Senator Richard Colbeck. (AAP Image/Lukas Coch)

Numerous things have been said by politicians, academics, senior accountants and other commentators about the way in which professional firms offer services to the government and private sector.

Some of the money-spinning consulting practices have company structures while others, such as the Big Four accounting firms, operate in partnerships that have been cast as large, secretive and opaque. It's a narrative that, in some respects, casts the firms as villains.

It is difficult not to view the criticism of certain firms through the lens of a classic hero-and-villain vibe that cheapens the discourse about reform, using descriptors that one might associate with Darth Vader in *A New Hope*.

Let's take the evidence that the Finance and Public Administration References Committee chaired by senator Richard Colbeck (https://www.themandarin.com.au/239276-colbeck-committee-faces-scope-

limitation-on-pwc/) from May 2, 2023. The inquiry into consulting firms had begun, and professors James Guthrie and Jane Andrew and researcher Erin Twyford took centre stage.

Andrew opened the batting by pointing to the $3 billion in commonwealth taxpayer-funded work that large consulting firms secured and that the firms had a practice of "working both sides of the street".

She said there was growing concern about the operations and power of consulting firms given the revenue that they amassed from taxpayers, but the world within which they operate remained shrouded in mystery.

"As there is no accountability for the quality of their work or transparency of procedures undertaken in these partnerships, they remain primarily secretive organisations while operating as highly influential global advisors with corporate and government clients," she said. "This points to a significant risk to public sector integrity."

Twyford continued the theme during her opening statement, highlighting the now-famous PwC (https://www.themandarin.com.au/239593-is-it-just-pwcs-dirty-six-highly-unlikely-tpb-says/) breach of confidence (https://www.themandarin.com.au/239477-afp-confirms-complex-pwc-probe-extends-beyond-australia/) about which people know more than they ever wanted or really thought necessary. She talked further about secrecy.

"Big consulting firms are secretive partnerships, not companies, and they do not have to disclose where their money is coming from, even though they are the most powerful private institutions in the world," Twyford said.

"Most of their income comes from governments and large multinationals in work that does not even attempt to avoid conflict of interest."

Guthrie picked up the tail end with his opening statement on day one of the Colbeck inquiry, stating that the material for their research on large accounting firms and consultancies is drawn from a range of sources because the firms are – you guessed

it – secretive.

"That's the only way we can get hold of evidence to make our arguments because these partnerships are very secretive and they keep a lot of what they do in commercial in confidence and other sorts of things," Guthrie said.

These arguments about secrecy and working both sides of the street (https://www.themandarin.com.au/239561-many-shades-of-conflict-needing-management/) have been omnipresent throughout the inquiry, but that is because the business structure has no shareholders other than partners.

A partnership is a structure that has people within it that are joint and severally liable and therefore accountable to each other as shareholders if they have 'skin' or equity in the game.

Their profits are distributed once they pay all of the expenses, including the wages and benefits owed to employees, and how partners deal with their tax affairs has been discussed by the media and the committee.

Partnerships are not corporations. As such, some criticisms of the partnership model fall flat if you look at it solely on the basis of the structure and its reason for existing.

There comes a point, however, where criticism of the partnership model and its transparency has validity. That is when partnerships are responsible for offering services in which the community ought to have trust – such as audit, insolvency, financial or tax advice, and advice to government.

These are services offered by professional firms – some of which are partnerships – that do create a legitimate question in the minds of shareholders and stakeholders of listed companies as well as taxpayers of governments about the fitness and propriety of the entities.

One way of providing some insight that may be sufficient for some critics is to enhance partnership reporting requirements to include the publication of full financial statements. But the question is how such a policy to make the disclosures

of partnerships the same or similar to that of companies can be fulfilled.

There are at least four ways the Colbeck committee can think about the problems posed by business structures including partnerships, but thinking about it is one thing. Recommendations need to be acted on rather than be left on the shelf to gather dust.

Tie disclosure to the function performed

One of the ways to enhance disclosure is to demand that entities or individuals performing certain services to the government or a regulated service for a private client provide a suite of disclosures to a regulator for the purposes of transparency.

Imagine a regime that would require an organisation that gets a government contract, for example, to provide key financial data such as total revenue and revenue from government services so that it is clear when a practice might have the problem of fee dependency on one sector.

Data on sources of revenue is critical because it opens the question of how vulnerable a practice is to a single sector. Is the firm big and ugly enough to resist intimidation from a client that wants a specific answer and not an independent and professional opinion?

A small firm can be completely dependent on one sector, which is not a bad thing in itself. But there is merit in people understanding where their revenue comes from so questions can be asked about intimidation or threats to future work if a report doesn't quite give the department an answer it wants the ultimate client to see.

The ultimate client, of course, is the community through the parliament that it elects to hold government ministers and the departments that are the stewards of resources.

Revenue-related data, for example, could be used by senators who want to explore whether a department has leaned on a contractor with uncertain revenue flow.

The benefit of tying an accountability regime to disclosure is that parity with corporations in accounting and disclosure terms can be achieved without busting up a business structure.

This is an option the Colbeck committee could consider. It can have further consequences for another committee looking at the ethics and structures of accounting firms chaired by senator Deborah O'Neill.

Uniform reporting obligations for professional service providers would at least make them more transparent to a community sceptical about the value they provide taxpayers.

Amend state-based partnership legislation

Partnership law is based at the state level. If the committee were to toy with the idea of changing partnership laws, it needs to rustle up a recommendation that calls for attorneys-general across Australia to have a serious conversation about uniform rules for partnerships.

That is if their view is that community standards and expectations have shifted and the size and transparency of operations of partnerships need to be shown more love by state and territory parliaments.

Uniform changes at a state level would help provide the committee with some of the benefits they seek, regardless of where a partnership may be based.

The other advantage of uniform provisions is that it would discourage people with partnerships across the country from seeking to take advantage of any arbitrage that might exist if a state were to change its own laws.

Seeking uniform legislation would come with a range of risks, however, even if the states agree that law reform is a good idea.

Each state's parliament has a different sitting calendar, legislative program and electoral cycle.

There may be minor parties that could hold the passage of such reforms hostage unless they get certain additional provisions incorporated into the partnership legislation.

A harmonised or similar policy outcome can be frustrating given that an initiative to get uniform changes across states and territories is dependent on everybody playing nicely.

Referring power to make partnership law

The attorneys-general could eliminate a lot of uncertainty if they decide to kick the problem of partnership law upstairs by referring the power to legislate on partnerships to the commonwealth.

Legislating on corporations had to be referred to the commonwealth some decades ago and that meant regulatory action could be taken against entities operating in different states in a uniform sense.

Uniform laws also meant that people could operate in whichever state, but a national law covered their company regardless of whether it is private or public.

Commonwealth partnership laws would mean one set of amendments to legislation is all that is necessary, but that does not limit the capacity for fun and games when it comes to amendments on the floor of parliament that might differ from what has been envisaged by attorneys-general prior to agreeing to refer a legislative power to the folks in Canberra.

Nuking professional partnerships

There are those who think partnerships just operate like companies anyway and should be nuked, and existing partnerships forced to transition to companies.

That would require significant legislative change as well as reflection on what mischief people are seeking to fix that could not be dealt with by other measures that are less radical.

It is also based on the fallacy that a corporation is a more transparent structure by its nature. It is complete bollocks when it is put by people who have a simplistic understanding of the way the Corporations Act works when it comes to transparency requirements.

The Corporations Act itself makes certain companies less transparent if they are private companies that fall beneath particular thresholds.

Some entities that used to file financial statements that journalists and others could access no longer file accounts for the public to read because they fall beneath the thresholds for the preparation and lodgement of audited financial statements.

It is laughable that people think a corporation is automatically a better structure for a business offering professional services to run because they think partnerships are not transparent.

Companies are not completely transparent either depending on their type – private or public – and then whether they are required to prepare and have audited a set of financial statements for the public to read when folks run out of stuff to binge-watch on Netflix.

Financial statement and audit quality

There is also a risk that the financial statements that might be on the public record fail to comply with accounting standards and other requirements if a review of them by the regulator is not undertaken.

Financial statement lodgement in itself is no guarantee of a set of information that is compliant with regulatory requirements – especially if a regulator is not vetting accounts of private companies for compliance with financial reporting and audit requirements as it might, for example, publicly listed entities.

The underlying assumption that a more transparent regime is automatically a regime that provides access to true and fair accounts of the finances and operations of an entity needs to be questioned.

A dislike of features of one kind of structure, such as those presented by academics to the committee regarding partnerships, does not automatically mean that the alternative is automatically or instantly better. As a result, any recommendations for reform need to be reflected on with caution.

An option not available to the Colbeck inquiry

Evidence before the inquiry chaired by Colbeck points to a need for tweaks around a range of processes related to government procurement and the assurance that services are being provided by professionals providing services are appropriately qualified.

Colbeck and his colleagues must recommend measures designed to improve the system. 'Do nothing' is not an option.

It should be, however. A focus solely on business structures can lead to a distorted perspective on what must happen to improve the behaviour of professionals.

It should not matter what business structure professionals offering services to the broader community and government choose – the behaviour of people is what ultimately matters.

Accountants are driven by two behaviours: incentives to boost performance – their employers and their own – and fear of a regulator giving them grief.

Those two things are the only things that matter. The rest is just details.

About the author

(/author/tom-ravlic)

By

ASIC's deputy chair Sarah Court. (Image: LinkedIn)

The Australian Securities and Investments Commission (ASIC) has been asked to let the Australian senate know whether its relationships with regulators across the world can help them get closer to understanding which global PwC partners had access to confidential information on tax policy.

PwC Australia has told the senate committee inquiring into government consulting that it cannot give the senate access to the Linklaters report into how tax information might have been used internationally because its global entity, the UK-based private company known as PwC International Limited (https://www.themandarin.com.au/239593-is-it-just-pwcs-dirty-six-highly-unlikely-tpb-says/), will not hand it over to the Australian division because it is confidential and legally privileged.

Senator Richard Colbeck, the chair of the senate committee, asked ASIC representatives in what capacity they had to engage with the Australian-based director of PwC International Limited, Paddy Carney, given that she is also on the

governance board of the Australian partnership.

PricewaterhouseCoopers International Limited was incorporated in the UK in 1998 at the time of the merger between Price Waterhouse and Coopers & Lybrand, and it has been used since then to coordinate the global branding and risk management for the PwC network of various firms.

Such a structure also means that PwC network firms could have different corporate forms in their home jurisdiction, but they are be connected to the rest of the network via the global hub.

ASIC deputy chair Sarah Court told Colbeck it was unlikely that the commission would have jurisdiction in relation to Carney given she was a director of an entity that was registered in the UK.

Court said that the question that would come into play would be whether Carney was a director of an Australian company over which ASIC had any jurisdiction.

"We can explore that," Court said. "I am not familiar with her circumstances, I confess."

Senator Deborah O'Neill asked the corporate regulator to explore what oversight mechanisms they might have through any relationship they might have with their UK-based regulatory counterpart.

O'Neill also asked ASIC to look at what it can also learn through its relationship with the Public Company Accounting Oversight Board (PCAOB), given PwC has reporting obligations to that regulator because it audits entities that seek capital in the American financial market.

PwC told the committee last October that it was engaging with the PCAOB on issues related to the delayed reporting of the regulatory action taken against the firm related to the breach of confidentiality.

Colbeck told the corporate regulator that estimates had received evidence from the ATO about the revenue authorities it was engaged with across the world regarding the information sharing by the accounting firm.

He asked ASIC to provide similar information so the parliament understood what scope the corporate regulator had to chase down the global accounting behemoth.

"Could you give us on notice the jurisdictions that you are engaged within relation to this matter so that we can understand that," Colbeck said.

"I think we would be very keen to ensure that the dirty rotten scoundrels — which is the broader group than the Dirty Six which we understand are in the US — have every regulatory tentacle chasing down that is possible so we can try to ferret them out."

Estimates also heard earlier in the week that the Australian Federal Police (https://www.themandarin.com.au/239477-afp-confirms-complex-pwc-probe-extends-beyond-australia/) investigation into the PwC matter was both domestic and international following questions from both Colbeck and senator Barbara Pocock seeking an update on the police investigation.

READ MORE:

Is it just PwC's Dirty Six? Highly unlikely, TPB says (https://www.themandarin.com.au/239593-is-it-just-pwcs-dirty-six-highly-unlikely-tpb-says/)

About the author

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By

TPB chief executive o icer Michael O'Neill. (AAP Image/Lukas Coch)

The Tax Practitioners Board has revealed that its analysis of the documents related to the PwC tax leaks scandal showed that more than a "dirty six" were involved in sharing confidential information related to multinational tax avoidance.

TPB chief executive officer Michael O'Neill told senate estimates that PwC's assertion that there were only six people tagged by Coalition senator Richard Colbeck as the "dirty six" involved in the tax leaks saga understated the reality.

O'Neill said that the analysis of the documents by the TPB found that there appeared to be more than six individuals involved in the sharing of information across the relevant firms in the PwC network.

"Also, without prejudice into the scope of the investigation into the individuals of the firms, the suggestion that [the] Linklaters report lands on six people in the international firm is not consistent with our analysis of the documents," O'Neill said.

PwC representatives gave evidence to the Colbeck-chaired senate committee looking into consulting firms last October that they were engaging with and reporting to the PCAOB on matters related to the tax policy leaks saga, and the TPB told Senate estimates that it had written to the regulator for its assistance.

O'Neill said that it appeared the PCAOB was unable to share any investigation material with the TPB so that avenue was closed off as a source of information.

He also observed that what appeared to have been occurring with PwC's involvement in what is known as the Base Erosion Profit Shifting program, or BEPS, across the globe that the firm had blended private and public consultations on multinational anti-avoidance rules to influence debate globally on the issue.

"Our investigation is really targeting, senator, that communication that happened at that time between the Australian firm and the International firm, and they will be one of the issues that we'll need to be engaging PwC on to understand whether that raises regulatory issues under the Tax Agent Services Act," O'Neill said.

Both Colbeck and his references committee colleague senator Barbara Pocock sought feedback from the ATO on how it works with other regulators to deal with the PwC matter given that information was shared globally.

ATO deputy commissioner Rebecca Saint told the estimates committee that ATO engages with tax authorities across the world and that each jurisdiction will deal with investigations and alleged breaches differently depending on their law.

What was common between the jurisdictions, Saint observed, was that each of them had an interest in the Linklaters report that PwC Australia asserts the London-based PwC International Limited is refusing to release to the Australian firm so it may cooperate with requests from the Australian Senate and other authorities.

A public company extract from the online companies register in the UK obtained by *The Mandarin* confirms that PwC International Limited, a private company based in London, has a PwC Australia partner as one of its active directors and that partner is also on the local PwC governance board with Kevin Burrowes, the firm's chief executive officer.

"Whilst there is a level of interest in that Linklaters report globally the ability of the regulators to be able to see that or access that is somewhat hampered by the fact that it is going to be privileged," Saint said.

"I think the question for PwC Australia is if you haven't seen the report how do you know the investigation has actually occurred and identified all of those partners in that chain so I think that is certainly something that we would be expecting PwC Australia to have a great level of interest in."

ATO second commissioner Jeremy Hirschhorn told the Senators at the estimates committee hearing that there is a need to remember for whom a particular document or documents are privileged when seeking to unpick the lack of cooperation from PwC with the senate committees and regulators regarding the release of the Linklaters report.

"There's been a lot of discussion about legal professional privilege. I think it is very important to remember that legal professional privilege is not the lawyer's privilege. It is the client's privilege," Hirschhorn said.

"And so when somebody says that they will not provide a document to you on the basis of legal professional privilege it is really saying 'I don't want to provide you the document and you can't make me' which is the exact opposite to cooperation. I just make that observation."

READ MORE:

AFP confirms complex PwC probe extends beyond Australia (https://www.themandarin.com.au/239477-afp-confirms-complex-pwc-probe-extends-beyond-australia/)

About the author

(/author/tom-ravlic)

By

ATO Second Commissioner Jeremy Hirschhorn. (AAP Image/Mick Tsikas)

Identifying and managing conflicts of interest has become the topic of the moment as legislators and public servants grapple with how to handle private sector entities providing services to the government in the future.

A focal point of the discourse has been the conflict that exists between the private and public sector sides of a Big Four accounting firm as how some of the work done by large accounting firms for the private sector might conflict with consulting or contracting work done for governments regardless of the level or jurisdiction.

These conflicts (https://www.themandarin.com.au/239159-conflicts-of-interest-need-active-management-colbeck-says/) may be the ones that exist if a firm is doing policy work for a department on contract, but it might engage with private sector entities impacted by the very policy that they are working on for a department.

It is for this reason that some accounting firms will be picky about the kinds of things they do in the government consulting space.

In one particular firm, there is a practice of trying to ensure that the practice does not do policy-related work for government given that it may conflict with the implementation of technology and other types of consulting engagements with private and public sector clients.

The new consulting firm Scyne Advisory is a government-only play and sees itself avoiding that 'inherent conflict' between providing services to the public and private sectors.

"Allegro engaged with what has become the leadership of Scyne and we collectively agreed that the government consulting industry had to adapt to a new paradigm," Loader told the New South Wales parliamentary committee looking at firms engaged in providing services to government.

"Scyne Advisory needed to be independent from PwC, solely focused on the public sector with ASX level of governance and adopting a public sector code of conduct standard."

That conflict as highlighted by executives from Scyne Advisory during recent public hearings might be obvious but recent evidence given to a Senate committee by ATO second commissioner Jeremy Hirschhorn revealed that there is much more to analysing conflicts of interest.

Hirschhorn told senator Richard Colbeck and his colleagues that there are many shades of conflicts that exist within private and public sectors and that the conflict between audit and certain taxation services is not the only one to think about.

"Obviously, we've seen an increased awareness of conflicts where you provide advice to government and also to the private sector operating in that industry. Again, it's particularly important if you're systematic — like I've said — what a boutique firm does is less important than what a systemic firm does," Hirschhorn said.

"But even if you isolate yourself from providing services to government, there are still conflicts. For example, if you're providing advice to the federal government and a state government, there could easily be conflicts.

"To go to some specifics, there are conflicts within a government. You could have conflicts between different departments, which this committee has explored in the context of KPMG and TAHE."

Hirschhorn observed there might be a clearer delineation of issues that relate to audit independence within the accounting firms as opposed to other conflicts that sit outside the auditing discipline.

"The firms have been very focused on audit independence; they are auditing firms at their heart, or at their start, and there are very strict rules around audit independence. I suspect you'll find there are fundamentally different rules and levels of enforcement within the firms around auditor independence style conflicts and the other more subtle forms of conflict that we've spoken about," Hirschhorn said.

READ MORE:

PwC refugee Scyne gets government green light, but Finance warned of 'critical deficiencies' (https://www.themandarin.com.au/232494-scyne-gets-government-green-light-despite-deficiencies/)

About the author

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By

The government and PwC are at loggerheads over Linklaters' report. (Steve Lovegrove/Adobe)

The federal parliament and the global accounting giant PwC remain at loggerheads on the issue of law firm Linklaters' report into the activities of PwC tax experts in various jurisdictions across the globe.

The report relates to the tax leaks saga that has lingered like the stench from a half-closed compost bin over political and professional discourse for more than a year.

Representatives from PwC were hit with a focused opening statement from the committee chairman, senator Richard Colbeck (https://www.themandarin.com.au/238866-colbecks-committees-unfinished-business/), who is having trouble reconciling PwC's opening statement pointing to a range of internal structural reforms such as establishing risk committees with a continued refusal by the firm's global offices to hand over the report.

Colbeck told PwC's chief executive officer Kevin Burrowes that the firm's reputation will remain in freefall if it does not meet the demands from the parliament to come clean about what he as committee chairman has tagged the 'dirty six'.

The 'dirty six' (https://www.themandarin.com.au/239271-pwc-investigation-expands-but-a-faceless-dirty-six-remains/) is a reference to the six individuals that PwC has acknowledged had access to information from Australia related to changes in multinational anti-avoidance legislation, and the firm said in September last year that individuals received disciplinary consequences where relevant as a result.

They remain faceless and unidentifiable to those parliamentarians like Colbeck, senator Deborah O'Neill and senator Barbara Pocock who are obliged to come to an opinion with a significant limitation of scope related to the overseas divisions and their involvement in the handling of tax information created by the firm's reluctance to provide the report.

Colbeck (https://www.themandarin.com.au/239159-conflicts-of-interest-need-active-management-colbeck-says/) asked Burrowes whether the committee could trust the evidence on process improvements in PwC when the firm was not providing the committee with a copy of the Linklaters' report so the committee could see the international aspects of the tax leaks saga more clearly.

"You make a point of saying you are on the road of changing the culture and the way that the organisation operates but how do I — how do we — have any confidence in that when you as an organisation — and I don't differentiate between you as PwC Australia and PwC as an organisation — refuse to provide us, the Australian community, with the Linklaters report which I know is being withheld from you," Colbeck said.

"I did say at the last hearing that you're not being helped in your efforts to turn the Australian arm of the business by the withholding of that report by the overarching body.

"How do we have any confidence in any of the things that you say that you are doing when we are treated with that disrespect."

Burrowes said that he approached PwC International after the October 2023 committee hearing to request a copy of the Linklaters report and "that request was refused on the basis that the information contained in that report is privileged and confidential to PwC International Limited".

A firm website explains that PwC International Limited — the entity that Burrowes told the committee refused to cough up the Linklaters report — is an English private company limited by guarantee to which the firms operating under the brand are connected while each firm is a separate legal entity.

"PwCIL does not practise accountancy or provide services to clients. Rather its purpose is to facilitate coordination between member firms in the PwC network," the firm's website says.

"Focusing on key areas such as strategy, brand, and risk and quality, the Network Leadership Team and Board of PwCIL develop and implement policies and initiatives to achieve a common and coordinated approach among individual firms where appropriate."

The private company that handles the branding, strategy, risk and quality for the firm is a separate and non-trading legal entity and it would be up to the entity to volunteer to release the Linklaters report.

Australian senators are unlikely to experience that degree of charity unless there is a regulator or parliamentary committee of the UK parliament able to snaffle the report from the mechanism to compel the release of the report from PricewaterhouseCoopers International Limited, which has board members from PwC-branded firms from across the globe including Australia.

The parliamentary committee was in effect told that a private company based in the UK that has a partner of the Australian firm on its board of directors was not releasing the Linklaters report that deals with the international aspects of the Australian tax leaks scandal to the Australian firm because it was covered by legal professional privilege.

It was made clear by Colbeck, Pocock and O'Neill that they saw the refusal of the firm domestically and globally to shed more light on the contents of the Linklaters report as unacceptable.

Both the Tax Practitioners Board and the Australian Taxation Office were asked whether they had received the report, but the ATO's second commissioner Jeremy Hirschhorn told Colbeck and company that there was no ability for the ATO to compel the production of documents that were the property of overseas legal entities.

The ATO, Hirschhorn explained, could request a document but there was no legal power that would permit the ATO to go in harder. A request in these circumstances does not come with a legal requirement to produce.

Hirschhorn told the committee he was as frustrated as the committee members with the fact the report was not being produced in Australia.

"I think it is fair to say that we share the frustrations of this committee that an organisation that claims to be cooperative is deliberately hiding behind the difference between their local firm and their international firm," Hirschhorn said.

TPB chairman Peter de Cure told the committee that the firm had not produced a copy of the report and that it was someplace overseas, and Burrowes pointed the committee to where to look

It is not as if the parliamentary committee has not bent over backwards to accommodate the firm's concerns about the publication of certain pieces of evidence shared with the parliamentary committee online.

Members of the senate committee had agreed to the firm's request to not publish the names of people on the various e-mail lists that were first known about when the thumping great wad of e-mails providing evidence of the use of confidential information was secured from the TPB by the senate on 2 May 2023.

The committee agreed to not publish the names of the individuals supplied by the firm — that material is redacted — because it was not clear from the distribution lists who was intimately involved in the tax leaks saga and who was simply receiving e-mails because somebody liked spreading the love far and wide.

PwC also provided its partnership agreement to the committee but that was provided on the condition that the committee not publish that document and the committee agreed to comply with the firm's wishes.

It is unclear why the firm has not supplied a copy of the Linklaters report to the parliamentary committee on a similar basis as the previous information — either with redactions of names and details that might identify an individual or for the document to be for the committee's eyes only given the committee has accommodated PwC on previous occasions.

What should also be remembered by observers of this discourse is that the committee has been careful to permit the firm to undergo the various investigations and complete its own due diligence before being asked to front the parliamentary committee in the federal parliament.

Treasury's reference to the Australian Federal Police after Treasury officials looked at the e-mails tabled by the senate weighed heavily on the committee members as they did not want to prejudice any work being done by the AFP on the PwC investigation.

The last thing politicians complaining about the lack of action on aspects of the PwC matter would want was for their work to be responsible for another investigation either being further delayed or being ditched.

A further consideration for the committee was to allow the firm enough room to complete its own investigations and to receive and evaluate the work of Dr Ziggy Switkowski, a former Telstra chief executive and corporate governance consultant, before ultimately releasing the less than complimentary Switkowski report, the firm's response to the report, and a statement of facts related to the tax leaks matter.

All of this material was published on the firm's website on a page that displays all of the firm's published material as well as responses to various parliamentary questions on notice.

The Linklaters report is the piece of the puzzle that remains invisible to the parliamentarians, regulatory authorities, and other interested stakeholders including the media because the identity of the former Australian partners the Australian firm asserts did the wrong thing have been thrown out into the public domain.

Investigators from the TPB have turned their minds to more cases with the PwC matter going up to nine matters from the two cases that de Cure mentioned last October when he fronted before senate estimates.

The anonymous 'dirty six' won't vanish from the minds of legislators or regulators any time soon.

Broader consequences of the stand-off

The danger in this stand-off between the political authority of parliament and the accounting behemoth for the accounting profession in the first instance is that professional firms across the board — not just accountants — will begin to observe greater calls for tighter regulation, a decline in patronage from government departments seeking advice or implementation of initiatives, and a general smearing of large professional firms more generally,

It further cements an argument mounted by the Albanese government before and since it took office that the public sector needs to have its capacity rebuilt, and as a result, the market for government consulting services from larger firms should decline.

That burden in the case of PwC no longer exists as it cut a deal with Allegro Funds, the private equity investor, to jettison its government consulting arm for a dollar, and to not play in the government consulting space.

Scyne Advisory (https://www.themandarin.com.au/238844-higher-scrutiny-on-all-of-us-following-pwc-dramas-says-scyne/) has to build trust with government departments over time and its appearance before two parliamentary committees within the same week is an indication that, firstly, they are ready to tackle the harder questions in the public domain and, secondly, the fact that they recognise they have to rebuild relationships with departments.

One of the steps Scyne has had to take, for example, is to get itself placed onto the various procurement panels in New South Wales that will then serve as a way for the firm to be available for approaches for government sector work.

There is another question that needs to be contemplated by everyone involved in this saga and that is the fact that debates about the large firms can have an impact on other policy initiatives.

The federal government has branded a range of initiatives as responses to the PwC matter. To what extent does that impact other initiatives where the government wants readers of audit reports, for example, to treat the audit opinions as being credible?

This is particularly the case when you consider recent initiatives on sustainability reporting and the audit requirements that the government has exposed that were in many respects sloppily drafted.

Debating whether accounting firms of all shapes, sizes, and scopes of activity are behaving well is one thing but all parties engaged in any element of the tug-of-war involved here need to remember that there are consequences for all concerned if the community ends up treating audit opinions with a high degree of scepticism as a result of the current discourse on the PwC matter.

READ MORE:

[PwC investigation expands but a faceless “dirty six” remains (https://www.themandarin.com.au/239271-pwc-investigation-expands-but-a-faceless-dirty-six-remains/)](https://www.themandarin.com.au/239271-pwc-investigation-expands-but-a-faceless-dirty-six-remains/)

About the author

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By

More Premium Content

Committee chair Richard Colbeck. (AAP Image/Joel Carrett)

Senator Richard Colbeck has principal carriage of a report for the committee that has spent a year looking at procurement and consulting services that is due to be tabled in federal parliament next month, and it has two more public hearings scheduled this month to tie up loose ends with key players before it contemplates recommendations.

Colbeck and his colleagues on the Finance and Public Administration committee (https://www.themandarin.com.au/237767-pwc-year-on-what-we-have-learnt/) have concerns that have materialised since the senate triggered the inquiry process last year at the prompt of Australian Greens' senator Barbara Pocock following public sector outrage after it was revealed PwC and a former partner, Peter Collins, (https://www.themandarin.com.au/236738-the-big-fours-revelations-in-senate-estimates/) breached confidentiality rules surrounding policy discussions almost a decade ago.

The initial confidentiality breach that triggered this inquiry into government procurement and consulting practices still leaves a bitter taste for committee members and Colbeck, Pocock and ALP senator Deborah O'Neill share frustrations about the answer the firm has given to the committee in person and on notice.

This Friday's committee hearing will again see representatives from PwC (https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Consultingservices/PwC_Re field questions from senators who have had their patience tested by the firm's reluctance to provide greater insight into the contents of the infamous Linklaters Report.

That report has been requested by the parliamentary committee so that it could better inform itself of what PwC has done in relation to investigating the conduct of international tax partners.

A public statement (https://www.pwc.com/gx/en/news-room/press-releases/2023/statement-linklaters-pwc-network-review.html) was issued by the firm last September when it released the eviscerating but relatively unremarkable Switkowski report (https://www.pwc.com.au/media/2023/pwc-australia-announces-transformational-action-plan-to-enhance-governance-culture-

and-accountability.html) into its governance systems, a detailed response on the firm's remediation plans as well as a summary of the firm's statement of facts related to the tax policy confidentiality.

"In May 2023 the PwC Network appointed the international law firm, Linklaters, to form an independent assessment of what happened in relation to the unacceptable sharing of confidential information by PwC Australia with PwC personnel outside of Australia," the 27 September 2022, statement issued by PwC globally said.

"Linklaters have now concluded their review and found no evidence that any PwC personnel outside of Australia used confidential information from PwC Australia for commercial gain. With respect to those PwC people who did receive confidential information from PwC Australia, most did not know the information was confidential.

"However, the review found that six individuals should have raised questions as to whether the information was confidential. To the extent that they are still with PwC, their firms have taken appropriate action."

Members of the parliamentary are presented with a picture that is very different in Australia for the firm under the spotlight and globally. Colbeck and his colleagues have a situation where they are in some respects obliged to compare and contrast because over the first six months since the tax leaks scandal or saga broke there were senior partners from tax and governance roles exited from the firm's Australian partnership.

These included players such as then chief executive officer Tom Seymour — who has not appeared before the committee at any point — to people such as Richard Gregg who has taken the firm to task in court for the manner it has sought to remove him from the partnership.

Committee members have names and faces in Australia, and it is only natural that the committee would ask for further particulars about the Linklaters report and the six folks mentioned in the statement.

The fact is Colbeck has been so focused on getting answers to questions concerning the Linklaters report and the international PwC network that he has written to his counterparts in the US Congress and the parliament of the UK to flag the matter for their attention.

Those letters are publicly available and are a clear indicator of the annoyance Colbeck in the first instance feels about there being no further information being placed on the public record about the six people from PwC's global network.

It remains to be seen whether the firm will provide any further insight into the contents of the Linklaters report to the committee later this week when its representatives roll up to Canberra.

What should be clear is that questions related to the Linklaters report are different in substance to any questions related to legal matters the firm has with former or existing partners because any questions related to the Linklaters report relate to the broader issues of how information might have been disseminated from Australia to global offices.

It is unclear what value there is in reflecting on committee proceedings on domestic legal disputes between PwC and former or current partners taking the firm to court in relation to aspects of the partnership agreement.

Those lines of inquiry might be more relevant to other parliamentary committees, for example, such as a committee of the house of representatives or the senate that may wish to look at the nature of partnership agreements more broadly and how accounting and law firms in particular deal with the admissions and exits of partners, and also how accounting firms deal with employment conditions for staff.

Courtroom dramas between PwC and its current or former partners, frankly, sit on the periphery of what the committee ought to consider its key priority and that is how to produce recommendations that are pragmatic, principled and ultimately deal with the behaviour of the contracting parties — the government, its departments, and agencies — and those that provide services to government regardless of whether they are described as consultants or contractors.

What observers to committee proceedings during the coming week will also note is that the Australian Taxation Office and the Tax Practitioners Board (https://www.themandarin.com.au/233383-colbeck-doesnt-hold-back-in-criticism-of-adjustment-to-pwcs-fine/) front up before the PwC representatives with TPB representatives likely to cop questions on the Linklaters report given Colbeck invited TPB chairman, Peter de Cure, to ask for the same report last year.

Colbeck asked de Cure whether he had come across the Linklaters report and as at that point de Cure noted that he had not seen the report nor had the TPB formally asked for it.

De Cure got some senate encouragement to add the Linklaters report to the list of things to ask PwC about.

"I invite you to add to the workload for PwC. I think it's outrageous that PwC International think that they cannot provide that piece of information to you or to us, to be frank," Colbeck told de Cure on 26 October 2024.

There are ongoing investigations into the PwC tax leak saga that the TPB has been asked to update the senate on over the past six months and what, if anything, is happening with those investigations will no doubt be on senator's minds gearing up to look at where they might take recommendations in their report.

What areas should the committee think about?

It is simple to articulate a principled answer to that question. The committee must reflect on how to ensure government departments are sufficiently tooled up to better monitor the work done by private sector firms so that they are not surprised by requests for extensions that end up costing the public sector more.

Firms get away with requests for extensions of contracts — and get more money as a result — if administrators fail in their duty to manage contractors or consultants properly.

What, if any, checks and balances within departments need tightening so that contract extensions such as those described above go before multiple sets of eyes including that of an internal auditor or similar kind of reviewer before they get signed off?

How do government departments prevent the kinds of situations that Pocock has spoken of in which department officers are in a position where they feel they need to sign off on extensions to get a project completed?

There also needs to be a thorough consideration by the committee of when codes of supplier conduct should be signed and agreed to by firms seeking to do government work. Should those codes of conduct for suppliers be signed off only when a contract is granted to a party?

One possible view is that signing off on a code of conduct for suppliers should occur before an individual or entity is listed as a part of a procurement panel. There is a plausible argument the committee could mount in its final report that anybody wishing to offer services to the government should sign off on the code of conduct for suppliers as an initial barrier to entry.

Imposing such a requirement on all potential suppliers rather than only on individuals or entities that secure a contract means a code of conduct is front of mind for those who want public money in their coffers.

Dealing with naughty people

The committee has been spending a heck of a lot of time examining the role incentives play in human behaviour in corporate organisations, and what drives individuals to meet key performance indicators such as bringing more money in through the front door.

Committee members will need to consider what recommendations they can make about the kinds of penalties for breaches of contract and poor behaviour of individuals and firms to create a disincentive to those who might want to play vagrant on the dark side of their professions.

Fear of losing business because of poor behaviour ought to be enough to scare risk managers but parliament must ensure that regulators have sufficient resources to conduct surveillance and that penalties are sufficiently severe that firms will do their utmost to ensure partners and staff behave properly.

Transparency for partnerships

Much has also been made of corporate structures and the operation of partnerships during the conduct of the inquiry and various individuals have complained about the absence of transparency of aspects of a partnership.

The first thing people need to remember is that a partnership is not a listed entity. Owners are the partners and not shareholders with individual shares in an entity. Anybody suggesting that partnerships should be the same as listed companies is talking nonsense.

Transparency for organisations providing certain kinds of services — especially those that involve individual or organisational registrations such as taxation or audit — can be legislated.

Entities that are engaged by entities to do audits under the Corporations Act, for example, could be required to prepare and ensure the audit of a set of financial statements for lodgement with an appropriate regulator.

That could be done via a professional services entity financial reporting act that can specify the kinds of firms that should be lodging audited general purpose financial statements with the relevant authority and complying with any other necessary disclosure rules.

There is no reason for a partnership to be broken up for transparency to be assured as parliament is fully capable of crafting laws that require certain organisations to report.

You can't make structures idiotproof

Transparency requirements are easily legislated in this respect but there is another matter those arguing for partnerships to be done away with in their present form need to keep in mind.

Members of the Colbeck committee have been looking at flawed human behaviour and that behaviour — rather than the entity in which it takes place — should be the principal focus.

Why?

It doesn't matter whether a business is run by a sole trader, a proprietary or private company, a listed company or even a global partnership. There is no structure that is idiotproof and the committee should be wary of any recommendations that head down the path of assuming a change of structure is going to be a panacea for greed or stupidity.

READ MORE:

The Big Four's revelations in senate estimates (https://www.themandarin.com.au/236738-the-big-fours-revelations-in-senate-estimates/)

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By

Senator Richard Colbeck listens to PwC's Kevin Burrowes. (AAP Image/Mick Tsikas)

Australian politicians have had an intense 12 months looking at the innards of governance and how risk management works – and doesn't work – in the public and private sectors. The results paint unflattering pictures of government departments and accounting firms alike.

It began exactly a year ago. A little-known regulatory body, the Tax Practitioners Board, quietly published a media release just prior to Australia Day that a former partner of PwC Australia, Peter Collins, had been found in breach of the code of professional conduct for tax agents.

His registration was terminated – that is, the registration no longer exists – and he was prohibited from reapplying for two years.

Collins was also given an eight-year ban by the corporate regulator, the Australian Securities and Investments Commission, that would have ended any thought he may have entertained of re-entering the financial services fray.

His innings at PwC was effectively over by the last quarter of 2022 as the TPB was finalising its decision, readying itself to make the announcement during what was meant to be a quiet time.

Anybody hoping it would be quiet was kidding themselves. Any suggestion, allegation or inference that a firm or its partners were using policy information in confidence for what was seen as client advantage was always going to set off a blaze that not even the longest downpour of rain would put out.

Media coverage and political and public service outrage ensured that PwC Australia, its former partner and the rest of the accounting and consulting fraternity would not forget a breach of a confidentiality agreement. It set off a chain of inquiries at state and federal levels of government into government procurement, professional services regulation and the management of conflicts of interest among other factors.

PwC focus

Given the nature of the TPB's revelations, PwC became the focus of intense public attention. There was also internal partner dissent about the conduct of the tax division, which led to few public appearances from the senior management.

The firm's most significant statements were either supplied to the media in written form, given to media by insiders when internal emails contained juicy bits not in the media release section of the website or statements made in public hearings or responses to questions on notice from politicians.

Politicians' questions relating to how many people were involved in information sharing led to a senate request for the release of emails held by the TPB that revealed more details about how information was shared inside the firm.

That tranche of emails released in May provided further impetus for parliamentary inquiries and media questions, and resulted in the resignation of CEO Tom Seymour and the appointment of Kristin Stubbins as the interim chief executive.

PwC's global influence came into play when it decided to bring in experienced firm chief Kevin Burrowes to kick the tyres and work out precisely what needed to be done.

Burrowes has spent more time talking to PwC staff and main clients after his arrival in the country to focus on ensuring clients didn't scamper off elsewhere, and staff were assured the firm was taking the necessary action. The man appointed to help clean things up for PwC in Australia, however, has had little media presence.

Amputating a practice

Heat generated by the TPB decision and the subsequent attention paid to it in the public square also resulted in PwC deciding to find a way of amputating its government consulting practice. It wanted to give people hired to build that practice a fighting chance to continue their work.

This resulted in the creation of Scyne Advisory (https://www.scyne.com.au/) – a firm dedicated to government consulting. It has been created as a corporation, rather than a partnership, and features a range of committees – including one to monitor ethics and compliance.

Giving government consultants a crack at being gainfully employed was one thing but sorting the firm's own innards out to get it focused on improved risk management and client acceptance processes was something else.

The Department of Finance (among others) have started to engage with the senior directors of Scyne, who must now prove to the departmental secretaries and public service managers that the new entity can deliver high quality services to government without baggage from the old shop.

Switkowski's PwC report

Spinning off the government consulting arm only dealt with a part of the challenges PwC faced because the partnership needed to lance several more boils.

A report (https://www.themandarin.com.au/231380-whatever-it-takes-pwcs-poor-behaviour-exposed/) by governance expert and former corporate executive Ziggy Switkowski gave a sobering assessment of aspects of the firm's culture. It focused on leadership and cultural weaknesses that had led to the firm spending much of last year apologising for sins that occurred more than a decade ago arising from the TPB matter.

Switkowski's report saw recommendations for greater outside input and scrutiny at a governance level to ensure the board operates using best practice.

The firm would have at least three external directors and a new appointment process for senior executive partners to shake up the culture, among other internal changes designed to make those governing the firm more accountable to a board of partners.

Burrowes would also tell a parliamentary committee that the firm had instituted a committee to review engagements to ensure PwC was accepting engagements that were appropriate from an ethical, conflict management and ethical standpoint.

The firm not only released the unflattering but unremarkable Switkowski musings and an action plan to respond to the recommendations, it also released a statement of facts relating to its investigations on the tax confidentiality breach.

That did not include a release of details related to a global firm legal report that looked into international tax partners who received information. That report by law firm Linklaters is still the subject of significant interest for politicians and parliamentary committees. This interest is unlikely to decline as this year rolls on.

Similar public sector challenges

PwC was not the only firm to have its introspection spill out into the public square.

Fellow Big Four firm EY released a report into its culture and workplace environment prepared by Elizabeth Broderick. This was, in part, prompted by the untimely death of an EY staff member.

Broderick's report shone a bright light on the culture of the firm, and confirmed there were practices accounting firms needed to address to ensure they could be safer work environments for all ages and cultures.

It was the Broderick report and the evidence given before the Finance and Public Administration Committee, however, that prompted committee chair Richard Colbeck (https://www.themandarin.com.au/236738-the-big-fours-revelations-in-senate-estimates/) to point to similar problems existing in the public sector.

"Having read through your report, it prompted me to go and look at some of the reports on public services around the country," Colbeck said. "That showed a really variable set of numbers for some of the things that we're talking about, in terms of the indicators that we're looking at.

"For example, for bullying, where it was about 15% at EY, in the Victorian public service it's 13% and in the Western Australian public service it's 20%, which goes to your point about large structures and organisations and the issues that we're trying to deal with."

Colbeck's point was about the need to refocus on human behaviour and not just about what has gone on in the private sector firms that have been the subject of intense scrutiny.

Other comparisons can be made with private sector governance problems when reports from the Australian National Audit Office are brought into consideration.

Soon-to-depart auditor-general Grant Hehir and his team have done reports showing inadequacies in governance and record-keeping. This includes a more recent examination of governance of legal and other matters impacting the preparation of financial statements.

"During 2022–23, the ANAO identified four significant audit findings across four entities in relation to weaknesses in financial statement preparation processes with respect to consideration of legal matters. These audit findings indicate a failure in

governance supporting the preparation of the financial statements," an ANAO report released last November says.

"These weaknesses included the assessment of the impact of the receipt of legal advice or recently determined legal matters which has the potential to affect an entity's administration, financial management and financial reporting obligations."

That same report points to another little curiosity: there were still entities in government that failed to table their financial statements on time to permit scrutiny of their financial statements and the management of their respective budgets by senate estimates.

"Sixty-six per cent of annual reports were tabled before the entity's portfolio hearing date, a decrease of 10% compared with 74% in 2021–22," the report says. "Ten per cent of entities' annual reports were tabled on the date of the entity's portfolio hearing, consistent with 10% in 2021–22.

"Twenty-four per cent of entities' annual reports were or will be tabled after the date of the entity's portfolio hearing, an increase from 16% in 2021–22."

The ANAO report says there were 23 entities across seven portfolios that failed to table their financial statements before senate estimates. This ensured those numbers and their activities could not get scrutinised by politicians.

Scoop: Humans are flawed

A recent summary of risk management in the public sector was published by the ANAO as a part of its audit insights series. It makes sobering reading for those in the public service getting outraged about what a private sector firm may or may not have done almost a decade ago.

The insights report points out that 94% of ANAO audits – 75 out of 80 audits between July 2021 to June 2023 – examined some aspect of risk management within an entity. Findings in relation to risk management in these audit reports were "mixed" in 51% of cases and "negative" in 16%.

About a quarter of ANAO report messages related to risk management issues and 19% of recommendations dealt with risk management concerns.

What does this tell us about the world in which our politicians and policymakers live?

It doesn't matter whether it is a private sector firm or a public sector department, agency or some obscure statutory authority, human beings are flawed – regardless of their training and expertise.

The only way to deal with this flawed reality is to create and enforce systems and processes to ensure adequate checks and balances. Penalties need to provide a sufficient deterrent to ensure appropriate, ethical behaviour.

Sometimes the best solution is to not ask what law or regulation might need to be added to the already bulging statute book. This drives most people nuts.

The better question is: What can be done to increase the threat of detecting misconduct and a failure to follow good practice? What, if anything, must be done to ensure there is a penalty that is sufficiently onerous to function as a sanction but also as a deterrent to people thinking of straying from the right side of the road?

All that might be required to ensure good behaviour and the following of sound risk management practices is for a risk manager to be in a position to soil their underpants at the mere thought a regulator might come calling.

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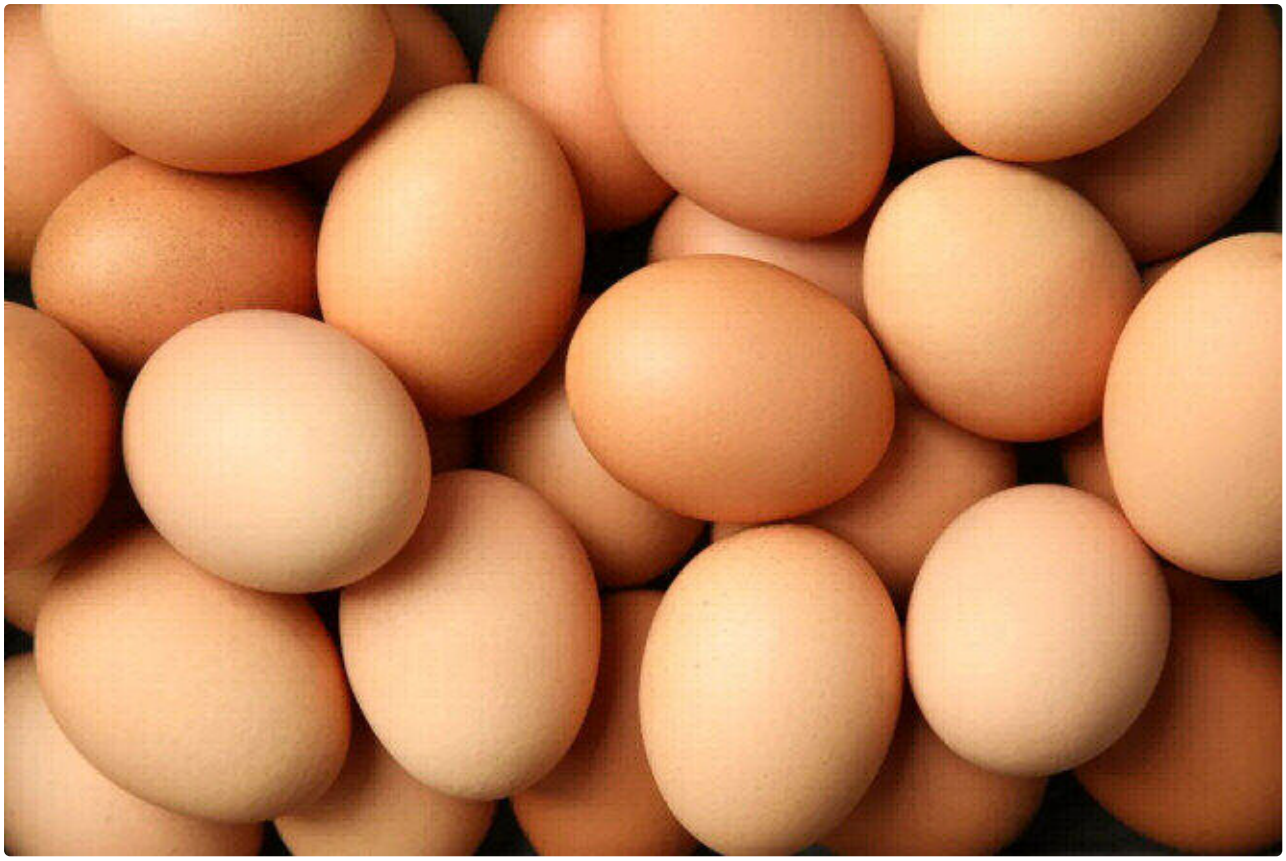
By



Policymakers need to ask themselves if adding to the rulebook achieves anything more than an appearance of doing something. (Adobe)

Assistant treasurer Stephen Jones has a new power to add things to the Code of Professional Conduct in the *Tax Agent Services Act*. It's in the form of a legislative instrument known as a determination (https://treasury.gov.au/consultation/c2023-469627).

A regulation or legislative instrument is a convenient way to update a law. It means there isn't a need to redraft the principal act every time an idea for improving a code pops into someone's head.

It is an efficient way of legislating; many other rules and regulations are issued as legislative instruments. Accounting and auditing standards are developed by expert boards, turned into the correct format required by Australian law, and then tabled in parliament for disallowance.

One of these blighters seeking to amend the Code of Professional Conduct in the TASA is currently out for public comment (https://www.themandarin.com.au/236303-consultation-period-opens-for-tax-agent-regulation-reform/). Accounting and tax professionals had the Christmas and new year break to study up on this proposal as well as draft observations on the document.

It covers a range of issues including confidentiality and the management and declaration of conflicts of interest. But, as you will note below, there are some curious things about this document that were pushed out for public comment not long before Santa Claus's annual house calls.

The first thing is that there is a bureaucrat who is clearly in the zone of thinking about their workflow commitments when they return from leave.

A document or documents out for consultation over the festive season with a pre-Australia Day public holiday deadline provides people in Treasury with a week or so to collate responses.

Timing a consultation period over a holiday break may also reduce the number of people likely to respond to proposals. In other words, tax and accounting professionals likely to respond in their own right during the normal course of their working year might just rely on their professional associations to represent their interests.

What about the professional associations? Don't their people have time off?

Professional associations are not necessarily flush with resources. They may not have tax and accounting policy people hanging around the office over a break getting their heads around proposals. Even those organisations will find it challenging to properly respond to any suite of proposals released over Christmas because the pace of regulatory reform and proposed regulatory change can be relentless.

A saving grace in relation to the discussion paper on increasing the sanctions being contemplated for the Tax Practitioners Board, for example, is that there are people who would have responded to the original review of the tax agent regulator by respected tax lawyer Keith James. It was finalised with a batch of recommendations in 2019 that included beefing up the penalty regime.

It is a trick in policy adviser land to read what you have originally sent to the government on the topic, and then recycle whatever is needed to highlight the bits of the initial submission the government ignored. This provides the basis for a submission that looks moderately well thought through when the government might well have decided it has made up its mind on its policy position.

It also means an organisation has its name in lights by putting forward a position, even if its policy team knows the likelihood of a proposal being amended is minimal.

Members of professional associations need to see their professional bodies in action. Submissions are one form of advocacy feeding into policy making but tight deadlines with an annual holiday period in the middle may mean responses are less well prepared than they might be otherwise.

To what extent is a comment process on tax agent regulation actually performative rather than meaningful in the context of the proposed amendments? How much of the policy position presented to the community is already cast in stone before the document has been released for public consultation?

There are tax and accounting policy advisers who have told *The Mandarin* in recent months that they believe consultation is sometimes used as a 'tick-a-box' exercise so that bureaucrats and their relevant ministers can proceed with proposals having essentially told people what is going to happen.

This is an unsatisfactory state of affairs, even if you allow for a cynical view that the professional bodies come to the table with their own self-interests. There is a danger they might actually understand the area better than the bureaucrats being

asked to develop policy, and the organisations should be given ample time to respond.

It could be argued that a truncated period of consultation for a document might be justified because changes are narrow in scope, clearly defined, necessary to bring the conduct of a certain class of individuals back within community standards and expectations, and that the tax and accounting propeller heads in the profession already understand the implications so it should not take long to respond.

There is also the possibility that a government or statutory authority does not wish to allow people the time or space to question whether the contents of a determination are necessary, and whether principles-based regulation is giving way to prescriptive rules because some politicians and bureaucrats have been spooked by a scenario that played out almost a decade ago.

The answer to the question is actually contained in the original explanatory memorandum published in 2008 when the Tax Agent Services Bill was debated in the federal parliament. That was the bill that first proposed the creation of the TPB and the Code of Professional Conduct.

That explanatory memorandum states that the code of conduct was meant to state principles – general principles for behaviour – and not be prescriptive in the manner envisaged by the current draft determination out for public comment.

"A Code of Professional Conduct (Code) governs the ethical and professional standards of tax agents and BAS agents," the 2008 explanatory memorandum says.

"The Code is set out as a statement of principles and the Board may issue binding written guidelines for the interpretation and application of the Code."

Let's break this part of the explanatory memorandum down because it is important. As legislated, the code demands people who are registered tax, BAS or other kind of agent (https://www.tpb.gov.au/code-professional-conduct) behave, for example, with honesty and integrity.

The TPB itself can issue binding guidance on how it would interpret honesty and integrity in the context of the law. There is an explanatory paper (https://www.tpb.gov.au/explanatory-paper-tpbep-012010-code-professional-conduct) that defines honesty and integrity for the purposes of the TPB's interpretation.

Anybody who is a registered agent knows the TPB has a screed already there for them to read on how the board would interpret the principle of behaving with honesty and integrity when a disciplinary matter lobs on somebody's desk for review.

What is even more bizarre is that the case that led to the explosion of interest in the behaviour and regulation of tax agents involving former PwC partner Peter Collins (https://www.tpb.gov.au/former-pwc-partner-banned-integrity-breach) was actually decided with the existing principles as legislated, and without the need for additional red tape for people who are sufficiently qualified to understand right and wrong when it comes to dealing with confidentiality agreements.

It is questionable whether the current draft determination does anything productive other than add words to something that has already been proven to be effective in dealing with a prominent case – a case that has not gone unnoticed by most observers over the past 12 months.

There are pointless references throughout the draft determination to actions being taken in a capacity as a tax agent or a BAS agent. Somebody ought to have their head read because nobody gets consulted by government simply because they are a tax agent or a BAS agent.

The consultation on the tax law that was at the centre of the PwC matter was not related to an individual's capacity as a tax agent or BAS agent. Somebody with expertise in tax does not need to be a registered agent at all. They can be involved in consultation with government without any regulatory recognition whatsoever.

A person on a committee consulting on tax legislation would not be subject to any penalty from the TPB if, in fact, they were not registered with the TPB in the first place.

These provisions are laughable because they appear to assume that there are certain aspects of consultation with government that would simply occur because of somebody's capacity as a tax or BAS agent.

That is nonsensical drafting, and somebody needs to excise those provisions from the determination completely. A tax or BAS agent who breaks a confidentiality agreement can be dealt with under the provision related to honesty and integrity in the current code as legislated.

There is a further matter to be considered in reviewing the law as proposed by the Treasury. Why would tax agents be singled out as a population and not anybody else involved with consultation that has just as much access to certain confidential materials as a person with TPB registration?

Let's take a closer look at another part of the draft determination as it relates to confidentiality.

"Unless you have a legal duty to do so, you must not disclose any information you have received, directly or indirectly, from an Australian government agency in connection with any activities you undertake with the agency in your capacity as a registered tax agent or BAS agent," the draft determination says, before listing a couple of exceptions.

But the question remains why this would be necessary at all. It's a determination that teaches people how to suck eggs.

The only information that people would receive in connection to their activities as a tax or BAS agent would be issues related to client matters. This stuff is already covered.

Another limb of confidentiality refers to not using confidential information to personal advantage. This should also not have to be written down in a determination. It is covered by the code in the principle concerning behaving honestly and with integrity.

There are times when policymakers need to step back and ask themselves whether adding to the rulebook actually achieves anything more than an appearance of activity as a response to a confidentiality breach on tax policy.

Sometimes it is best to leave what exists alone and work on improving the detection and enforcement of penalties for breaches against the law.

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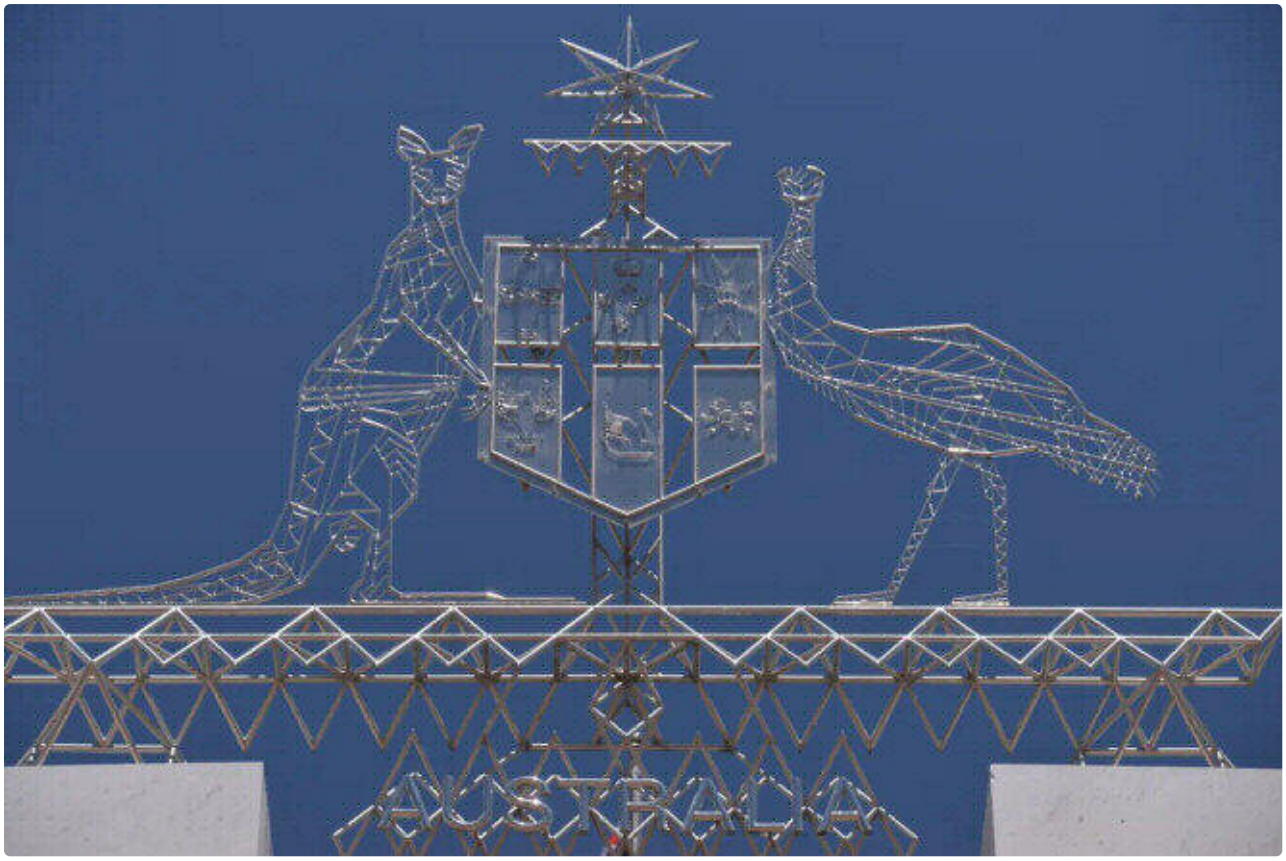

Is the O ice of Impact Assessment respected? (TPG/Adobe)

There is a question that ought to be exercising the minds of policymakers within the ranks of our elected representatives as well as the senior brains in the bureaucracy following the recent amendments to the legislation regulating tax agents in Australia.

That question: under what circumstances can elected representatives and bureaucrats ignore guidance on the analysis of regulatory impact published by the Office of Impact Assessment when making new or revising existing law?

This question is asked on the assumption that people involved in the legislative process and negotiating on amendments in the parliament have actually read the 'Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies (https://oia.pmc.gov.au/resources/guidance-impact-analysis/regulatory-impact-analysis-guide-ministers-meetings-and-national)', and have the list of six principles for policymakers in mind.

Let's refresh our memories before we go meandering through some recent accounting and tax developments to see whether they measure up to the actual guidance that sits within the government's own paperwork.

The six principles

The first principle of the six highlighted in a large text box in the document refers to policymakers needing to show there is a problem with existing policy that demands a government response.

"Policymakers should clearly demonstrate a public policy problem necessitating government intervention, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem," the guide says.

It follows this general observation with the second principle that says "regulation should not be the default option".

"[The] policy option offering the greatest net benefit — regulatory or non-regulatory — should be the recommended option."

What the guide is pointing to is that there might be other ways of achieving an objective that does not rely on slapping things on the statute books.

Principle three states that every major decision to regulate should be the subject of a Regulation Impact Statement.

The importance of a conversation with affected stakeholders is set down in principle four.

"Policymakers should consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policymakers to avoid creating cumulative or overlapping regulatory burdens," it notes.

Principle five sets down the principle of publication of decisions to legislate at the earliest possible opportunity, and principle six says all regulations should be

periodically reviewed to check whether the law is not redundant.

What constitutes a breach of principles?

This is where the rudimentary and rather unexciting recitation of principles that people should know when they are involved in churning out laws gets more interesting.

There is an open question as to whether the principles embedded in the guide were followed during recent debates over the composition of the Tax Practitioners Board and a mandatory reporting of misconduct rule inserted into law.

Let's first consider the issue of former partners of Big Four accounting firms receiving pensions being banned from being selected for membership on the board.

It is a policy idea, a legislative change, that is said to have been spurred on by the PwC confidentiality agreement breach saga that has dragged on for the better part of the year and in part because of the media coverage that has occupied countless column inches, and broadcast hours.

Set aside the details of the proposals for a moment that could be debated endlessly and look at the words in the guidance.

The regulatory impact analysis guidelines state that there ought to be an examination of genuine and alternative policy options that include the exploration of non-regulatory options. No evidence of the exploration of policy alternatives as would be required of people engaged in proper regulatory impact analysis is present.

What are the other options that could be considered as an alternative to a legislated ban against individuals who are former partners in firms receiving a continuing payment?

A minister could factor in current financial arrangements impacting a possible appointee during the process of seeking out a new member of a board. This could happen today. It can happen without a legislative provision in place.

Ministers could instruct a department to do a proper check of the background of a prospective nominee to ensure that they do not have financial links to an accounting firm to keep the perception of the independence of the board intact.

Appointment is a matter for the relevant minister and as such it is an open question as to whether such a prohibition – as clunky as it appears in its drafting — is necessary in the first place.

Remember that this is only relevant in a case that a partner of a TPB member's former firm is hauled before a disciplinary committee and that the member's pension or similar financial benefit creates a perception of a conflict even though the TPB member would recuse themselves as is appropriate from hearing the case.

How often is that likely to take place, and why is the capacity of people to recuse themselves from hearing a matter insufficient under the circumstances? Did this issue really need parliamentary intervention to have an impact?

An argument in favour of the amendment is that the community has read and heard about conflicts of interest in professional services firms, and this measure may provide the community with some assurance that certain conflicts albeit it perceived will not exist as time progresses in the membership of the board of the tax agent regulator.

It raises a further question about how other conflicts may be dealt with when it comes to disciplinary action. What happens if a friend of one of the board members happens to fall foul of the tax agent rules? Would they be required to recuse themselves from hearing a matter, step down entirely from the board or be excluded from reappointment because somebody they knew got themselves into a bit of trouble?

What happens in the case of executives of professional bodies that might be board members who have no direct connection to a member that might get pinged by the TPB? Recusal from decision-making on disciplinary action that could result in a perceived conflict ought to be sufficient, but will that be deemed sufficient by a hypersensitive community?

It ought to be considered rather curious when anybody puts in an arbitrary figure such as 100 or more employees in a definition of a registered agent that is an entity — partnership or corporation — that might have somebody that could serve on a board.

What does '100 or more employees' actually mean? Does it mean 100 full-time-equivalent employees or does it mean 100 people who work for the entity regardless of how many hours they work during the week? The decision on how the numbers play out in terms of employees could impact the ability of somebody to be appointed or reappointed if numbers go up.

These things could be explored and clarified in an explanatory memorandum or a regulatory impact statement.

Neither of these documents existed at the time the relevant provisions were debated and it can be correctly argued that the method of passage of those provisions represents the legislative process at its worst.

A further challenge to policymakers in this instance is the failure to properly consult those who were affected by these issues. The guidelines explicitly require that people be asked about proposed changes and how those changes will impact them.

The guidelines also tell policymakers to set aside media attention on issues and consider policy or legislative development more broadly.

This issue is addressed in a section that looks at keeping risks in perspective and not just reacting to lobby groups or media reportage.

"Be careful not to be distracted by the symptoms of a problem or media interpretations of it. Identify the underlying cause of the problem, its seriousness and capacity to deal with it," the guidance says.

There is a further reference to lobby groups and media in the context of considering risks and their consequences.

"Consider the likelihood of risk as well as the consequences of the risk," the guidance prompts. "Media or lobby groups often focus on controversial or emotive aspects of potential policy decisions, but is the cost of regulating in proportion to the real-world risk?"

This is a call for the exercise of prudent judgement and also for individuals involved in policy-making to be more discerning when thinking about what they are reading, listening or watching in the media.

Stakeholder management blunders

There is a failure in stakeholder management when key groups are not consulted on changes as required by the regulatory impact analysis guidance and those failures fall into three categories.

The first reason why failing to consult is dopey is that the law could be improved to deliver a desired policy objective but also provide necessary protection for people participating in a disclosure process.

Insight from affected parties could help a government avoid making mistakes in legislation that require tweaking in subsequent omnibus bills designed to make a provision in law workable.

A second stakeholder management problem for policymakers is that asking people what they think also gives an early warning for potential points of attack that an affected party or industry body might use in public.

The opportunity to be forewarned about concerns is lost and there is an increasing likelihood of policymakers getting a bloody nose in the media as a result of parliament passing a law that impacts a sector.

Why would you not want to be given some notice about how cranky people might be about a particular amendment? It gives media advisers operating within a department and a minister's office the ability to be ready to participate in the 24-hour ping pong tournament that is the news cycle.

It is also fascinating that groups such as professional accounting bodies and relevant legal associations were not properly consulting from the perspective of political self-interest.

There are tens of thousands of members of CPA Australia, Chartered Accountants Australia and New Zealand, and the Institute of Public Accountants alone.

Think about what this means in a period of a cost of living crisis when there are people who will be telling their accountant it appears politicians don't appear to be listening to the average person's concerns.

What is a switched-on accountant going to tell the small business owner or the parent with several children coming in to get their tax returns done about the government's failure to consult on laws to do with the accounting world?

They can freely say the government was not listening to professionals impacted by laws when new provisions were being debated in the senate.

It is an example of government and possibly bureaucrats not listening because political considerations of another kind interfered with complying with the very guidance that is designed to ensure legislators and policymakers more generally listen to people for whom they make law.

READ MORE:

[Change continues at OIA, with new policy impact analysis guide (https://www.themandarin.com.au/212881-change-continues-at-oia-with-new-policy-impact-analysis-guide/)]

About the author

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It's unclear who holds the Big Four to account. (Netfalls/Adobe)

There is a point in time when it's appropriate to reflect on what is statutory regulation and what are extra rules provided by a third party.

This needs to be thought about not just by parliamentarians but also by consumers and commentators looking to get some kind of remedy against a professional they believe has broken a law or ethical rule.

Nothing highlights this better than the announcement this week by Chartered Accountants – Australia and New Zealand (CAANZ) about its disciplinary action against PwC for the breach of confidentiality.

The penalties include a fine of $50,000 plus almost $46,000 in costs as well as a bundle of reporting obligations to the accounting body that include PwC telling CAANZ about how it is implementing the Switkowski review of its practice, and, of course complying with the Tax Practitioners Board order.

CAANZ expects the firm to keep up to date on progress in its cultural change processes until at least the end of the 2026 financial year.

The CAANZ review is that of a professional body. It may be embarrassing to the firm — as it should be — and it adds to the seriousness of the problems that have confronted it but it is in no way a substitute for regulatory change and monitoring what government bodies or even the federal and state parliaments should be doing.

Consider the fact that a profession has a goal to act in the public interest. Who monitors adherence to that objective? How is that objective actually measured? What consequences are there if people fail to serve the public interest?

It is unclear at the present time who has that role unless you count the occasional deep dive by parliamentary committees into the culture of the accounting profession because something like the PwC confidentiality scandal has brought a range of issues to the surface for elected representatives.

The issues brought up by politicians are actually a secondary consideration. What ought to be the focus is why the process is reactive.

Why are politicians not being more proactive about quizzing, for example, the professional bodies in a sector to which recognition might have been given in law as to how they are running themselves, monitoring the behaviour of members, and also findings of disciplinary processes that are able to be disclosed in the public domain.

Professional organisations such as accounting bodies are given recognition in laws and their members are able to sign off on statutory declarations and other documents That is a privilege. It is not a right.

It is a privilege extended to a profession by parliament and is often contained either in a specific act of parliament or a regulation that the parliament passes.

There should be a process by which all organisations that are recognised in regulations of some kind appear before a parliamentary committee to inform the parliament about core areas of governance and self-regulation of their membership.

Parliamentary monitoring of this kind would be different than the monitoring the profession does of itself through its internal processes.

This is a process that should not be seen solely as an opportunity to have a series of gotcha moments to embarrass people in expensive shirts, ties and pinstriped suits.

That is political theatre that is at best entertainment for some keyboard warriors in the cheap seats on social media platforms. It does not always equate to the pursuit of policy in the public interest.

What is also necessary is for parliament to use periodic reviews of professional associations to get insight from the bodies on areas in which professionals are declining and what, if anything, the parliament or department could do to reduce costs of compliance while not compromising consumer protections.

It is important for parliamentarians to hold bodies to account for the legislated privileges they have while also learning about areas of emerging challenges that politicians should know more about, understand, and do whatever is in their power to assist.

There is also another benefit to having a regular review of a professional body's recognition status in law. Reviews by parliamentary committees help demystify a profession and place on the public record what a profession does.

Accounting and auditing are not always well understood, and enhancing oversight of the accounting profession and other professions for that matter will contribute to community knowledge.

Ignorance only disappears when people bother putting the effort into understanding, and that can only be a good thing.

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Transparency is essential with Chalmers' creation of new accounting standard-setting beast (https://www.themandarin.com.au/235204-transparency-is-essential-with-chalmers-creation-of-new-accounting-standard-setting-beast/)

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Machiavelli might be more useful than all of the academics, accounting rms, legal gurus who have been bloviating on audit regulation. (Phillip Minnis/Adobe)

The words of the dead are often useful when it comes to solving the problems of the living. Particularly when those problems relate to conflict of interest, self-interest, or the search for something to fix that shows them in a good light.

Policymakers in Canberra, irrespective of whether they are in the parliament or within the public service, have a fixation on the accounting, audit, and consulting space right now.

There are some issues within the regulation of professional services that appear to be a bit of a bother, so some guidance from an age-old political adviser who has been dead for some centuries can be useful.

Take Nicollo Machiavelli, for example, and his treatise, *The Prince*. It is one of the sharpest pieces of observation of the human condition, written for rulers wishing to succeed in obtaining and maintaining power.

Machiavelli might be more useful than all of the material put forward by academics, accounting firms, legal gurus, and the rest of the menagerie who have been bloviating on accounting matters since the audit regulation inquiry reported back in 2020.

Machiavelli's usefulness in the current debate is focused on the best way of regulating the professions, examining whether it is better to be feared or loved as a ruler.

Let's have Machiavelli talk us through his logic and then examine how this might apply in regulatory practice.

Machiavelli characterises the tension between the choice of wanting to be fanboyed by those you rule or hated with a vengeance over a dispute that needs some kind of resolution.

"The response is that one would want to be both the one and the other; but because it is difficult to put them together, it is much safer to be feared than loved, if one has to lack one of the two," Machiavelli noted.

He provides a pithy assessment of the human frailties of 'men' but it needs to be replaced with 'people' in the modern environment.

"For one can say this generally of men: that they are ungrateful, fickle, pretenders and dissemblers, evaders of danger, eager for gain," Machiavelli observed.

"While you do them good they are yours, offering you their blood, property, lives, and children, as I said above, when the need for them is far away; but, when it is close to you, they revolt."

Machiavelli also places fear above love in another context — there appears to be no cost observable at least to Machiavelli for those who turn on somebody who has made themselves loved.

"And men have less hesitation to offend the one who makes himself loved than one who makes himself feared; for love is held by a chain of obligation, which, because men are wicked, is broken at every opportunity for their own utility, but fear is held by a dread of punishment that never forsakes you," *The Prince* author advised rulers.

The observation that people have "less hesitation" to offend people or institutions that make themselves loved or liked should cause us to reflect on a specific question: what is it that professionals and their firms should fear?

Take the audit inspections conducted by the Australian Securities and Investments Commission (ASIC) as a convenient, current case study given the recent report issued on audit quality by the Financial Reporting Council (FRC).

There has been an observable decline in the number of individual sets of audit working papers that are looked at by the regulator.

"During 2022 ASIC introduced a new integrated approach to conducting financial reporting and audit surveillance. ASIC continues to select audit files for review when there is an identified or suspected error in the financial report, and the number of audit files selected for review where there is no identified or suspected material misstatement of the financial report has been significantly reduced," the FRC report says.

"This has resulted in a decrease in the number of audit files reviewed from 45 in 2021/22 to 15 in 2022/23. Whilst the FRC support the continued focus on high-quality financial reporting, the FRC considers that there should be a greater number of auditors and audit files reviewed on an annual basis."

Note the number of files reviewed has gone from 45 to 15 over a two-year period and reflect on what this means in the context of a firm that does many thousands of audits.

That cannot say anything particularly informative about the standard of quality across a firm when the number of audits from a single practice that gets examined now is tiny, and even calling it 'tiny' is an understatement.

Even reporting the results of audit inspection reports as a bit of a Melbourne Cup race between major accounting firms was a joke because next-to-no reports were looked at by the corporate regulator to give anybody any sensible sense of the quality of audit in a Big Four accounting firm.

Let's go back just a bit further to ASIC's 2021 report on audit inspections for a further example of the absurdity of this little exercise that people ran up the flagpole each year as an indicator of stuff accounting firms did wrong.

The six firms that do a significant amount of listed company work are, of course, PwC, Deloitte, EY, KPMG, BDO and Grant Thornton.

There was a drop in the number of audit files examined by the ASIC for all of the Big Four firms. KPMG, EY and PwC had 11 sets of files reviewed in the 2020 audit inspection process. The 2021 report reveals each of the three behemoths had eight reports reviewed.

Deloitte went from seven sets of audit working papers being reviewed down to five across that same two-year period, and BDO and Grant Thornton experienced no change in examination at that point in time because they had three a piece reviewed in both 2020 and 2021.

Let's first talk about the detection of poor auditing and misconduct. Reducing the number of sets of audit working papers reviewed by the corporate regulator means the likelihood of detection of poor auditing practices will drop.

The drop in audit inspections done by the corporate regulator also means there is no need for a firm to fear regulatory findings too much. Firms know the regulator only looks at a small sample of work. Some lessons might crop up but there is in essence nothing to fear.

It is also in no way a figure of statistical relevance when you consider the amount of audit work done by an accounting practice.

Eight sets of PwC's working papers were reviewed by ASIC during the 2021 financial year. The firm audited 166 listed companies during the relevant reporting period. Those eight sets of working papers represent 4.9% of the listed company audited population audited by PwC in the 2021 financial year.

Take it one step further. PwC conducted 7,500 audits of varying shapes and sizes during the 2021 financial year. What does the eight looked at by ASIC during the relevant reporting period look like in percentage terms now?

Eight sets of working papers are 0.1% of the total population of 7,500 audits done by the firm overall.

What does any firm really have to fear in the context of audit inspection reviews that have declined in number? One plausible response based on the FRC report, and the data above is there is little to fear because there is nothing in the figures to really indicate poor audit quality in Australia itself.

It gets even worse when you consider the fact that the number of audit key audit areas reviewed in the reduced number of audit files examined declined.

Key audit areas examined in the Deloitte working papers went from 26 in the 2020 financial year to 17 in 2021, PwC went from 35 key audit areas being examined to 20 in the same period, and KPMG went from 39 key audit areas to 27.

This means that on the face of the numbers alone contained in a table produced by ASIC for the 2020-21 audit inspection process, there were fewer areas examined across a lower number of sets of audit files.

What do the firms really have to fear from an exercise that showed back then it was headed to a decline in the number of working papers being looked at as well as the number of individual areas being examined?

That can't be particularly scary for any Big Four firm that can easily shrug off negative findings in an ASIC inspection by rattling out the raw numbers of audits it does and that an ASIC inspection while important is incapable of giving a clear view

on audit quality within any of the large firms.

The corporate regulator would find it difficult to argue against that logic. What basis would the regulatory body use?

You need to increase the fear of detection of poor auditing or misconduct and that can only be done, as the FRC recommends, by increasing the number of working papers looked at across the population of firms actively practising in audit.

Enforcement of the law is also critical but that can only occur when a regulator becomes aware of circumstances in which auditing standards have not been followed as required or ethical standards relevant to auditing have been breached.

Another matter needing to be raised in the context of the corporate regulator is the quality of both financial reporting and auditing in the context of proprietary companies.

Recent evidence from Deakin University academics about the challenges they had getting access (https://www.themandarin.com.au/235113-asic-charged-researchers-50000-to-access-corporate-reporting-database/) to and publishing academic papers on the quality of financial reporting of proprietary companies needs further attention from the federal treasurer and the relevant parliamentary committee.

How do you know what the quality of financial reporting is for a population that lodges accounts if nobody does the relevant research to look at the quality of reporting as well as the quality of auditing?

It would be entirely appropriate for the relevant committees to recommend that there be a periodic examination of the quality of reporting filed by proprietary companies by researchers tasked with looking at the data with an independent eye.

The committees looking at the accounting, auditing and consulting world would also do well to reflect on what measures they can recommend that increase the likelihood of detection of misconduct as well as an increase in any penalties that arise from enforcement action.

These are things that will inevitably cause fear within professional firms regardless of their structure.

Debating the merits of incorporated entities or partnerships ad nauseam is, frankly, mildly entertaining but does not necessarily deal with the most serious matters of substance.

Mandating a certain kind of practice structure for a particular kind of work does not guarantee the practice — partnership or corporation — will be free of greed, stupidity or, indeed, idiot-proof.

What you can do is regulate the function individuals and firms perform and ensure that they fear detection and the punishment that comes when somebody, somewhere gives into some temptation prohibited by the law and ethical standards.

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By

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Treasurer Jim Chalmers (l) and assistant treasurer Stephen Jones (r). (AAP imagea)

New governments like to tinker with the machinery of government when they get into power and no area — even the most arcane, technical, jargon-laden territory like accounting and audit — is immune from prying fingers eager to dabble.

Accounting and audit, in particular, have been fertile ground for governments wanting to have a lasting impact in the past, and those with enough grey hair and a half-decent corporate memory will recall the Howard government decided to engage in an exercise of *Renovation Rescue* when it took office in 1996.

Accounting standard-setting is usually a topic that some people relegate to the status of a non-chemical cure for insomnia, but the Howard government decided it was exciting enough to make a change to it a key policy priority back in 1997, launching the Corporate Law Economic Reform Program (CLERP).

The CLERP changes to accounting standards introduced a statutory oversight body for what was already a statutory standard setter.

It also brought the technical expertise previously resident in the private sector organisation known as the Australian Accounting Research Foundation (AARF) into the public sector.

The AARF was the hub of thought leadership in accounting standard-setting in Australia and it built a reputation for technical excellence.

What is often forgotten about the AARF is that it was funded by the two large professional accounting bodies that are known, these days, as Chartered Accountants — Australia and New Zealand and CPA Australia.

The accounting profession was the custodian of audit and accounting standard-setting for many decades and funded the AARF as a joint venture that was both in the interests of the accounting profession and the broader public interest.

What was odd about the activity at the time was that the Australian Accounting Standards Board (AASB), as a statutory board, was without a technical secretariat from within the public sector.

That work was done by the experts working in the private sector body, and the proposals advocated by the Howard government to renovate the standard-setting structure sought to amend that as well as make the structure more responsive to stakeholders through the Financial Reporting Council (FRC).

Those changes became effective in 2000. Not long after that, some corporate collapses — like Enron — called into question the quality of governance, ethics of professionals of various kinds and the quality of financial reporting and audit.

Audit standard-setting was then reunited with financial reporting under the newish structure, to ensure that auditing standards were treated in the same fashion as financial reporting standards under law.

The period 2000 to 2005 was also notable, for domestic and international pressures that eventually saw the adoption of international accounting standards in Australia and across many other jurisdictions in an attempt to achieve a single accounting

language.

The Albanese government's proposal to rejig the standard-setting process and collapse three bodies into one comes at a time when there is an impetus for jurisdictions to adopt a single set of sustainability standards (https://www.themandarin.com.au/232880-paradigm-shift-on-sustainability-standards-for-accountants-and-auditors/) for reporting.

A single set of sustainability reporting guidance is a necessary addition to the regulatory framework because it meets a global demand for consistency and comparability. The underlying logic is the same as that for the adoption of international accounting standards and similar global influences such as regulators and investor groups, which have prioritised this as they did with international accounting standards more than two decades ago.

What Chalmers needs to consider

Let's consider the suggestion of collapsing three bodies into one as being the equivalent of having a blank sheet of paper before us.

What additional things ought to be considered as a matter of policy as the government explores how it puts what it currently has in three boxes into one large container?

This opens the usual can of worms about differences between structures here and overseas, and what might or might not work based on people's professional experience, personal biases, views of the quality or otherwise of domestic regulation, and political tastes.

It also gives the floor to superficial commentary on the regulation of a profession that is sent in by people who see their enthusiasm for expressing an opinion as being an adequate substitute for subject matter expertise.

Treasury bureaucrats who are tasked with having to weed their way through the golden threads in submissions and ignorant, half-baked garbage need to be extended our sympathies in advance.

There are some things the government needs to reflect upon regardless of the support or opposition it receives from the broader community for its stated position.

The first thing the government must reflect upon is precisely what it wants this creature to do.

One view is that it should be a clearing house for standards that are black-letter law and relate to financial reporting, audit sustainability, and corporate reporting more generally.

That is certainly a supportable position but any government proceeding on this basis needs to evaluate what other sets of guidance ought to come into the remit of the new body.

It should also be made clear whether the work of setting public sector accounting standards remains within the new structure, given that the media release issued by the government does not specifically mention the existing AASB's public sector remit.

There is scope for the Albanese administration to be more adventurous than previous administrations in capturing relevant reporting requirements in black letter law.

That accounting professionals are hit with the regulation of audit in black-letter law is an absolute, nonsensical travesty but the Australian Securities Exchange continues to issue corporate governance council principles and recommendations outside the legislative regime.

This is a situation the Albanese government can easily remedy by capturing such requirements in legislation for the new merged body.

Ethical standard-setting for the accounting profession could be added to the mix; that would permit the broader legal backing of ethical standards from within a statutory environment that the Accounting Professional & Ethical Standards Board has asked the government to consider in its multiple submissions.

The function of the new body could simply be rulemaking, but adding different elements requires differing levels of expertise and knowledge.

One board cannot do everything on its own, so even when this structure takes shape, there will be a need to establish subcommittees to ensure that the impacts of auditing and financial pronouncements are properly understood.

It will require people who are critics of large firms and companies that apply financial reporting standards in complex situations every single day to understand there is no other source for some of this analysis.

This means that the current focus on conflicts of interest by various commentators needs to turn to what happens when you don't have appropriate expertise.

The neighbour across the road who is a retired assembly-line worker is not going to be the person to sit on a board or committee for financial reporting regardless of the fact their background renders them completely devoid of conflict.

Their input would be useless because, alongside their unquestioned, absolute independence is a complete lack of awareness of contemporary financial reporting and audit practice.

There were hearings of another inquiry into audit regulation in which a witness called such individuals "independent idiots". Their independence could not be questioned but their subject matter expertise *was* lacking.

Experience from within accounting firms, corporations, public sector entities, universities, law firms, and investment analysts will be critical to ensuring a new structure works well.

Transparency is essential to public confidence

Aligned with that is the transparency of operations and standard-setting outcomes is vital and this is one area in which the Howard administration's proposals miserably failed.

The AASB and AUASB were required to meet in public but the FRC — the body that had the power to direct the board — was able to meet in camera.

It was only over the past couple of years, under the leadership of former FRC chair Bill Edge, that the council's meetings were made public and people were able to observe the discourse of the FRC in public.

Major policy directions were set by the FRC in camera in the early years of the structure and this should not have been the norm.

The Chalmers rejigging of standard-setting must ensure that all discussions relevant to the policy of the standard setter and the development of standards themselves are held in public.

The government and its Treasury advisers also need to avoid the temptation to try to turn the new body into a super-regulator.

The remit of the body they are contemplating should provide the community with the assurance that standards being set for the profession, the public and private sectors, and auditor, for example, are being set appropriately and with the appropriate level of rigour in the public interest.

Regulatory functions such as inspections of audit firms as well as the disciplining of auditors should at least in the view of this author be done by a separate body that replicates the function of the Tax Practitioners Board to the extent that it is possible for the auditing and assurance professionals.

Solutions for regulatory reform in other parts of the accounting world can be drawn from how tax agents and other tax professionals are regulated here in Australia.

It should be acknowledged, however, that cultural cringe might motivate some people to look to models overseas instead of being more imaginative and using existing Australian solutions that fulfil the same function.

Copying the department-store model of accounting regulation that has existed in the UK is unnecessary. We can and should develop our own solutions in Australia for audit and assurance regulation based on models we already have here.

There is something else everyone needs to be reminded of as folks enter into debating how financial reporting, auditing, sustainability and other standards are set.

The argument about how you design the sausage machine that pumps out the standards is one thing, but those standards are useless unless they are properly implemented and compliance is enforced.

Chalmers and Jones should not spend too much energy on restructuring the standard-setting process unless they are also prepared to tool up the regulatory authorities to regulate the marketplace and its participants properly.

READ MORE:

FRC, AASB and AUASB to be merged into single government entity (https://www.themandarin.com.au/235164-frc-aasb-and-auasb-to-be-merged-into-single-government-entity/)

About the author

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By

Senator Barbara Pocock. (AAP Image/Lukas Coch)

There is a buzz. A murmur. A rumbling of discontent among professional associations that work in the tax game about the manner in which the Australian Greens secured their legislative win to ban certain Big Four partners from being appointed as members of the tax agent regulator.

It would be easy to dismiss the eight professional associations as being a self-interested cabal resistant to change, if you know nothing about the accounting profession, the ethical obligations of the profession, and the practical impact of changes proposed.

Simply dismissing the eight bodies that signed a statement late in the day after senator Barbara Pocock's legislation as being a self-interested cohort would be short-sighted and inappropriate because the amendments were not subject to sufficient public exposure — decent or otherwise.

None of the organisations that have members providing tax advice, offering BAS agent and bookkeeping services as well as financial planning were spoken to in the lead up to the amendments being released.

It would appear nobody in the room thought it sensible to discuss what, if any, implications there might be in the wording of the legislation and how the dob-in-an-allegedly-naughty-practitioner provisions of the new law might operate in practice.

The people who know how the provisions designed to encourage whistleblowing could create practical challenges are the accounting bodies themselves, and it is most unwise to legislate before the practical impact of legislating that policy position is understood.

The amendments proposed the Australian Greens were publicly unveiled a week before they finally got debated on the floor of the senate, and only the text of the amendments was available.

That in itself was a shortcoming in the legislative process because the proposed law to which these additional amendments were made was the subject of Treasury consultation and was also accompanied by an explanatory memorandum.

No explanatory memorandum accompanied the legislative amendments and as such there was no ability for the bodies to ascertain precisely how the dob-in provisions were envisaged to work.

That means that the chair of the Tax Practitioners Board (TPB), Peter de Cure, gets the hospital pass. He and the team at the TPB have to work out what the legislators intended, and work with the eight professional bodies to implement something that was chucked into the omnibus bill at the last minute.

The statement released by Chartered Accountants Australia and New Zealand, CPA Australia, Institute of Public Accountants, The Tax Institute, Australian Bookkeepers Association, The Institute of Certified Bookkeepers, Financial Advice Association of Australia and SMSF Association notes that the bodies were not consulted and that consultation should take place after the event.

A spokesperson for all eight bodies, Matthew Addison, said the original bill improving the independence of the TPB and its effectiveness was consulted on but new stuff coming from the Australian Greens was not.

"While the government consulted widely on the original proposed amendments earlier this year, there has been no consultation with stakeholders on the Greens' latest amendments, nor has an accompanying explanatory memorandum been provided to give further guidance on the changes,' Addison said.

'We strongly suggest that targeted consultation with key stakeholders be immediately undertaken to ensure the provisions operate as intended, and include any resulting changes as part of the second tranche of legislative changes to the TASA which are currently in exposure draft form."

It should also be noted that throughout the various committee processes involving senators engaged in the very debate that was observed over the Greens' amendments have received evidence from the professional bodies and accounting firms that individuals and groups were prepared to consider greater regulation of the sector.

That preparedness for considering greater regulation also needs to be met on other side of table by the politicians and the bureaucrats to bring a sector to the table and to listen to any concerns that are had with drafting before laws are passed.

Addison's call for consultation after the passage of the new provisions should not have been necessary — consultation should have taken place regardless of a politician's or journalist's or general Joe Public's views on the behaviour of some individuals in a large accounting practice.

The accounting and financial services sector has eight bodies that represent tens of thousands of individuals involved in the provision of accounting, tax or financial services.

Failing to bring them along the journey as amendments are being proposed creates at best a climate of suspicion, and, at worst, distrust. It can lead to advocates in those bodies feeling apprehensive and fearful that future legislation debated in parliament will come bundled with yet more surprises.

A process that winds up with surprises during the second reading or committee stages of a bill's passage will leave people asking whether politicians are prepared to set the gold standard for transparency and openness that has ben expected of witnesses coming before the various inquiries.

A further point to be remembered in the case of the Greens' amendments is that a government department would not get away with developing a regulation — a legislative instrument — without proving to the Office of Impact Assessment that they have considered and consulted with all relevant stakeholders in the development of a regulation.

Accounting and financial services organisations are also used to this approach in the accounting and auditing standard setting processes. There are exposure drafts issued for public comment and those comments are factored into the development of a standard that is then law.

Only after the experts have completed their work and issued a finalised standard is a standard put on the parliamentary table for disallowance.

The best practice in the bureaucracy is to ensure that regulatory impacts are assessed, the affected parties spoken with and then the law tabled. It might be useful if the politicians that expect the bureaucracy for follow that practice remember to do so themselves.

It would also be a gesture of goodwill to consult with a sector that has the expertise needed by parliament — and individual parliamentarians — when committees require an understanding of what happens in practice.

There are additional questions are equally valid in circumstances where — at least from an observers' perspective — consultation with an affected sector was not followed.

Could this not have been incorporated in another Bill dealing with TPB-related matters? Could it have been bundled into legislation issued after the excellent work of senators Pocock, Deborah O'Neill, and Richard Colbeck had reported back next March?

Legislation could have been developed by the government off the back of the Australian Greens' suggestions and put out for Treasury consultation a couple of weeks prior to Christmas, with a submission closing date in early February.

The legislation could have been introduced and passed in the first sitting week of the parliament in 2024.

All of those options raised above point to one simple truth: it is always better to bring a significant stakeholder group with you even if you are telling them the jig is up, and laws affecting how they are regulated must change.

You might be pleasantly surprised as a legislator because some people might agree with amendments as drafted while practical changes to draft laws to avoid unintended consequences could be discussed.

Sometimes what happens on the journey to getting better regulation is just as — if not more — important as the final outcome because it can lead to greater stakeholder acceptance of change.

READ MORE:

Senate bans Big Four 'foxes' from membership of Tax Practitioners Board 'henhouse' (https://www.themandarin.com.au/234877-senate-bans-big-four-foxes-from-membership-of-tax-practitioners-board-henhouse/)

About the author

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By

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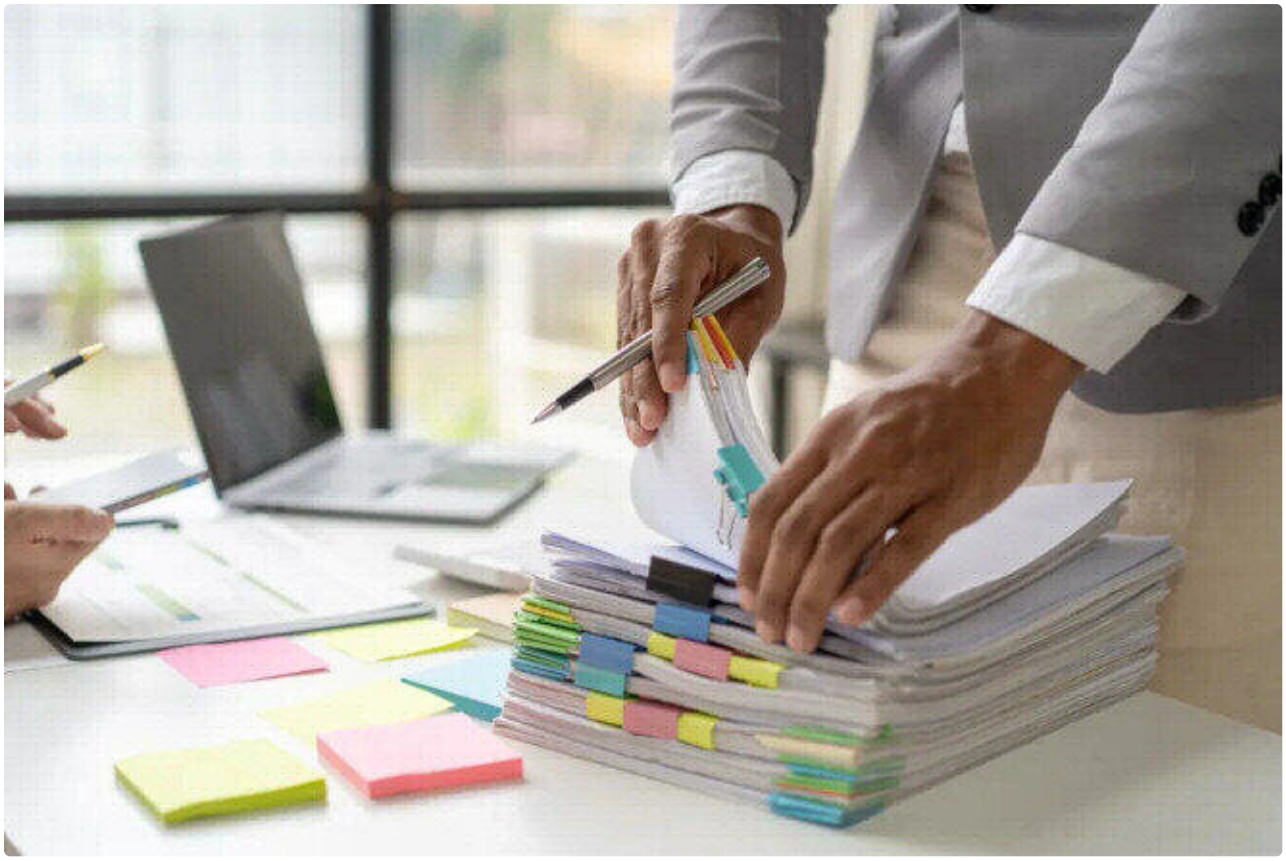

Not every auditor category has regulatory oversight. (Wicitr/Adobe)

A range of issues have emerged from the newly released report by the Financial Reporting Council (FRC), which deals with the state of audit quality in Australia. The most important of them is a greater need for imagination when designing regulatory solutions for auditing.

The FRC chronicles various regulatory gaps — not every auditor is overseen by an enforcement body — and it surveys the global scene to point out where Australia's regime sits about arguably similar systems.

A decline in the monitoring of audit working papers by corporate regulator the Australian Securities and Investments Commission (ASIC) is noted, as is the need for professional accounting bodies to do more work with their practice quality reviews.

The FRC report also notes some auditors are outside of the Corporations Act regime and therefore are not the subject of as much regulation or scrutiny as other people practising auditing in Australia.

Registered company auditors, for example, are subjected to ASIC oversight but there are auditors, accountants and consulting types who do not have any oversight by a government body at all.

The FRC also observes there are aspects of the accounting profession's ethical standards that do not have the force of law, and there is inadequate regulatory monitoring of compliance with these standards as a result.

While these observations might appear worrying, they should certainly not surprise anybody who has been paying attention.

The FRC foreshadowed findings in its report in a two-page submission to the Parliamentary Joint Committee on Corporations and Financial Services that was lodged earlier this year. The pithier version of its concerning assessment is worth a read if you are time-poor.

What the FRC offers up to the community is a call for greater regulation in an important sector, but it is understandably silent on the body or bodies that should fill the regulatory gaps.

The question the rest of the community and, more particularly, that rather unique subset of the community that sits in the parliament, must answer is quite simply: how do we improve what we do now given the inadequacies that the FRC highlights?

What function are we aiming to regulate?

Regulation in the accounting profession usually focuses on function. What function does an individual or entity perform? Park all of the talk of the partnerships and companies and the relative merits and demerits of the two structures for the moment because that chatter is not relevant to our purposes.

What is relevant is how we regulate those individuals or entities that engage in the provision of audit and assurance services.

That requires us to do an environmental scan to determine whether there is a model of professional services regulation that provides a template that could assist with the need to capture all those that provide auditing and assurance services in Australia.

Take a look at the Tax Practitioners Board — a separate board for tax professionals in Australia — as an example of a ready-made template for the purpose.

The TPB has top-shelf registration — the registered tax agent — for those who meet all of the registration conditions. It also has BAS agents that are registered with it that provide a different level of tax-related services.

How might this help solve the audit and assurance dilemma the FRC points out in its recent report?

Leaning on the TPB model for inspiration firstly suggests that a separate Audit and Assurance Practitioner Registration Board — AAPRB — is deemed to be better than having certain tasks such as registration sit with the corporate regulator.

A separate regulatory body that has its sole purpose as the registration, surveillance and disciplining of audit and assurance service providers would not be subject to the whims of the current corporate regulator's priorities because it would only have a single focus.

The ASIC has a portfolio of activities across which it must allocate funding, and this can result in less intense monitoring of audit quality periodically when other market problems create political and enforcement headaches.

It also leads to the notion of a national regulator so that all auditors doing audit work regardless of the size and type of entity should be registered at a national level with this body.

The federal government could give consideration to creating different tiers of auditing professionals: those sufficiently qualified and experienced to audit listed companies and similar large entities, a tier suitable for auditing larger charities and

clubs, and a tier for those who provide audit or review services to smaller community entities.

What appears in the paragraph above is, of course, conceptual because there would need to be work done that defines the levels of experience, relevant competencies, professional development requirements, and the level of education that is required.

Any new regime would also require transitional rules to enable people with the necessary skills and experience to be able to transition into the new regulatory regime that would apply to the audit and assurance space if a TPB-style model were to apply.

Audit firm inspections could be done by the new body rather than the ASIC, and the new body could have disciplinary powers similar to that of the TPB.

That means an auditor would be registered, subject to oversight while registered, and potentially disciplined if they were naughty by the one body.

The other benefit of this single audit and assurance regulator suggested above would be that the tensions between the ASIC and the Company Auditors Disciplinary Board related to resourcing would disappear.

A single audit and assurance sector regulator with a disciplinary function would have its staff — as it should — and not rely on secondments from the regulator.

This approach would not be without challenges because a new regulator would need to find people prepared to be involved in the registration and inspection of auditors, and the government would have to consider the various appointments that it may wish to make on such an authority.

Expanding audit regulation

What politicians and bureaucrats will need to reflect on is how the introduction of sustainability standards that will have legal backing into the regulatory mix impacts the regulation of auditing and assurance services.

Relevant standards being drafted to deal with the auditing and assurance aspects of the move to a single set of sustainability standards will be discipline-agnostic. This means that the standards could be used by people other than members of accounting bodies.

What does this mean for the regulation of audit and assurance services?

The expansion of audit and assurance services in line with demands for disclosures to be verified in some form means that limiting the regulation of audit to those that rip financial statements apart makes no sense.

What the federal government should consider is the way the tax agent registration regime deals with people who play in the tax space — not just the garde- variety of registered tax agents.

The TPB can register financial planners, quantity surveyors, and fuel tax specialists who use tax in their work.

People involved with financial planning or financial services who are registered with the TPB have to complete 60 hours of continuing professional development over three years as opposed to 120 hours over the three years required of the regular registered tax agent registration.

Financial planners would have to also meet other training requirements set by their relevant financial planning body.

Quantity surveyors and fuel tax specialists must ensure they do at least two hours of relevant tax training each year over three years.

An audit and assurance practitioner registration body could use the same kind of conditional registration method the TPB uses to capture people who are a part of audits but auditing and assurance is not their principal service offering.

They could be registered as auditors or assurance service providers with a lower number of hours of training specified so that there is a requirement in law for them to update their knowledge of auditing and assurance requirements as they are relevant to their work.

Such a regime would also deal with questions of quality control and policing of professionals who are involved in audit and assurance even though their primary discipline might be something completely different.

It ceases to be a problem when one does an environmental scan and finds regulatory models already in existence that can be taken as a template to solve a regulatory challenge that might perplex people.

What our politicians and bureaucrats need to keep in mind is that there are answers to these issues staring them in the face if they have a quick look around.

All they need to do is exercise their grey matter and not allow this particular exercise in regulatory reform to be a victim of a lack of imagination.

READ MORE:

FRC instructs ASIC to improve audit quantity (https://www.themandarin.com.au/234495-frc-instructs-asic-to-improve-audit-quantity/)

About the author

(/author/tom-ravlic)

By

Senator Richard Colbeck listens to PwC’s Kevin Burrowes. (AAP Image/Mick Tsikas)

Accounting firm PwC Australia is going to have to do a lot more to satisfy senators that it is serious about rebuilding the public’s trust. This need follows what the parliamentarians saw as an inadequate performance during recent hearings.

Representatives from the global behemoth, including new CEO Kevin Burrowes, have fronted the senate committee for the first time. They talked about a series of issues raised in the firm’s internal cultural review (https://www.themandarin.com.au/231380-whatever-it-takes-pwcs-poor-behaviour-exposed/) done by Ziggy Switkowski and its summary of the tax leaks saga.

Burrowes told the committee that the firm had pledged to implement all of the recommendations put forward by Switkowski. Such recommendations included the recruitment of non-executive directors so the firm has an external perspective on its

operations.

PwC also agreed to review its appointment processes for senior executives as well as how the firm manages operational risks.

Burrowes also told the committee the firm has begun to evaluate prospective client engagements, to weed out what the senate committee might consider conflicts of interest.

Committee members remain dissatisfied with the firm's explanations of what went wrong in the tax leaks saga.

Chair Richard Colbeck told *The Mandarin* that the documents released by the firm posed more questions than they answered.

"Anyone close to the details of the PwC matter would be in no way satisfied with the responses provided so far," Colbeck said.

"It appears that PwC Global believes that they can just drop the Switkowski report and a summary response and everything will be fine. Those documents, however, just raise more questions."

Colbeck said the firm needed to do more to comply with the committee's recommendation earlier this year regarding its cooperation with inquiries.

"It was alarming to hear that PwC Global has withheld details of the Linklaters report from PwC Australia in defiance of the senate committee recommendation that they should be open and honest with the Australian and international communities," Colbeck said.

"As much as they might try, the local management have been hamstrung in their efforts by the business as usual approach of PwC Global in their attempts to cauterise the issue to Australia.

"As far as I am concerned, there is no distinction between local and global."

Senator Deborah O'Neill – who is chairing a separate inquiry into accounting, audit and consulting practices – said PwC's performance was "deeply underwhelming".

"CEO Kevin Burrowes seemed unprepared for the bulk of substantive questioning, and the witnesses appeared to lack adequate knowledge of crucial facts associated with the committee's inquiry and their own firm," O'Neill said.

Senator Barbara Pocock said PwC has a lot of work to do to rebuild trust, and that means the firm needs to change its business model to one that puts "public interest ahead of profits".

Pocock said she thinks the firm is concerned about protecting its brand and its client base rather than what the broader community thinks about the organisation.

"They are so out of touch, it's like they live on another planet," Pocock said. "They secretly hope that the caravan will move on, and this will all blow over but I'm here to tell them that it won't blow over.

"We in the parliament who represent the Australian people will continue to hold them and their like to account."

READ MORE:

Judge Greenwood on what makes Scyne Advisory 'a very different animal' to PwC (https://www.themandarin.com.au/232813-greenwood-scyne-advisory-very-different-animal-pwc/)

About the author

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By

Former Federal Court judge Andrew Greenwood. (AAP Image/David Sproule)

Former Federal Court judge Andrew Greenwood is used to interpreting and deciding on matters of the law. However, his new role with Scyne Advisory means that he is the one laying down the law to partners and staff.

Greenwood, a former partner of a major law firm, found himself mulling over the future of staff in an entire division of accounting firm PwC Australia that had nothing to do with the tax policy confidentiality breach that dominated headlines.

Federal government departments turned against the accounting practice when a Tax Practitioners Board finding was announced. It became clear the firm's 1,500-odd partners and staff sitting within a government consulting practice were unlikely to be doing much.

PwC went through several scenarios. One was to create a business ringfenced from the rest of the practice but that was deemed unsatisfactory.

There had to be a complete separation from PwC to avoid what various government departments saw as an insoluble ethical problem. It was clear the tax practice would paralyse any prospects of growing government business.

So the embattled firm sold the government consulting business for $1 to private equity play, Allegro Funds. It wanted to create a specialist practice with no ties to the firm.

Scyne Advisory has now been given the all clear by the Department of Finance to do government work. In part, that is due to Greenwood's intense work over the past few months.

It has meant an almost full-time focus for Greenwood on getting the practice set up, verifying to the extent possible the bona fides of everyone joining the firm, and telling those coming across from the battle-scarred global behemoth what to expect.

"I came into this exercise as an independent expert to have a look at the structure of the proposed new company, Scyne," Greenwood said.

"Then to look closely at the code of conduct, the cultural and ethical statements surrounding the entity, and the cohort of individuals who would transition from PwC into the new company."

A part of the due diligence done by Greenwood included reviewing the unredacted version of email communications between PwC tax partners tabled in the senate to ensure nobody involved in the so-called tax leaks saga joined Scyne.

This meant Greenwood and Scyne, more generally, could assure government that the new practice would not have the cultural contagion or problems caused by the PwC's tax consulting practice.

Another significant part of the transition process was having conversations with people about what to expect at the new entity.

"I have spoken to a lot of people – a lot of partners and directors in this organisation – and I have had to explain to them, although they would intellectually comprehend this, that Scyne Advisory is a very different animal to the partnership beast that you are used to working in," Greenwood said.

"This is a company that is going to function as if it were an ASX-listed corporation. It will comply with all the listing rules. It will have a board of directors of six people, and five of the six people will have no executive role whatsoever with the entity.

"It will have three independent directors and an independent chairman, and it will have four separate subcommittees."

Greenwood said that among the usual committees – such as audit and risk, cybersecurity, and people and culture – one will examine probity, conflicts and ethics.

"That's a subcommittee that is going to be dedicated to the supervisory role of keeping an eye on all questions related to probity, culture, ethics, conflicts and those things," he said.

"A second element is to explain to them that there is a fundamental matter that dominates the whole discussion with the establishment of Scyne, and that is that every single person coming to Scyne has to understand the trilogy."

The 'trilogy', Greenwood explained, is made up of the purpose of the entity, what the values of the entity are and what the organising principles are.

"The purpose, values and organising principles are a critical combination of things," he said. "The very first thing I had to say to people is that you must understand that Scyne is a dedicated specialist adviser to the public sector, which means that it is delivering a public good by helping to enable best practice decision-making in the exercise of public power by the various polities in the federation, the various departments of government.

"Therefore, this means we will be serving the public interest and serving the interests of the Australian people. That is the underlying purpose and that is what we have been focusing on so much. So it's not just profit motives, profit-making, pursuing growth and profit."

Bedding down the right attitudes through the foundation purpose and operating principles also involves an organisational ethos that encourages questions, encourages the airing of opinions, and creates a climate where differences of view on issue are welcomed – not perceived as a threat to a hierarchy.

Greenwood said that it is critical that entities have a culture that encourages the airing of different views so that the best decisions are made by people in governance roles. The organising principles make clear that Scyne wants partners and staff to feel they can speak up, as well as challenge orthodoxy.

He said that in civilised discourse, even somebody with a minority view may persuade others of its merit.

"You have to encourage people to speak up, and you have to have mechanisms that entertain their views," Greenwood said.

"This set of principles is something we have distributed to everyone as a fundamental matter. You must encourage people because they might come forward with different views."

About the author

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By

Ziggy Switkowski. (AAP Image/Darren England)

Much has already been written about the report on accounting firm PwC Australia's culture and ethics prepared by governance guru Ziggy Switkowski, but much of this commentary has centred solely on the accounting practice itself.

Not what, if anything, others can learn from it.

A more reflective read of the 80-page report reveals the observations made about the practice could apply more broadly. Indeed, there are analogies for the public sector.

There is a well-known principle that it is best to learn from other people's mistakes rather than your own. So what, if anything, can people in government reflect on in the light of the Switkowski report?

Take the commentary that Switkowski provides on the power of a dominant chief executive officer as the person who "runs the show".

Switkowski describes a culture where the CEO was not questioned by other partners during a period of commercial success.

There were also observations made to Switkowski about a dominant chief executive leading to what is described as a culture that has fluid management practices, and decisions being made outside of rooms or being overridden.

What questions can ministers, departments and agencies ask themselves about governance within the public sector?

One of the first ought to be how much power ought to be in the hands of a departmental secretary. Consider the case of a ministry such as Home Affairs and the territory that ministry covered under the Coalition government.

It has since been scaled back a tad under Labor but the question may still be put constructively following the recent publicity surrounding the private texts of secretary Mike Pezzullo.

Governments, departments and agencies need to consider how best to ensure that there are sufficient checks and balances on the power of bureaucrats in ministries that cover a large swathe of territory.

How does this happen appropriately in the context of ministries perceived to be all-powerful?

What protocols and behaviours ought to be considered appropriate if a person – any person – is in a senior role within a powerful ministry?

It also raises a question as to how much territory any one departmental secretary should oversee. Does breaking departments up and having different responsible ministers provide a better result over time because contentious decisions could be better tested by people involved in decision-making?

Are there areas of government that should be split for the departments and their ministers to act as a check and balance on the appropriateness of decision-making?

There is another issue that needs to be considered by the public service for the preservation of the notion of independence. Who people in the bureaucracy choose to communicate with and how.

What kinds of conversations should people in powerful roles refrain from having even in encrypted forums that could be perceived as being inappropriate for somebody in a high bureaucratic post?

There is a large slab of the Switkowski report devoted to the need for sets of eyes from outside the partnership on their main governance board to give it some assistance to help it see things that might not necessarily be visible to those who just live in water in that fishbowl of PwC.

It is not as if the firm hasn't had outsiders in its governance before. PwC has over the decades had periods when its audit division would have a group of people overseeing audit quality. An Audit Quality and Advisory Board – a body created in 2019 – exists to take a bit of a squiz at the firm's audit processes.

The firm uses this process to get feedback on its audit and assurance practice but it is not the first time that the firm has adopted this approach. A similar body was established when Enron collapsed, and Arthur Andersen disintegrated into nothingness in the early 2000s.

It is puzzling as to why this approach, which has been seen by PwC domestically as being relevant to its audit practice, has not found its way further up the chain given the firm's audit and assurance division would be doing this because there is some value in external eyeballs.

What public sector department doesn't have a body such as an external board evident in its organisational structure?

One of the most powerful agencies in government is the Australian Taxation Office. Over the years it has been criticised for not having an external body to oversee the work it does.

There may also be benefits in having the agency overseen by an independent body with which it can discuss alternative ways of dealing with issues raised by whistleblowers and others.

Bouncing around ideas with a consultative oversight board on contentious matters could provide the ATO with better feedback on community expectations and standards.

That 80-page report also refers to aspects of PwC's governance and risk management being complex and fragmented. This led to ineffective processes within the firm.

It may well be that this observation could be applied to the regulation of audit. It's an area noted by the Financial Reporting Council for its fragmentation.

Should there be a new body created that combines the current remits of the corporate regulator and other authorities into one body that has one specific purpose – regulating audit?

Another lesson is a bit boring but equally essential. It might be prudent for words related to a high-profile regulatory sanction in any report to be checked and cross-checked before a document is let loose into the wild.

Switkowski's foreword sets out a description of what happened to former PwC partner Peter Collins.

"A senior tax partner had been sanctioned by the TPB and his licence to practice withheld for two years," Switkowski said on the first page of his foreword to the report into PwC's culture and governance.

The wording in Switkowski's report suggests the penalty was a suspension and Collins would be able to pick up where he left off after two years.

This is not the case. A termination of registration means just that – your ticket to ride as a tax practitioner no longer exists.

Collins would have to consider reapplying for registration with the TPB. The TPB would then have to determine whether to accept his application before registration could be granted.

No license to practice was withheld. The registration was terminated. It no longer exists.

Proofreading and fact-checking have their uses.

READ MORE:

Switkowski didn't need to be a nuclear physicist to identify PwC's problems (https://www.themandarin.com.au/231451-switkowski-didnt-need-to-be-a-nuclear-physicist-to-identify-pwcs-problems/)

About the author

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By

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Ziggy Switkowski. (AAP Image/Darren England)

PwC Australia has finally dropped the long-awaited report into its culture by Ziggy Switkowski. For anyone involved in any form of governance – public or private sector – it's a difficult, horrid and rather depressing read.

The report exposes cultural problems the firm acknowledges were detrimental, including an emphasis on profit over principle, and market leadership.

Those of you with a keen eye on the history of royal commissions know what happened when the Hayne inquiry looked at the profit motive in the financial services sector.

Profit at the expense of other considerations found that unpleasant, unfair consequences were suffered by customers and employees who did not maintain the company line in the context of financial services.

What did Switkowski say in the PwC context?

"The aggressive growth agenda overshadowed and occurred at the expense of the firm's values and purpose," Switkowski writes in his report.

"The focus on 'whatever it takes' seems, at times, to have contributed to integrity failures – some partners did the wrong thing, while others failed to do the right thing by overlooking or minimising the significance of questionable behaviours."

A culture where there is a dominant chief executive officer can lead to interesting things happening and Switkowski provides some insights.

It was, the report says, accepted that the CEO ran the organisation and that meant some people were unprepared to challenge the boss when commercial success was evident.

"It has also led to heightened (potentially even misplaced) trust in the CEO," the report says.

Other curious things can happen in a governance structure where the CEO is dominant, surely?

"A powerful CEO can also contribute to "fluid" management practices and to decisions being made 'out of the room' or overridden," Switkowski writes.

"The overly collegial culture at PwC Australia has tended to amplify the power of the CEO."

Consider for a moment what a dominant secretary in the public service might be like and what characteristics a dominant secretary has. Would it be similar to what Switkowski outlines?

The firm had a decentralised approach to running its business and there was no enterprise-wide visibility.

Let's take a moment and reflect on the point above before we go further. The firm that does audits and in the audit process looks at the structure of businesses did not

itself have a process where there was a view of the entire business.

The firm had three business lines and there was a deliberate shift from having a view from the central commentary position.

"There was a failure to maintain capability and capacity at the centre for oversight and decision-making," the report says.

"Decisions were business-led with a tendency for issues to be managed in silos. Without the counterbalance of the centre, the enterprise-wide view was lost."

That in itself is really bizarre.

How do you run a practice where the big picture is not necessarily visible to those who need to know?

How do you manage enterprise risk if there is no way for the pieces of the jigsaw puzzle to be properly seen at the centre? By any definition, it's extraordinary.

This will probably get fixed quick smart before the firm starts preparing to put together its own audited set of financial statements.

Then there's another cracker of a revelation in the can of worms tipped across the table by Switkowski. There were unclear responsibilities and accountabilities in the PwC business that people assumed things were being looked at but slipped through the cracks because they weren't always properly documented.

Assuming things might be done by somebody is one thing but unless there is an owner for the doing of certain things and their role is properly documented, those things might not actually get done.

Just imagine what that might mean in the context of a government department where people who are accountable for aspects of projects need to appear before senate estimates to be accountable for their work.

What would the discussion be like if somebody from a department said somebody is responsible but that could be anybody, and nobody could be tracked down to respond to a question on notice?

How do you get a problem solved if nobody owns it?

It should be noted at this point that the firm has reviewed the report and will implement the recommendations so it does its best to avoid past pitfalls.

Recommendations include changing the appointment process for executives as well as looking closely at its focus on managing risk.

There is also a recommendation for PwC Australia to have at least three independent directors.

The global accounting firm with a footprint in the governance space by virtue of its audit clients and a network of non-executive directors has been found wanting.

It's been told it needs to have at least three independent sets of eyeballs. Plus an independent chair sitting at the apex of the firm's leadership structure.

That is corporate governance 101. It's something accounting bodies such as Chartered Accountants Australia and New Zealand teach in their professional qualification.

That there might be a benefit in having some independent folks on a governance board isn't rocket science. It should not have taken a mind belonging to a nuclear physicist and governance expert to bring that revelation to them.

READ MORE:

'Whatever it takes': PwC's poor behaviour exposed (https://www.themandarin.com.au/231380-whatever-it-takes-pwcs-poor-behaviour-exposed/)

Greens MP Abigail Boyd chairs the committee looking into how the NSW government uses consultants. (Supplied)

You would think that a corporate lawyer who has seen the ins and outs of banking regulation would have seen every trick in a consulting firm's playbook, but Greens MP Abigail Boyd can still be surprised.

Boyd chairs (https://www.themandarin.com.au/221735-inquiry-to-look-into-nsw-public-service-use-of-consultants/) the NSW parliament's public accountability and works committee looking at how the state government uses consultants. She is staggered that consulting firms – particularly the big four accounting behemoths – are largely unregulated at the state level.

"What I know from my experience in banking regulation and in the corporate world is that these profit-making institutions by their very nature are designed to operate within the bounds of regulation to the maximum extent in order to maximise their profits," Boyd says.

"That is not a surprise. That is what they are supposed to be doing."

She says people like her former colleagues in the banking sector would say that they were behaving ethically as long as they were attempting to achieve a profit within the confines of the law.

Everybody knows the profit bit. What was it that made Boyd raise her eyebrows a bit more?

"The biggest surprise is how trusted these institutions are, how embedded they are within our government, and how reluctant people are to regulate them," she says.

Boyd observes firms such as the big four accounting practices appear to have traded off the image as ethical auditors to the point where bureaucrats are simply accepting firm assurances that they follow their codes of ethics rather than press them further on the way they manage engagements and their practices.

She says as a lawyer it was drummed into her and her colleagues what ethical practice meant. Contraventions of ethics and the rule of law had consequences for the lawyer choosing to walk a crooked path.

Boyd does not see enough consequences applied to consulting firms, which are in the crosshairs of the NSW inquiry plus two other inquiries in the Commonwealth parliament. They are taking a closer look at professional services firms following the confidentiality breach involving PwC and its former tax partner, Peter Collins.

Boyd still marvels that the NSW government believed it was adequate to suspend PwC's state-based tax work – work totalling less than 2% of the practice's total revenue from state contracts – as a result of the Commonwealth tax policy scandal.

She saw the NSW government action as being yet another example of an absence of consequences for behaviour in large firms providing services to the public sector that was emerging in evidence to the inquiry.

"If I ask, for example, a government bureaucrat why [they have] taken the consulting firm's word when they say they have a conflict of interest, they will say 'they are bound by a code of ethics and they agreed that they wouldn't do the wrong thing',"

Boyd says. "There's never a consequence for them failing to do those things.

"What we have is an entire framework set up around the use of these consultants which is relying on them to just do the right thing as though they're not the profit-taking institutions that they are – as if they are not driven by a profit motive and incentivised to go to the very bounds of ethical behaviour in order to make the most profit, and have the most profitable business."

The state-based review of government consulting arrangements follows a report, released on March 2, in which NSW auditor-general Margaret Crawford explained the difficulties of uncovering how much NSW spent on consulting.

It found the state government spent more than $1 billion on consultants between the 2017-18 and 2021-22 financial years but the records were not complete, according to the Audit Office, because more than $170 million in spending on consultants does not appear in annual reports. Some entities are exempt from reporting.

More than 1,000 firms were used by state government agencies over the four years covered by the Audit Office's deep dive but 27% of agency spending wound up in the bank accounts of four large consulting practices.

It also revealed that 30% of the contracts the audit engagement team looked at ended up being "varied", increasing cost.

Boyd put out a media release urging an inquiry into consultants during the state election campaign, effectively making it an election promise. Once re-elected, she delivered on her pledge to grab the can of worms and a can opener, and tip the contents on the committee table.

"[The auditor-general] pointed out the huge difficulties she was having in quantifying the use of consultants by the NSW government," Boyd says.

"She picked out a number of issues that were of concern. One of them was the number of entities like the local health district entities in NSW that don't need to report on their consultant use to the same extent.

"The other big thing was the use of systems that are supposed to record how much we are spending on consultants."

Boyd pointed to the inability of public servants to provide the committee with accurate numbers related to how much money was being paid to any given accounting firm as evidence of the system being opaque.

That opacity meant it was impossible to hold people accountable for how much was being spent on consulting firms. Boyd wants to address this in what she expects to be an interim report to arise from the committee's work to date.

"We don't know how much is being spent. We can't inquire on what it is being spent on," Boyd says.

"We can't then drill down into those contracts to work out: is this a good use of money, did we need consultants in this case, was it [an] overpriced contract? Was there perhaps some element of corruption or deals with mates? You can't do any of that when you can't even get to the basic point of how much are we spending."

Another matter needing a fix, according to Boyd, is the online data showing consulting engagements for a limited period. This restricts politicians, the media and other stakeholders from keeping track of who is getting what contract and how much is finding its way into the bank account.

There is a three-month limit on information being kept online – a problem that does not exist with the Commonwealth's online tender sites – but that is not the only problem Boyd is keen to point out.

"You don't need to disclose unless it is over $150,000 so there's a lot of contracts for $149,000," Boyd says.

"And then after three months it drops off the system. It gets deleted so unless you are watching every day and making your own little file, you don't have an ongoing record. You also don't have any record of the original disclosure of a contract that then gets changed."

Recommendations likely to flow from the committee's work in an interim relate to fixing the recordkeeping systems so that it is easier to keep track of who gets paid what for consulting work as well as changing the online registers related to government tendering so information is kept there as a matter of record and not just jettisoned into the black holes of cyberspace after three months.

"The final bit of that is to ensure that if people don't do that properly there are actual consequences," Boyd says.

NSW public servants and consulting firms can look forward to being at the other end of more questions from Boyd and her committee colleagues on where taxpayers' funds are being sent.

"I think we stop this inquiry when there is stuff to stop looking at. We started off with health because the Health department had built the worst level of disclosure because of the local health district structure, and there was a lot to look at," Boyd says.

Boyd says the committee will meet for two days this week to look at how transport bureaucrats use consultants.

"Then we're going to get to some of the other departments," she says, "and we will keep going because there are general principles coming out in the case studies we are uncovering as we go.

"Every time we look at any of these departments, there are very concerning examples of conflicts of interest and dodgy decision-making that deserve sunlight."

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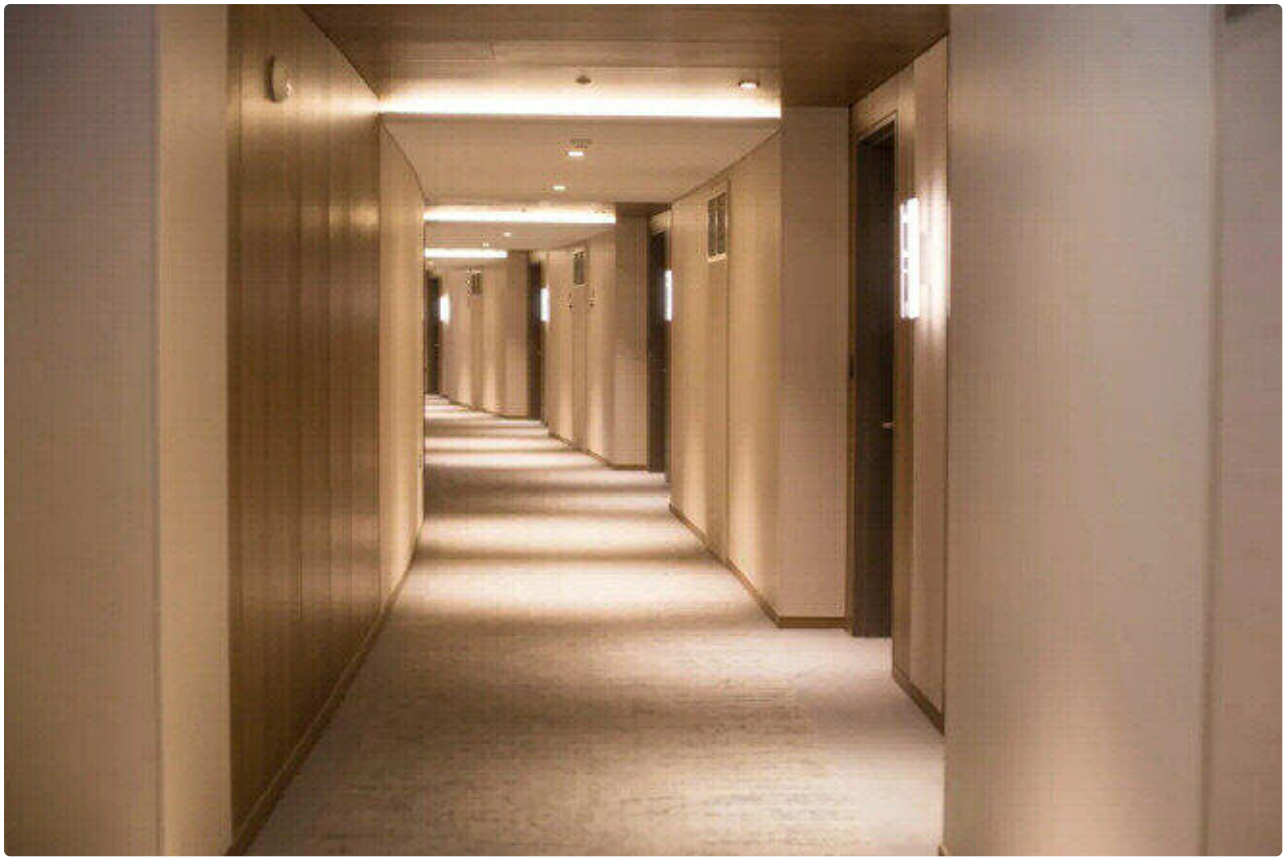

An agreement with the CPSU and APSC has been struck enabling all APS to ask for exible work as a right — soon. (bong/Adobe)

Both the movie and graphic novel *Watchmen* posed a particular question in a world where there were masked heroes or vigilantes dispensing justice on the streets.

"Who watches the Watchmen?" — a slogan from the film — may as well be a question asked about the regulation of certain professions.

Take the accounting profession, for example.

Its ethical standards proclaim the profession's commitment to the public interest. It does so in the first paragraph of the Code of Ethics otherwise known as APES 110.

"A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest," according to APES 110.

Let's be clear about one thing at the outset. The body that issues this standard is the Accounting Professionals and Ethical Standards Board (APESB). Its role is to develop and issue ethical pronouncements for the accounting profession in Australia.

It has no role in the enforcement or monitoring of compliance with the pronouncements it issues. That is left up to the three accounting bodies that fund the APESB: CPA Australia, Chartered Accountants Australia and New Zealand, and the Institute of Public Accountants.

These bodies have disciplinary functions that will act on complaints and concerns, such as the recent issues arising from the disciplinary action taken against PwC and its former partner, Peter Collins, on the misuse of confidential information from consultation on law reforms designed to discourage companies playing funny buggers with their corporate plumbing to avoid paying tax.

This raises a further problem. Is it sufficient for the profession to be left alone to catch and kill its own when it comes to disciplining accountants, and interpreting the public interest?

One area where legislators have ensured the profession is not left to its own devices to discipline its own practitioner members is audit.

Audit standards have ethics embedded in them as black letter law. Tax practitioners are bound by a set ethical code in the law — the very law that resulted in Collins being deregistered.

Other areas such as broader consulting services — a major point of contention in the current parliamentary inquiry into the government's use of external consultants – are not covered by law in the same manner.

Audit and tax clearly have their own regulators and a process by which practitioners can have their registrations removed if they are caught not acting within the bounds of laws and ethics.

What about the rest of the accounting world? How do the legislators in Canberra and elsewhere assure themselves that the accounting profession that proclaims a commitment to the public interest actually lives up to it?

One of the things that has been lacking over the years is continuous oversight of the accounting profession more broadly by parliamentarians who make the laws that impact the accounting world.

Oversight hearings that see the various accounting bodies and larger accounting practices give evidence before a parliamentary committee would do no harm to a profession that professes to be committed to the public interest.

It would provide politicians with the opportunity to get a better understanding of trends within the accounting world, quiz the partners of professional firms about any contemporary controversies reported in the press, and offer a chance for parliamentarians to understand what laws or regulations should be made or revised to deal with emerging challenges in business.

The latter point is important in circumstances where there might be reducing numbers in areas of practice, such as financial planning or auditing.

Parliament needs to understand why professionals are exiting their calling. Parliamentarians need to consider if there is anything they can do to ensure consumers are protected while ensuring there are enough professionals in a particular line of work to service them.

Oversight processes can also be used to hold the accounting profession and its various representatives accountable for their commitment to act in the public interest.

How do firms define the public interest in their day-to-day work? How do the bodies ensure the public interest is a focus in the work of their members across the board? There are all questions that ought to be asked periodically by a proactive parliamentary committee.

Ask yourself this question: who outside of the accounting profession holds the top dogs of the accounting world more broadly to account on this claim that it has at its heart the "responsibility to act in the public interest"?

Nobody.

It's about time somebody did.

READ MORE:

ASIC warns directors to 'tell the full story' in financial statements (https://www.themandarin.com.au/222159-asic-warns-directors-to-tell-the-full-story-in-financial-statements/)

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There has been a negative reaction to disconnected NMHC SES. (AAP Image/Mick Tsikas)

Policymaking in accounting, audit and consulting can be fraught with risk. There is often a lot of heat but insufficient light for people to see clearly.

This has been true for much of the past seven months because there has been little focus on proper regulatory reform as inquiries delved into the culture, processes and procedures of firms that provide services to government.

Fact-finding is necessary, although not everything that politicians on the senate finance and public administration committee have found through an inquiry is useful when it comes to making policy in a topic area often regarded as a non-chemical cure for insomnia.

Evidence before the committee by three of the major accounting firms, whistleblowers and government departments has painted a picture of a landscape that looks like a spaghetti junction. The committee has an unenviable task of dealing with several challenges at once.

First principles

The first of the challenges is the question of definition. What does it want any suggested reforms to achieve, and how can a measure get the greatest bang for its buck? What is the actual mischief the inquiry has been called to resolve?

Taxpayer funds are a scarce resource, and the committee has been looking at how consulting firms have grown their revenue from the public sector. But not all of this is necessarily transparent or appropriately overseen.

Committee members will have to scope their recommendations within the context that anybody involved in buying and providing services to government must be accountable for the spending and outcomes achieved.

They will also have to bear in mind that there are different corporate structures that exist for government service providers. Any solution must capture all possible structures.

A policy solution must be able to capture the sole trader who is an ex-public servant contracted back in to fill a gap or is given an engagement by a former colleague because they can deliver a knowledgeable report completed in a way that is suitable for the department.

It must also capture the global partnership that provides services to the government that is not as transparent (because it isn't regulated like a listed company) to the community.

There will be public and proprietary or private companies and possibly even trusts that house entities that do government work, but this won't be the world's greatest mess to sort out. It's certainly not one that requires the break-up of global structures

or other solutions.

All you have to do is ensure your brain is in gear before engaging one's mouth on the matter.

The most basic principle the committee must grapple with is that the kinds of entities that are listed above all do government work. They must build a set of transparency requirements that impact them all because of the nature of their work.

There are already registers that deal with matters of transparency for lobbyists. That can be used as an example of what could be done with individuals and entities on procurement panels or receiving work from government on an ad hoc basis.

Establishing a consulting firm register

Such a register could be maintained by the Department of Finance as a part of its oversight of procurement guidelines. All departments and agencies would have to do is ensure that each person or entity eligible to receive work from government on a procurement panel has a register record.

Basic information that should be available is the name of an individual or entity, the size of the practice (in terms of headcount), accountable individuals with a firm (such as the heads of risk management and the head of a government business), total revenue over a five-year period for comparative purposes, and disclosure of government revenue for that same period.

The purpose of this is to ensure there is some understanding of how dependent an individual or firm is on work sourced from government.

A further factor that complicates the figure related to revenue from engagements with government is that individuals and firms can get work from different levels of government. This information would need to be broken down for disclosure purposes because the committee is examining these procurement issues in the context of service provision to the federal government.

There will also be a need for commonwealth-related engagements to be disaggregated into portfolio areas so that it is clear from which area of government a firm is winning work.

This builds a picture of how much is going from commonwealth coffers into a particular practice without people necessarily needing to go looking through places like AusTender to compile their own tables of winners and losers in the consulting space.

A further measure is to require firms of a specific size regardless of structure to lodge financial statements on the register. This would address transparency concerns as they relate to partnerships expressed by Greens senator Barbara Pocock.

A criterium for this might be the number of full-time equivalent employees. Let's nominate a number of 1,000 full-time equivalent employees for the purposes of a quick thought experiment.

Anybody under this threshold would only need to supply the key financial data related to revenue in aggregate and then a breakdown of government-related revenue as set out above.

Those with more than 1,000 full-time equivalents would need to put in financial statements as a transparency and accountability measure. This would deal with part of Pocock's concerns about the big four accounting firms, as well as ensure that any other entities with the same number of full-time equivalent employees are treated the same way.

Dealing with the revolving door

Entities do win work based on the efforts of talent they either grow in-house or — more interestingly — talent they buy into their firm.

A register should feature a section that asks firms to state the number of people they have been recruited from the public sector over five years so there is a comparative set of numbers. Firms should not be required to name individuals on a public register for reasons of privacy unless a person recruited from the public sector holds a key role, such as the head of a government business line.

It should be clear that some practices will not have a five-year history to report. Any register will need to cope with the concept that a new firm providing services to government will not have a five-year history of movements between the government and a private sector consulting practice.

A sole trader that has come from government should only have to disclose their own background on establishing their business if they intend to consult to government under this concept.

It should be stressed that this part of a register would not necessarily deal with the phenomenon of mates giving work to mates. This requires people to behave ethically, and that goes to both the government procurement culture as well as the culture of the practices seeking government work.

A register of this nature ought to be the subject of a periodic performance audit to ensure data is accurate and reliable.

The Australian National Audit Office would be in the best position to review the administration of the register as well as a sample of entries to ensure register integrity. There is no point in having an information source on which the community can't rely. A performance audit process is essential to provide some degree of community comfort that the register can be trusted.

Ethical standards for government consulting

Tax agents, regardless of whether they are accountants or lawyers, must comply with the Code of Professional Conduct in the *Tax Agent Services Act 2009*, and that is a good part of the law. Registered tax agents are treated the same regardless of the discipline in which they deal with the tax law.

That law gives the parliamentary committee a precedent on what it might wish to consider when it comes to imposing regulations or contract conditions on individuals or firms taking on government work.

The committee has several options here. It can look at the tax agents' Code of Professional Conduct and suggest it be tweaked for the purposes of those accepting contracts with government agencies or look at a standard such as the accountant's code of ethics as a base to build on. There will be other ethical codes as well.

What is critical when it comes to setting ethical requirements for consultants is to ensure the same guidance applies across all players involved in government consulting.

One of the regular complaints about the use of consultants is that it puts certain projects and engagements out of reach for parliamentarians who want to understand what happened and who was responsible.

Enabling parliamentarians to interrogate consulting firms involved in government engagements must be considered a priority so that it is not necessary to call a royal commission every time a stuff-up becomes apparent.

The current inquiry into consulting firms needs to deal with issues related specifically to procurement. It can't deal with all of the real or perceived ills raised by the loudest voices.

A recent announcement of a deep dive (https://www.themandarin.com.au/227180-tough-new-tax-rules-to-help-agencies-share-information/) into professional regulation across consulting, accounting and audit by treasurer Jim Chalmers will take two years. There is ample time for the government to explore, interrogate and propose changes to the regulation of professional services.

The committee considering the regulation of consulting firms doesn't need to solve every single problem.

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KPMG is obliged to keep track of and disclose political donations. (Images: Adobe)

How do policymakers make sense of the mess of evidence related to consulting firms and their internal workings to create policy outcomes that might deliver greater transparency, accountability and better behaviours of those working in big firms interested in making money?

That is the core question at the centre of the work being done by the Senate committee on finance and public administration as it slowly strips one layer of mystery away after another about the operations of major accounting and consulting practices.

One example of the committee's work netting results for the voyeurs watching their every move is the release by KPMG of their partnership agreement in full.

These documents are only ever seen by those involved in a partnership and as such the release of an entire partnership agreement via the work of the parliamentary committee is a novelty.

KPMG is not the first firm to provide the committee with a copy of its partnership agreement because PwC provided a copy of it in confidence to the committee, but KPMG will end up getting an elephant stamp from some observers because they've given the public — and not just the politicians exploring the consulting space — a look at the rules of the road for how their partnership is run.

These agreements, as well as the fact the chief executives of these large organisations earn multiples more than the prime minister, are curious facts that initially attract a lot of media attention but that does not resolve a particular policy problem.

That problem stated in its simplest form is this: how does the parliamentary committee develop recommendations that will assist in improving the behaviour of consultants engaged by government?

The remuneration of firm chief executive officers provides some salacious detail and comparisons with the remuneration of the prime minister but these talking points do not resolve the challenge in determining what should be done to increase the accountability of consulting firms that are given access to taxpayer coin.

Consider the various estimates and committee hearings that have occurred since the publication of the media release on January 23 on the confidentiality breach that saw former PwC partner Peter Collins stripped of his tax agent registration and the firm cop an administrative order to clean up its act where monitoring of and training on conflicts was concerned.

Issues that have been explored have included the structure of consulting practices and whether you can have a pure play in government consulting that is shielded from some of the issues that emerge when a firm is consulting with both private and public sector clients.

PwC has hidden itself in the bunker for months and during this time it decided the best way to deal with a part of the pickle in which it found itself was to hack off its government consulting practice by flogging it to Allegro Funds for a dollar in order to remove certain conflicts that existed with government work.

It has opened up the issue of whether consulting firms that have a multidisciplinary and multi-sector practice can provide services to government while managing the various conflicts that exist.

Conflicts of interest and their management is only one issue dealt with by the committee. Another particularly thorny topic the committee is poking and prodding witnesses over is whether the partnership model is appropriate in the current era for firms doing work that is public interest-oriented such as audit.

Different kinds of organisations provide services to government so it remains an open question as to whether the current exploration by the finance and public administration committee of the partnership necessarily guides towards policy solutions.

Accenture is an entity that is listed in the United States, and it gave evidence to the committee last week along with the partnerships, EY and Deloitte. Accenture is not a partnership, but it does provide services to government like the other practices do.

One of the challenges the committee will face in these circumstances is how it crafts recommendations that deal with the work entities for government rather than how they structure themselves.

There is already an approach they can adopt by analogy sitting the Australian electoral regime because political parties will organise themselves differently.

Anybody that wants to receive the benefits of being registered with the Australian Electoral Commission as a party including getting whatever public funding they may get as a result of their electoral performance must follow the law for registered political parties.

That logic can be applied by the parliamentary committee in designing any recommendations related to consulting firms that do business with government.

Why should it matter if a firm is a sole director proprietary company, a publicly listed company or a partnership if the thing they all have in common is they do government work?

The most effective and efficient way of regulating the consultants that provide services to government is to ensure that any regime the committee agrees on applies to anybody that agrees to provide any service to a government entity.

One idea that the committee could consider if it wants to shake things up a fraction is to create a public register of all entities that are on procurement panels with a set of disclosures about ownerships structures, areas of practice, key management personnel, a firm's total revenue for a reporting period, and the percentage of that revenue total that is made up of government work.

The latter is important because one of the indicators of an independence or conflict issue can be that there is a large source of revenue coming into a firm from only one sector of the economy.

Does getting a large proportion of revenue from one source impact the way a firm might deal with contentious reports or inquiries it has been asked to undertake by a government department?

What new measures, if any, to put additional fear into the consulting sector will be up to the committee, but it would be unwise for the committee to lessen its scrutiny of the sector it has reacted to in recent months in such spectacular fashion.

One the key elements of any future regime must be more intrusive and regular parliamentary oversight into the professions such as law, accounting, and the less well-defined consulting discipline.

A weakness in the existing framework for policy development is that Parliament and its senators and members tend to be reactive during committee hearings and in their responses to media queries.

Establishing a proactive inquiry process that functions as a periodic check to examine the health of the system for which Parliament enacts laws becomes more critical.

There is a risk that inquiries can become performative if there is no substantive follow-up to ensure the behaviours a particular inquiry or set of inquiries have focused on have in substance changed.

Making loud noises about poor practices and judgements of professionals is one thing. Improving the process of monitoring developments to ensure the same professionals understand there is little chance they will continue to get away with it is another.

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