ARITA
AUSTRALIAN RESTRUCTURING INSOLVENCY & TURNAROUND ASSOCIATION

31 August 2023

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

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

Dear Committee Secretary

Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry

The Australian Restructuring Insolvency & Turnaround Association is pleased to provide this submission to the Committee in relation to its inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry.

As the professional body representing around 85% of Australia's insolvency, turnaround and restructuring professionals, the Australian Insolvency, Turnaround and Restructuring Association (ARITA) and plays a key role in maintaining high standards of professional & ethical conduct of its members, many of whose work may be encompassed by this inquiry.

More about ARITA is provided at the end of this submission, but we highlight that our membership is spread over a range of firm structures and sizes and all members are subject to the same standard of regulation by ARITA.

ARITA has been closely following the recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms, including but not exclusive to the 'Big Four'. We support the inquiry's detailed investigation and analysis of regulatory, technical, and legal settings, and broader cultural factors.

That said, ARITA is concerned by suggestions that large multi-disciplinary firms should not be subject to existing oversight specific to individual disciplines and we highlight the value of a specialist professional body as a standard setter and enforcer.

Impact on future consultations

As we understand it, the current focus on large accounting firms stems from their influence and impact over both federal and state governments and the inexcusable violation of confidence by one individual within a firm.

Most importantly we believe that instance of failing to maintain confidentiality in a consultation on next-practice legislative design should not be interpreted as a failing of the government's approach to consultation on law reform. Indeed, despite the significant harm caused by this instance, we actually advocate for government to increase the involvement in subject matter experts in legislative design to ensure that laws work in practice the way they were conceived to.

Sadly, we have experienced firsthand the poor legislation that can result from the failure of governments to adequately consult subject matter experts. Recent examples of that include the "simplified liquidations" which is more complex and costly than a standard liquidation and the "small business restructuring" legislation which is as complex as a voluntary administration[1].

As experts in insolvency and restructuring, ARITA has a long and productive history of contributing to policy discussions directly or indirectly impacting financial distress of individuals, businesses and corporate entities.

Indeed, as you would be aware, the Parliamentary Joint Committee on Corporations and Financial Services' final report into Corporate insolvency in Australia, specifically recognised the importance of consulting with experts plays in the design of policy and legislation.[2]

Any move away from the government's established practice of consulting would impact the overarching principle that Australian Government policy makers should consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens.[3]

Regulation of consultancy services

We note from some of your public hearings that there were calls made for the Big 4 to have a single regulator and the involvement of few professional bodies. Yet, moving from multiple regulators and oversight bodies who oversee multiple specialities and hold deep expertise in those specialities to one regulator or professional body for a handful of firms would only magnify the possibility for the regulatory capture and influence.

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[1] Simplified liquidations and small business restructurings were implemented by the *Corporations (Corporate Insolvency Reforms) Act 2020* (Cth) and Corporations Amendment (Corporate Insolvency Reforms) Regulations 2020
[2] Parliamentary Joint Committee on Corporations and Financial Services, Report into Corporate insolvency in Australia, July 2023, pages 145-146
[3] Commonwealth of Australia, Department of the Prime Minister and Cabinet, *Australian Government Guide to Regulatory Impact Analysis*

The creation of multidisciplinary 'behemoth' firms should not create the need for less specialist regulation than small firms that choose to focus on fewer services. If anything, the larger the firm and the service offerings, the greater the prospect for ethical dilemmas and conflicts to arise.

An example of such conflicts led to a settlement between the Securities and Exchange Commission of the United States of America and KPMG Australia in 2011 stemming from violations of the auditor independence requirements imposed by the Commission's rules and by generally accepted standards in the United States of America.

Importance of specialist professional bodies

The Royal Commission into Banking, Superannuation and Financial Services Industry extensively considered professional discipline as part of its inquiring into, and reporting on, 'whether any conduct of financial services entities might have amounted to misconduct and whether any conduct, practices, behaviour or business activities by those entities fell below community standards and expectations'[4].

Commissioner Hayne outlined the following key features of a coherent system of professional discipline for financial advisers:

- First, each financial adviser should be individually registered.
- Second, only those who are registered should be permitted to give financial advice.
- Third, there should be a single, central disciplinary body with the power to impose disciplinary sanctions on financial advisers – the most serious sanction being cancellation of registration.
- Fourth, there should be a system of mandatory notifications, requiring AFSL holders to report particular information about the conduct of financial advisers to the disciplinary body.
- Fifth, there should be a system of voluntary notifications, enabling AFSL holders, industry associations and clients to report information about the conduct of financial advisers to the disciplinary body.[5]

Consistent with the recommendations of Commissioner Hayne, the key role professional bodies play in upholding professional standards was recognised in the *Insolvency Law Reform Act 2016*, which inter alia was aimed at improving overall confidence in the professionalism and competence of insolvency practitioners.[6]

The amendments enable the following prescribed bodies to lodge a notice with the Australian Securities and Investments Commission or the Australian Financial Security

[4] Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report, 1 February 2019, volume 1, page 1
[5] Ibid, page 199
[6] Insolvency Law Reform Bill 2015, Explanatory Memorandum, page 3

Authority if it reasonably suspects that there are grounds for the regulator to take disciplinary action against a registered liquidator or trustee:

- ARITA;
- CPA Australia;
- Chartered Accountants Australia and New Zealand;
- the Institute of Public Accountants;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Victorian Legal Services Commissioner;
- the Victorian Legal Services Board;
- the Bar Association of Queensland;
- the Queensland Law Society;
- the Legal Practice Board of Western Australia;
- the Law Society of South Australia;
- the Legal Profession Conduct Commissioner of South Australia;
- the Law Society of Tasmania;
- the Law Society of the Australian Capital Territory;
- the Law Society Northern Territory.

Without the knowledgeable scrutiny of specialist professional bodies, it would be possible for highly technical and nuanced noncompliance issues to go unquestioned as it would not be possible for a single regulator to be across all technical aspects of the services provided by large firms.

We would be happy to meet with the Committee to discuss these matters further, but should you require any further information please contact me or Narelle Ferrier

Yours sincerely

John Winter
Chief Executive Officer

About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents professionals who specialise in the fields of restructuring, insolvency and turnaround.

We have close to 2,300 members and subscribers including accountants, lawyers and other professionals with an interest in insolvency and restructuring.

We are a not-for-profit, incorporated professional association run for the benefit of our members.

Around 82% of Registered Liquidators and 86% of Registered Trustees choose to be ARITA members.

ARITA's ambition is to lead and support appropriate and efficient means to expertly manage financial recovery.

We achieve this by providing innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large. In 2022, ARITA delivered 82 professional development sessions to over 5,000 attendees.

ARITA promotes best practice and provides a forum for debate on key issues facing the profession.

We also engage in thought leadership and public policy advocacy underpinned by our members' knowledge and experience. We represented the profession at 14 inquiries, hearings and public policy consultations during 2022.