to consider in each audit the question whether the entity will continue to exist," Ruder said.

Do the last two of the trio of projects referred to by Ruder in the American context in 1988 sound familiar?

These are the same topics — fraud and going concern — that the IAASB, under Seidenstein's leadership, is grappling with right now, arising from the continuing and perplexing dilemma of finding a way to close an expectation gap.

These are only a few examples of references to the issue of an expectation gap but they are sufficient to illustrate that all someone has to do is live long enough to observe arguments and solutions being recycled.

The same is true for the debate on the provision of non-audit services to audit clients, the growth of management advisory services over the decades in firms and whether those impact the delivery of an independent audit, and the discourse about conflicts of interest that exist within firms that provide services to both private and public sectors.

Each of these topics has a rich vein of literature in its own right that extends beyond recently published tomes that are sometimes read into Hansard by parliamentarians as a way of pointing to problems in, for example, government procurement.

Policymakers should seek a deeper understanding of the discipline they are inquiring into rather than ride on the coattails of outrage and controversy because history rather than histrionics will assist in delivering reasoned policy outcomes.

READ MORE:

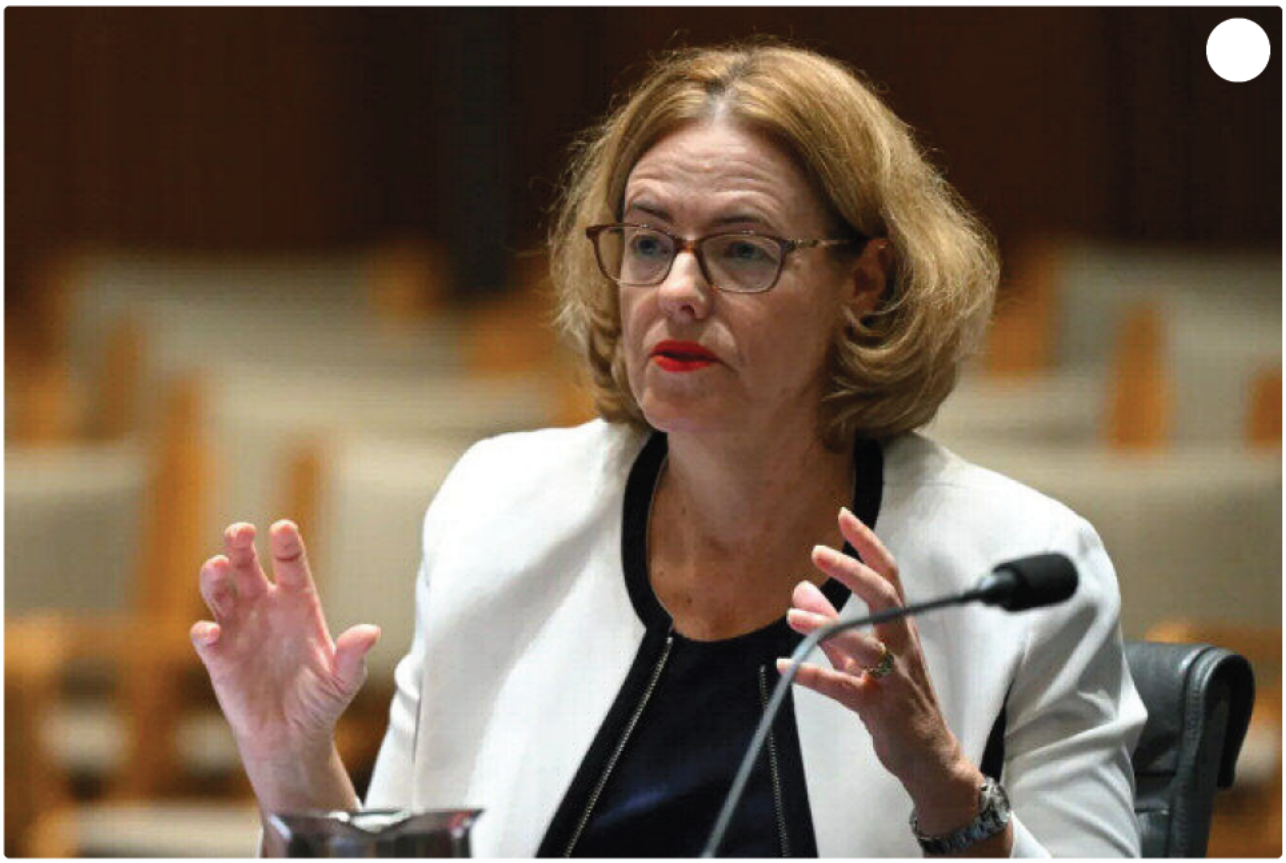
Sustainability assurance standard coming soon, says global auditing chief (https://www.themandarin.com.au/241158-sustainability-assurance-standard-coming-soon-says-global-auditing-chief/)

About the author

(/author/tom-ravlic)

By

More Premium Content



Former PwC Australia acting CEO Kristin Stubbins. (AAP Image/Lukas Coch)

"My name is Kristin Stubbins. I am here as a private citizen. I was the former acting CEO of PwC."

The former interim chief executive officer of PwC Australia made her first public appearance before a commonwealth parliamentary committee. She did not hide her disdain and ongoing upset at the partners who had brought the firm she had worked for over 30 years into disrepute.

Stubbins told the parliamentary committee that issues of the public interest and benefit — the debate sometimes characterised as "purpose over profit" — were discussed within PwC during her time there.

The former top audit partner, however, told the parliamentary committee that it was more likely that the assurance side of the practice would focus on issues of public interest — it was not a major discussion point for the tax side of the firm.

She also said she was disappointed she was unable to complete the reform tasks as interim chief executive officer once the global firm parachuted Kevin Burrowes, the former chief of PwC's Singapore firm, into the top job in Australia.

PwC announced Burrowes' appointment as chief executive officer in June 2023 and announced the sale of its government consulting practice to Allegro Funds for $1.

That practice would later become known as Scyne Advisory and be limited to providing consulting services to the government sector across jurisdictions.

Stubbins' opening statement to the committee outlined her concern that the scale of the tax leaks scandal problem was not fully disclosed to the firm leadership.

"I apologised several times to the Australian taxpayers for the behaviour of PwC Australia and I sit here today that I am very sorry and I remain deeply upset at the behaviours of some of the partners," Stubbins said.

"I am also very upset that the seriousness of these issues was kept hidden from the broader partnership for so many years.

"That points to the uncomfortable truth that despite PwC Australia doing many good things in recent years, there were underlying cultural issues of which most of us were unaware and which Dr Switkowski calls out in his report."

Stubbins told the committee she was a member of the executive board of PwC Australia from 2020 through to 2023, and that during that period there were briefings on legacy tax issues that were characterised as being largely resolved.

She found out that things were not quite largely resolved when she was appointed as the interim CEO last May. Stubbins kicked off the process of comprehensive investigations to understand the cultural behaviours that caused the firm reputational damage.

Stubbins and the board sought to conduct an analysis of the root cause of problems within the firm, commission the Switkowski report as well as hold a range of individuals accountable for their failure of leadership while the tax scandal flourished.

One line of questioning pursued by committee chair Deborah O'Neill was whether there was a rejection of the public interest in favour of making profit at all costs.

Stubbins told O'Neill that during the period relevant to the tax leaks scandal, those involved in the saga had ceased behaving like professionals, and that they had breached their professional obligations.

"I think when it comes to thinking what happened, there were clearly some individuals who not only breached their confidentiality agreements with government, which is a very serious thing, but also had a complete disregard for confidentiality more broadly," she said.

O'Neill asked Stubbins where the discussion of public interest took place in the accounting firm. Stubbins contrasted the discussions on the audit side of the practice versus the tax division.

"It is a very serious discussion in all of the firms around the public interest of auditing and how we can best serve the public interest," Stubbins said.

"I take that very seriously personally as do many of my professional colleagues. I have to say that same discussion was not happening with respect to the tax matters."

Stubbins said discussions at the board level were not happening in the same way about the tax profession as they were in the audit profession.

"I think that's a complicated area given the complexity of the tax laws, and investigations and things like that, but, frankly, the discussions were not held in the same way around the auditing profession versus the tax profession," Stubbins said.

Committee members were also interested in the role of the entity known as 'PwC International Limited' in the Australian firm.

Stubbins said she engaged with somebody from the international arm of the firm, counsel Diana Weiss, who came to Australia to provide assistance.

Weiss is a secretary of the global entity that is a private company incorporated in the UK. It is also the entity refusing to release the Linklaters report into the way global partners used confidential information.

Senator Barbara Pocock asked Stubbins for her thoughts on the failure of the global entity to provide the senate and the Australian community with access to the Linklaters report.

"What does it say to you, given your view about the need for a change in culture that PwC is refusing to release the Linklaters report? What does that say about commitment to transparency?" Pocock asked.

Stubbins obliged.

"I — like you — am frustrated that this has not been released but I don't know the reasons why. There may be very good reasons why, senator Pocock, that this has not been released. I just don't know," Stubbins said.

"I sought to control what I could control in the Australian investigation."

O'Neill asked whether Stubbins during her time in the top leadership role in PwC saw the terms of reference of the review Linklaters was asked to do of the involvement of firm partners globally.

Stubbins said she asked for assurance there was a detailed global investigation.

"I do believe a detailed investigation has occurred but I can't comment on why it has not been released," she said.

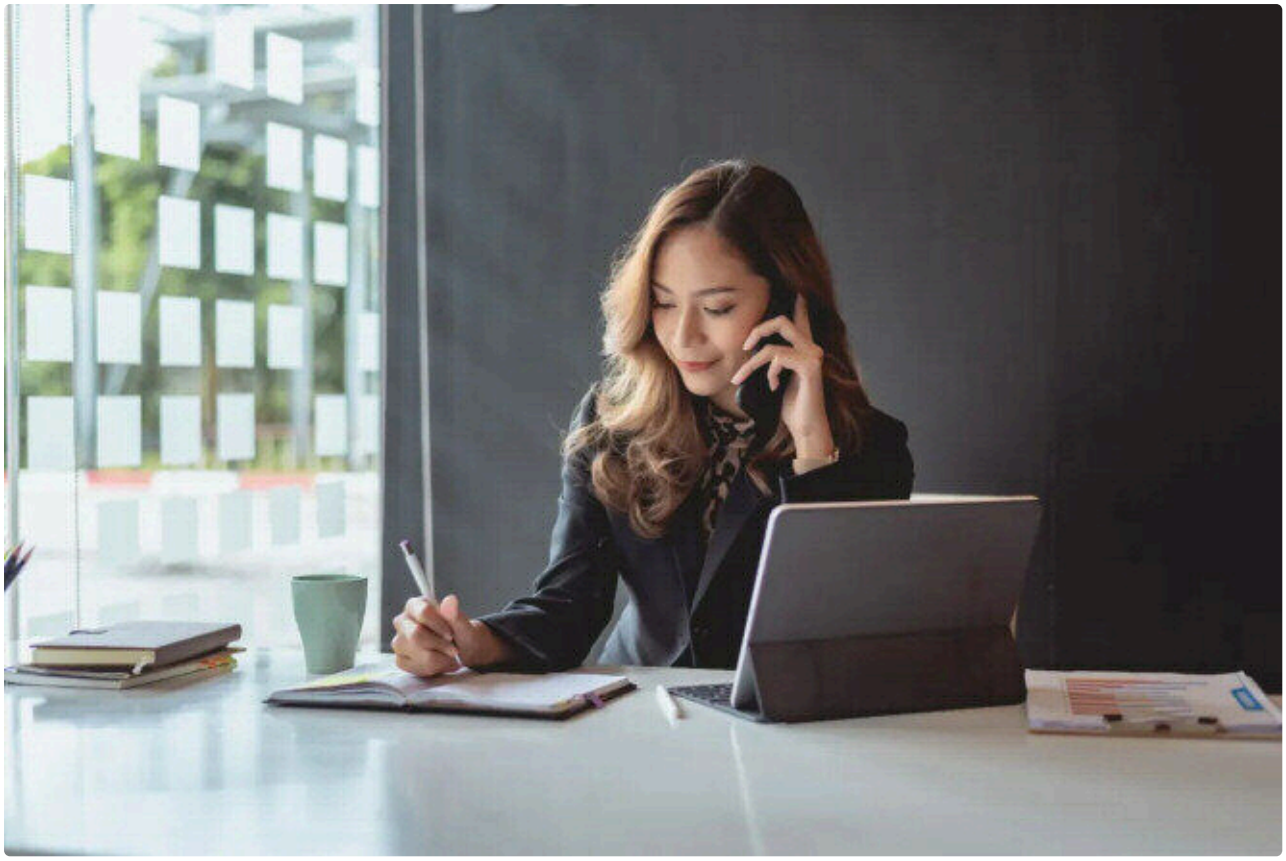
READ MORE:

About the author

(/author/tom-ravlic)

By

More Premium Content



The gradual switch to the greater use of technology means auditing techniques and standards need to keep up with the times. (amnaj/Adobe)

The area of audit and assurance tends to be perceived as fairly dry, routine and generally of little interest to policymakers except when companies fail and people go hunting for the auditor to work out what the auditor was doing on the engagement of the entity that belly-flopped.

Assuming the auditor could see some things coming before the management that was doing those things to begin with is always dangerous and that points to a fundamental weakness in the understanding of audit and assurance in the broader community.

Making effective and well-informed policy on corporate reporting, corporate governance and accountability requires an understanding of all of the factors that shape the practice of contemporary auditing.

These factors include domestic and global regulation, understanding the role of technology in business and its impact on auditors, servicing new demands for information to be assured, and demands that the accounting firms and the broader profession reevaluate the manner in which self-regulation takes place.

Setting of auditing standards

Australia's auditing and assurance standards are set by a government-funded body known as the Auditing and Assurance Standards Board — a board originally created, funded and staffed by two of the Australian accounting bodies, CPA Australia and the Institute of Chartered Accountants in Australia – now known as Chartered Accountants — Australia and New Zealand — through the joint venture vehicle known as the Australian Accounting Research Foundation.

That standard setter moved from being a private sector activity being funded by the profession into a taxpayer-funded body following a demand for a change in audit regulation globally following the collapse of Enron, the disintegration of the global accounting firm, Andersen, and the rush by US legislators to ramp up regulation. This move was in part to ensure the auditing standards had explicit legal backing in Australia and it assisted in aligning parts of the Australian regime with that operating in the US.

The AUASB joined its sister standard setter, the Australian Accounting Standards Board, under the oversight body called the Financial Reporting Council, and that has been fixed in place for the past two decades.

It is the policy of the federal government to collapse the three bodies into one organisation — it does not yet have a name — in a move that may be similar to that of New Zealand.

New Zealand and Australia work closely on accounting matters and parity in structures has some merit for those with neat minds, but it is unclear at present what the federal government has planned with this proposal because the merger of the three authorities has been mooted in a short media release.

Global auditing standards

The AUASB does not create many new pronouncements for audit and assurance. It is largely an adopter of the work done by the International Auditing and Assurance Standards Board and that assists in ensuring that consistent auditing and assurance standards are in place across the globe. There are a series of global projects that the Australian board is following closely including the development of a specific auditing standard dealing with sustainability reporting.

There are some exceptions when it comes to domestic solutions for audit and assurance dilemmas. One example of this is the continuing work of the AUASB in the area of the auditing of self-managed superannuation funds in which the AUASB provides guidance to professionals auditing self-managed superannuation funds.

This guidance combines the relevant requirements from auditing standards and superannuation law in a single reference. It does not, however, replace knowledge of the main body of audit standards and audit professionals are still required to refer to it to remain compliant.

Intersection between ethics and auditing standards

One of the challenges faced by the Australian parliament when it first took the profession's auditing standards and gave them legal backing was how to deal with incorporating the ethical requirements of the accounting professional in legal documents that would apply to all auditors — even those that were not members of a professional body such as CPA Australia, CAANZ or the Institute of Public Accountants.

The law regulates auditors but some auditors belong to communities that do not permit memberships of organisations such as a professional body. The only way the same ethical requirements could apply is if they were hardwired into the auditing standards.

This occurs through parliament mandating the auditing standards through the Corporations Act 2001 and then the audit standards mandate the ethical code of the accounting profession, known as APES 110 for the detail-minded among us.

The Accountants Professional and Ethical Standards Board in Australia is concerned the ethical standards are not sufficiently legally backed and has mounted an argument that the ethical standards should be given greater legal backing to encourage compliance.

The role of technology in modern audit

New technology means auditors have new toys with which to examine transactions in a greater number than was ever imagined when auditing standards were first created. Deloitte's managing partner of assurance, Joanne Gorton, told *The Mandarin* that auditing in contemporary times relies more on technology than it did when paper-based transactions were all that existed.

Audit sampling, for example, of records to check whether transactions that were recorded had actually occurred and been accounted for correctly was done on a smaller number of transactions in the past.

"If you compare that to getting 100% of a population's revenue, for example, you'll actually have revenue from the start of the year to the end of the year. You look at all the transactions. You can run a lot of data filters over that for standard prices, standard terms and conditions," Gorton said.

"And then you can quite easily identify a subpopulation where they have characteristics of higher risk, and then we're able to target our testing."

The gradual switch to the greater use of technology means that auditing techniques also need to keep pace, according to Sue Horlin, PwC's assurance business leader.

Horlin said that emerging technologies such as artificial intelligence demand an adjustment to the way in which auditors test information systems, and PwC's team of digital experts is looking, for example, at how auditors can grapple with

providing assurance on what large language models produce as output.

This relies on the auditor maintaining the traditional scepticism of an accounting professional, Horlin said, and ensuring that they wore a "digital hat' to be able to audit in the contemporary environment.

What is clearly being observed by professionals leading audit divisions in the firms is an increasing drift away from periodic auditing of the information systems and data to continuous auditing. This also means the accounting and commerce faculties at universities need to keep up with practice so their graduates possess not only theoretical but practical skills to help them be work-ready.

Legislators and standard setters need to keep a watchful eye on technology so they amend guidance to reflect new and emerging audit risks over time, and that the auditing literature is not stuck in a time warp.

Shifting regulatory climate

Accounting firms in Australia and across the world have been the subject of greater scrutiny in recent years and Australian parliamentary committees are looking closely at issues concerning auditor independence and the kinds of services auditors provide to their financial statement audit clients.

It is clear in Australia that parliamentarians are keen to learn more about the profession and precisely what Deloitte chief executive officer Adam Powick recently told *The Mandarin* that this was an area that could be considered for some further tightening up.

PwC has also announced that it would be restricting the work other parts of its firm can do for financial statement audit clients of its own accord to ensure it reduces wherever possible the perception of non-audit services being an impairment to independence.

What will be of interest in the coming months is where the various parliamentary inquiries looking at consulting firms and audit practice land and what, if any, impact they have in shaping how audit firms conduct their work in the public interest.

READ MORE:

PwC-busting senators give regulators homework on global links (https://www.themandarin.com.au/239896-pwc-busting-senators-give-regulators-homework-on-global-links/)

About the author

(/author/tom-ravlic)

By

More Premium Content

Right-wing strongmen, it turns out, are bad for national security

(https://www.themandarin.com.au/232363-right-wing-strongmen-it-turns-out-are-bad-for-national-security/)

Appointment of new chief watchdog is vital for good government

(https://www.themandarin.com.au/238583-appointment-of-new-chief-watchdog-is-vital-for-good-government/)

Senator Richard Colbeck. (AAP Image/Lukas Coch)

Accountants and most consultants are very simple folks, as there are only two things of consequence that matter in their professional lives.

The first is improving performance for their organisation in a context where they are likely to be financially rewarded. Profit motive, anyone?

There are also matters of status within a firm such as promotions to the position of higher standard such as a director or partner.

A second and equally important is the need to keep regulators, inspectors, and reviewers of their work — much like wolves — away from the door.

This means ensuring that individuals within any organisation providing services to the private or public are aware of their ethical obligations, contractual agreements, and provisions of legislation that govern professional conduct.

How do you strike the balance between the focus professionals of any kind have on performance — particularly incentives to make a profit — and their obligation to some greater good?

Senators Richard Colbeck, Deborah O'Neill, and Barbara Pocock have spent the better part of the past year wrestling with the exploitative practices engaged in by firms supplying services to the government and how best to boost the capacity of the public service to better manage outside contractors who have never met a dollar they didn't like.

The report arising from the committee's inquiry is due out by March 28, and it has to mull over evidence it has received in 61 submissions as well as 10 sets of public hearings.

This was also an inquiry hampered by legal obstacles for some time because the star witness, accounting firm PwC, (https://www.themandarin.com.au/237767-pwc-year-on-what-we-have-learnt/) was not called until October because it was sifting through its own innards using external lawyers to help nut out what happened.

Two lots of evidence and multiple responses to questions on notice from the firm but neither the committee, the Tax Practitioners Board, the Australian Taxation Office, nor the Australian Federal Police (https://www.themandarin.com.au/239271-pwc-investigation-expands-but-a-faceless-dirty-six-remains/) appear to be able to prise the mysterious Linklaters report detailing the extent of the use of confidential information from the Australian partnership.

The Australian PwC chiefs (https://www.themandarin.com.au/239477-afp-confirms-complex-pwc-probe-extends-beyond-australia/) have told the committee they cannot get the report from the London-based entity called PricewaterhouseCoopers International Limited — an entity that has an Australian partner, Paddy Carney, on its board.

The absence of the Linklaters report (https://www.themandarin.com.au/239276-colbeck-committee-faces-scope-limitation-on-pwc/) will undoubtedly feature in the final report of the parliamentary committee but that will simply be the committee

delivering the evisceration that it promised the firm when its representatives appeared before the committee on February 9.

Annoyance over the inability of the committee to access the Linklaters report to better understand how Australian policy information was disseminated through the network and who had access to it continues to fester, and it will last longer than the firm would like but PwC knows how to end that pain.

Release the report. (https://www.themandarin.com.au/239593-is-it-just-pwcs-dirty-six-highly-unlikely-tpb-says/)

The Linklaters report, however, and the quality of cooperation of witnesses is not the only matter on which the committee must opine because there were a string of issues that filled its last day of hearings that featured a focus on ethical codes and their application.

Draft supplier code of conduct

One of the issues that has dominated the hearing process is a constant reference to suppliers needing to keep in mind that their work for the government is work conducted in the public interest but there is a minor problem — somebody appears to have left the Department of Finance on the recipient list for the memo.

There is a concern among committee members that the objective of the public interest has not been properly identified in the document. The phrase "public interest" does not appear once in the Finance draft code nor does the current finance draft provide the broader context for why the code exists.

Read the first page of the current draft as exposed for comment by the Department of Finance, and that absence becomes apparent after a few moments of reflection on the questions asked and points made by various members of the Colbeck committee over the past 12 months.

Committee members have explicitly or implicitly throughout their poking, prodding, and persistent inquisition of consultants appearing before them reinforced the point that the firms hired to do work were supposed to regard themselves as serving the public good and not feathering their own nest.

Where is the statement in the current draft that tells the reader and the budding supplier that the commonwealth must service the Australian community and that it may use suppliers to fulfil its obligations in the public interest?

It does not exist, and that context must be clear and unambiguous from the first line so that anybody doing work for the government understands their place in the pecking order.

Such a link between the provision of services to the government and the obligation to serve the public good would help with the committee's objective of tightening aspects of monitoring and regulation of consultants who are presently not obliged to follow a specific code of conduct.

Accounting profession's code

Another point of emphasis from the committee during the hearing held last week was the need to encourage the use of existing efforts in developing codes that were linked to the pursuit of the public interest.

The example used by the committee was the accounting profession's code of ethics, which, from the first paragraph, states that the mark of an accounting professional is the overarching commitment to the public interest.

Members of the three professional accounting bodies — CPA Australia, Chartered Accountants –Australia and New Zealand, and the Institute of Public Accountants — are obliged to follow the code as members, and they can be subject to disciplinary action for breaches, but professional bodies are limited in what they can do.

A professional body's power to act rests solely in its contract with the member that holds its designation, but finding a way of making the accountants' code of ethics have greater legal backing could help capture unregulated classes of professionals such as consultants without a professional affiliation.

This does require some imagination from bureaucrats and legislators because the ethical code is an extra-legal document that sits outside the legislative framework.

It needs to be referenced either explicitly in legislation or a regulation that is tied to ensuring appropriate professional conduct of the firms that are providing or propose to provide services to government.

Such a mechanism for recognition of ethics already exists in auditing with a reference to ethical standards in legally backed auditing standards. There is no reason why the same method could not be used for a broader application of the ethical standard.

There is an open question in the discourse about the creation or adoption of any code of conduct that remains to be answered: who is ultimately responsible for regulating compliance?

The Department of Finance might use its supplier code of conduct once completed to assess performance against contract conditions, but the committee may want to reflect on whether those arrangements are sufficient to regulate supplier conduct.

Broader reviews of professional practices

The Department of Finance is conducting a review of PwC to determine whether that firm remains suitable to provide services to the government that were not scoped out of the PwC agreement with Scyne Advisory.

This review emerges from the tax leaks saga about which everybody knows more than they probably would want to remember but it opens the doors ever so slightly to the notion of similar ongoing reviews of practices providing services to the government.

Officers from the Department of Finance told the committee last Friday that other firms (https://www.themandarin.com.au/236738-the-big-fours-revelations-in-senate-estimates/) are not subject to the same level of review as PwC is at the present time.

It creates an obvious point for a recommendation for an institutionalised and continual review process of the ethical backbone of the firms (https://www.themandarin.com.au/238866-colbecks-committees-unfinished-business/) used to provide contracting services.

Such reviews would ensure that any supplier to the government is aware that that they will be reviewed holistically on a periodic basis to ensure that they are fit and proper and that their professional standards on the job align with those of the public service.

Reviewing suppliers only when examples of poor practice flare up is reactive and not necessarily the most effective way to deal with inappropriate conduct.

Reinforcing the expectations of ethical conduct might actually benefit everyone in the process and not just be an act punishing an errant consultant and their firm for being naughty.

A paper published in an academic journal called Economic Research in 2023 titled 'Affective professional commitment and accounting ethics principles: examining the mediating role of the code of ethics' covers this territory in the context of the accounting profession's ethical rules.

Andrijana Rogosic and Ivana Perica from the University of Split state that there are individuals for whom ethical guidance is more necessary than others, but they also found that a commitment to ethical behaviour might also be stronger if people identify as members of a profession.

"Professional accountants in business agree that it is reasonable to expect that an accountant should behave according to the accounting ethics principles (integrity, objectivity, professional competence and due care, confidentiality and professional

behaviour) more so if they report a high level of affective professional commitment (identification with, involvement in and emotional attachment to the accounting profession)," the Rogosic and Perica paper says.

The work of Rogosic and Perica touches on a question that has perplexed the committee: should consulting be regarded and regulated as a profession, and, if so, how does such regulation and discipline come about?

Committee members don't have the luxury of time to resolve that issue in any comprehensive manner given the deadline for the report is imminent.

It can, however, propose a means of regulating consultants without a clearly defined profession such as accountants and lawyers through the very contracts and commitments they sign.

Some things are other people's business

A lot has been made of the size of certain kinds of partnerships (https://www.themandarin.com.au/239951-talk-is-cheap-but-changing-rules-around-partnerships-requires-spine/), and how partners in large firms can hold their colleagues to account for their behaviour. This has seen robust questioning of partners of accounting firms as well as professional accounting bodies.

One significant problem exists for the committee in this sphere and that is an inability to impact partnership structures from the commonwealth's perspective because partnership law is a state and territory matter.

A way for the Colbeck committee to deal with this prickly debate about partnerships and their use by consulting professionals is to recommend a further inquiry by either the Legal and Constitutional Committee of the senate or get the government to refer the issue of modernising partnership law in Australia to the Australian Law Reform Commission.

Colbeck and his colleagues do not need to have a fix for every problem in government procurement. There is wisdom in knowing when it is best to send a problem elsewhere.

READ MORE:

PwC-busting senators give regulators homework on global links (https://www.themandarin.com.au/239896-pwc-busting-senators-give-regulators-homework-on-global-links/)

About the author

(/author/tom-ravlic)

By

More Premium Content