

Thursday, 31 August 2023

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

Online submission: https://www.aph.gov.au/Parliamentary_Business/Committees/OnlineSubmission

Dear Chair and Committee members

Submission on Parliamentary Joint Committee (PJC) Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry

As one of the largest professional accounting bodies in the world, CPA Australia represents the diverse interests of more than 172,000 members working in over 100 jurisdictions and regions around the world. We make this submission to the Parliamentary Joint Committee on Corporations and Financial Services (PJC) Inquiry into [Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry](#) (the Inquiry) on behalf of our members and in the broader public interest.

The Inquiry's Terms of Reference (ToR) indicate that it has been established to inquire into "*recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms (including but not exclusive to the 'Big Four')*". Our submission highlights:

- the voluntary ethics and professional standards by which professional accountants choose to adhere as a member of professional accountancy organisations (PAOs), such as CPA Australia
- the extensive codified obligations imposed on professional accountants and statutory requirements for certain professional accounting and advisory services including audit
- the role of PAOs in upholding ethics and professional standards and as a key part of the regulatory environment.

Background

CPA Australia has over 20,000 members in public practice in Australia and New Zealand, serving our communities as trusted advisers who provide business advisory, tax, financial planning, reporting, auditing/assurance and insolvency-related services. Our members primarily operate small to medium sized practices (SMPs) that support the small and medium sized entities (SME) market, and their firm structures and regulatory requirements are generally like those of the larger firms.

Accountants who are members of a PAO (professional accountants) choose to be held to very high standards of conduct. Our members are bound by the ethics standard [APES 110 Code of Ethics for Professional Accountants](#) (the Code), and our Constitution, By-laws and applicable regulations in addition to relevant statutory requirements. Our members are required to complete 120 hours of continuing professional development (CPD) over three years and our mandatory ethics CPD requirements commence from 1 October 2023.

To maintain and improve quality standards in the profession, we have an ongoing assessment program for our members in public practice, and complaints and disciplinary processes that apply to all of our members to address reported instances of member misconduct. Members are personally liable for civil liability or damages if a court upholds a claim against them which is capped at between \$2 million and \$75 million depending on the size and nature of the member's practice under the [CPA Australia Professional Standards Scheme](#).

CPA Australia, with Chartered Accountants Australia and New Zealand (CA ANZ) and the Institute of Public Accountants (IPA), established the Accounting Professional and Ethical Standards Board (APESB) in 2006 to independently develop and publish ethics and professional standards for our members including the Code. The APESB exists in the public interest, to establish high quality standards with which our members are required to comply. As a PAO, we recognise the public benefit of establishing and maintaining high standards for our profession and to provide guidance for our members to ensure they provide high quality services, operate ethically and professionally and properly manage their risks. The Code applies to all professional accountants such as members in public practice, including management consulting, as well as those working in business, government, academia, charities, and those providing voluntary services.

General comments

Terms of Reference 1 and 2

CPA Australia is sceptical about how changes to the structures of global and national accounting, audit, and consultancy firms will directly impact the Inquiry's concerns with respect to allegations of misconduct and responses thereto.

Regardless of the firm structure, our members, and those of CA ANZ and IPA, are bound by [APES 110 Code of Ethics for Professional Accountants](#) (the Code) and [APES 320 Quality Management for Firms that provide Non-Assurance Services](#). Firms providing auditing and assurance services are also bound to comply with auditing standards. Professional accountants and their firms are required to have the necessary governance and reporting processes in place to ensure compliance with these obligations.

We note that rules relating to fit and proper person requirements, consumer and client protection, duties of care, management of conflicts of interest and access to whistle-blower protections already exist in either common law or statute for many aspects of the services our members provide. This is in addition to their professional obligations under the Code. As far as we are aware, the obligations and requirements do not confer a particular advantage on a partnership structure compared to a corporate structure.

However, we support the introduction of additional reporting and disclosure requirements for larger firms where they are currently not obligated to report. This could include details of remuneration or potentially full general purpose financial reporting requirements. Enhanced transparency provides comfort to the public, clients and regulators, and aligns reporting requirements with similarly sized corporations and non-profit organisations, including CPA Australia.

Terms of Reference 3

CPA Australia recognises the importance of effective and efficient regulation that enables professionals and their firms to be registered, monitored and appropriately sanctioned for misconduct. The regulatory environment for the accounting profession is extremely complex and we believe there are opportunities to reduce this complexity.

A range of regulatory mechanisms already exist with PAOs performing an important role in upholding ethics and professional standards. We support the PJC's efforts to identify gaps and overlaps and welcome the Government's response which includes a Treasury-led review to consider whether regulatory reforms are needed for audit, assurance and consulting firms.

In considering improvements and potential changes to regulatory arrangements, it is important to consider:

- The potential impacts of any holistic reforms across the profession, including their impact on smaller practitioners and firms, to ensure that regulation is proportionate, effective and efficient. Equity and competition in professional services should be maintained, whereby being a professional accountant should not be a barrier to a career nor an excessive cost, relative to other service providers. We are observing a

recent decline in entrants to the accounting profession and regulatory reform arising from this or other associated Inquiries should not act as a further barrier to those entering the profession.

- That not all audit and assurance professionals are professional accountants. Moreover, consultancy services are not offered solely by professional accountants; they are provided by an even more diverse range of professions and firms than auditing and assurance services. While we understand the Inquiry's focus on the accounting profession, the professional activities covered by the ToR extend significantly further than accounting. As such, in considering regulatory reform, the regulation of those who are not members of PAOs must also be addressed.
- A co-ordinated and comprehensive approach to regulating professional services that incorporates recommendations from completed Inquiries would provide the opportunity to develop consistent regulation across the sector. In its deliberations, we suggest that the Committee considers recommendations from completed reviews and inquiries. These include the PJC inquiries into the Regulation of auditing in Australia and Corporate insolvency in Australia, as well as the Senate Standing Committees on Economics Inquiry into ASIC investigation and enforcement, if available. Our [submission](#) to the PJC [Inquiry into the Regulation of auditing in Australia](#) in 2019 includes recommendations in relation to auditor independence, competition in the audit and consulting market and audit quality.

CPA Australia notes, and welcomes, the Government's [response](#) to the PwC matter (Government Response), including the progression of recommendations from the [Review of the Tax Practitioners Board](#) and the inclusion of this PJC Inquiry as part of the Treasury examination of the regulation of consulting, accounting and auditing firms. We look forward to participating in the Government's announced actions.

Our detailed responses to the ToR are provided in the **Attachment** to this letter. Should you have any questions about the matters raised in this submission or wish to discuss them further, please contact me at elinor.kasapidis@cpaaustralia.com.au.

Yours sincerely,

Elinor Kasapidis
Head of Policy and Advocacy

Attachment

CPA Australia's responses to selected points in the ToR are as follows.

1. Global and national firm structures.

Accounting and professional services firms are generally structured in a multitude of ways for many different reasons. The structures used by these firms are legitimate and well-established business structures used in many professions and industries.

We caution against placing constraints on business structures without due consideration of the impacts on the public, consumers and other market participants, particularly smaller firms. The introduction of new entity types such as limited liability or large partnerships may provide a pathway to better define and capture partnerships for reporting and monitoring purposes. As recognised in the Government Response, structural reforms will require collaboration with states and territories given the cross-jurisdictional regulation of partnerships.

2. The extent to which governance obligations applying to a professional services firm may vary depending on the structure adopted, such as a partnership, a company, a trust, or other structure.

2a. Entity reporting and transparency and 2b. Executive accountability and remuneration

In our view, the primary concerns related to firm structures are associated with reporting and disclosure requirements, especially given the size and impact of larger firms in the Australian and global economies. As such, we believe it is appropriate that professional services firms of a certain size or presence should be subject to the same financial and transparency requirements, regardless of structure. Therefore, we support the introduction of improved reporting and disclosure requirements for those larger accounting firms that are currently not obligated to report.

Disclosures could include details of board and executive/partner remuneration, governance reports, mandatory reporting of material risks, related party disclosures and/or full general purpose financial reporting requirements. Consideration could also be given to including requirements to disclose material breaches of the Code and any penalties imposed by Australian and international regulators such as the Public Company Accounting Oversight Board (PCAOB), Tax Practitioners Board (TPB) and Australian Securities and Investments Commission (ASIC).

2d. Structure of contracts and fiduciary responsibility to public sector clients

Consulting firms, regardless of structure or their underlying profession, perform an important role in providing specialist capabilities including to public sector clients. In our view, the integrity of public sector consulting contracts is best overseen by the Department of Finance and managed through the [Public Governance Performance and Accountability Act 2013](#) (PGPA Act) and the [Commonwealth Procurement Rules](#).

Given the diversity of consulting services and the range of professional capabilities, enhanced contractual obligations and requirements to commit to a Code of Conduct specific to government contracts may be a more flexible and comprehensive approach to monitoring consultants to government rather than seeking to define and regulate a large and amorphous group of professionals.

The Australian National Audit Office (ANAO) should also be funded appropriately to undertake regular performance audits of procurement processes to ensure their integrity.

2f. Consumer and client protection - governance obligations for professional accountants and their firms

Regardless of a firm's structure, our members, and those of CA ANZ and IPA, are bound by the Code and the obligations contained in PAO constitutions and by-laws.

PAO members, including sole practitioners, who operate firms providing professional accounting services such as management consulting, as well as their employees, are required to abide by the Code by virtue of [APES 320 Quality Management for Firms that provide Non-Assurance Services](#). In particular, section 4.4 requires that firms establish policies and procedures designed to provide reasonable confidence that the firm and its personnel comply with professional standards.

Firms providing auditing and assurance services also need to comply with [Auditing Standard ASQM 1 Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements](#), as well as the Code in the conduct of an audit by virtue of Auditing Standard [ASA 102 Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements](#).

Unaffiliated and non-accounting firms do not have any requirement to abide by the Code. However, individual employees who are members of PAOs are required to abide by the Code. The structure of the firm does not impact these obligations.

Additionally, members are subject to a wide range of statutory obligations if they wish to practice in certain regulated fields such as audit, tax, insolvency and financial planning. These obligations include statutory codes of conduct, supervision requirements, managing conflicts of interest, fit and proper person tests and other ethics requirements. Relevant legislation includes:

- *Corporations Act 2001 (Corporations Act)* for financial advisers and registered company auditors
- *Tax Agent Services Act 2009* for registered tax practitioners
- *Superannuation Industry (Supervision) Act 1993 (SIS Act)* for self-managed superannuation fund (SMSF) auditors
- *ASIC Act 1966* for registered liquidators.

Professional accountants are expected to develop and adhere to governance processes to comply with their obligations under the various statutory and professional rules. CPA Australia's Best Practice Program assessment procedures are developed in line with the International Federation of Accountants' (IFAC) [Statement of Member Obligations](#) which includes requiring members in practice to have a system of quality management in accordance with mandatory quality management standards, controls and assurance review systems. These obligations are structure-agnostic and are focused on ensuring strong standards that are sufficiently flexible to practically apply to the wide range of services and structures across the accounting profession.

We also note that the term "accountant" is not defined in law and there is no requirement for accountants to be a member of a PAO. Therefore, there is no requirement for an "accountant" be subject to professional obligations in order to provide professional services to the public. In addition, many employees of accounting firms are not members of PAOs. Similarly, many consulting professionals are not accountants but rather come from a wide range of backgrounds. As such, the governance obligations for professionals and their firms can vary significantly depending on whether they offer regulated services such as audit or are members of PAOs, but this is not necessarily driven by the structure of the firm.

3. Mechanisms available to governments, government departments, statutory authorities, professional standards bodies, regulators, and non-government clients to monitor and sanction misconduct and poor performance, including any gaps and overlaps across service and entity types.

3a. Accountability frameworks for governance obligations

The Australian professional accounting sector is highly regulated with a number of statutory authorities monitoring and sanctioning misconduct in their particular areas of responsibility. ASIC and the TPB are the primary enforcement agencies in relation to the behaviour of regulated professionals in the areas of audit, tax, financial planning and insolvency. Members of PAOs are also assessed against ethics and professional standards.

A professional accountant in a SMP will often provide services that include tax, financial planning, SMSF audit and consulting/business advice. The practitioner and/or their practice will hold multiple statutory registrations and be subject to different codes of conduct and compliance requirements enforced by different government agencies. Further, as a member of a PAO, the practitioner, their firm and employees are expected to abide by additional professional standards including quality management and ethics.

Professional accountants in practice are personally liable for significant amounts in the event of civil liability or damages being awarded by a court. Regardless of structure, professional accountants are liable for between \$2 million and \$75 million depending on the size and nature of the member's practice under the various [Professional Standards Schemes](#) administered by the Professional Standards Councils including CPA Australia's [scheme](#).

Therefore, for many practitioners and firms, the issue is not one of under-regulation or lack of governance, or seeking to structure themselves to avoid scrutiny and compliance requirements. Rather, the issue is over-lapping and misaligned regulation that creates uncertainty for practitioners trying to do the right thing. Higher compliance costs associated with regulatory complexity are passed on to consumers.

Given the existing framework, we recommend that any changes are carefully contemplated and properly target the relevant mischief without imposing unnecessary additional regulation on the majority of professionals who uphold the standards. We suggest that the review of regulation in the Government Response provides the opportunity to consider the most appropriate framework for Australia, informed by the range of existing regulatory frameworks across the globe. Examples include:

- the UK [Financial Reporting Council](#) which [recognises](#) professional associations for the purpose of statutory audit
- the New Zealand [Financial Markets Authority](#) which [accredits](#) PAOs¹ to license auditors and register audit firms
- the [New Zealand Institute of Chartered Accountants Act 1996](#) which enables the Institute to control and regulate the practice of the profession of accountancy by its members in New Zealand
- the Canadian [Chartered Professional Accountants Act 2015](#) that establishes a comprehensive framework for the profession including restricting the practice of professional accounting to CPA Canada members.

3b. Coverage of disciplinary bodies - the APESB's role and purpose and CPA Australia's approach to professional standards

The APESB is an independent, national body that sets the code of ethics and professional standards with which accounting professionals who are members of CPA Australia, CA ANZ and the IPA must comply. The Australian Code is based on the [International Code of Ethics for Professional Accountants](#), issued by the [International Ethics Standards Board for Accountants](#). While the standards issued by the APESB do not have the force of law, members of the three PAOs must comply with these standards as part of their membership obligations. The APESB is equally funded by CPA Australia, CA ANZ and the IPA.

CPA Australia is committed to ensuring adherence to and, where required, disciplining our members when they fail to comply with the ethics and professional standards. The [CPA Program](#) provides the initial certification of professional accountants and ensures high standards for entrants to the profession. Our ongoing professional development offerings support our members throughout their career to ensure they develop and maintain the necessary capabilities to service their clients or employer.

Our CPA Australia [Best Practice Program](#) assesses our members in public practice to help them build successful and sustainable businesses. This includes a review of their adherence to ethics and professional standards. We assess members against standards set by APESB and the Auditing and Assurance Standards Board (AUASB) as well as legislation such as the *SIS Act*.

PAOs, including CPA Australia, also maintain a disciplinary role and have complaints and disciplinary processes to ensure that members abide by the required standards. In 2022, CPA Australia received 300 complaints of which 183

¹ CPA Australia has been granted accreditation by the FMA.

were deemed relevant and investigated². Out of 175 closed cases, 46 charges were determined by the Disciplinary Tribunal with a further 41 internal reprimands or cautions issued³.

Our recent [submission](#) to the PJC Inquiry into ASIC Investigation and Enforcement sets out how our oversight functions operate and the steps we take to ensure members adhere to professional and ethics standards.

3c. Self-reporting policies and practice and 3d. Whistle-blower policies and established pathways to report - NoCLAR obligations and mandatory reporting by auditors

CPA Australia members are professionally required to follow the Code which contains specific rules in relation to non-compliance with laws and regulations (NoCLAR). The Code prescribes the possible courses of action when PAO members become aware of non-compliance or suspected non-compliance with laws and regulations committed by a client or employer. This includes raising the issue with management and/or those charged with governance (R360.11 of the Code), providing advice to take appropriate and timely actions (R360.13), considering existing laws, regulations and statutory requirements (R360.15) and then determining whether further action is needed in the public interest (R360.20).

Registered company auditors conducting *Corporations Act* audits, also have [mandatory reporting requirements](#) in relation to contraventions and suspected contraventions of the *Corporations Act*, including conflict of interest situations. Whistleblower provisions may also [require](#) auditors to report matters disclosed to them by whistleblowers.

3e. Interaction with regulatory bodies - CPA Australia engages with regulators to develop and maintain standards

To support the integrity of the profession, CPA Australia continuously engages, both nationally and internationally, with standard-setters, regulators and policy makers to develop coordinated and cooperative responses to the challenge of misconduct or unethical behaviour.

Our member conduct and discipline processes⁴ are underpinned by CPA Australia's Constitution, By-Laws, the Code and applicable regulations. However, as a professional organisation, CPA Australia does not have statutory powers and is therefore limited in its ability to obtain evidence, compel responses or disclose information to statutory authorities.

We have a [Memorandum of Understanding](#) with the TPB to facilitate communication, however current legal constraints limit the timeliness, detail and effectiveness of information exchange. We welcome the Government Response to enable the ATO and TPB to refer ethical misconduct by advisers to professional associations for disciplinary action and to protect whistleblowers when they provide the TPB with evidence of tax agent misconduct. The development of effective mechanisms to enable the disclosure of actionable information between PAOs and statutory authorities will enable more effective responses and improve PAOs' ability to support statutory agencies in maintaining standards.

The expansion of information sharing and whistleblower protections to PAOs for *Corporations Act* purposes could similarly be considered.

However, this approach is only effective to the extent that those providing professional services are members of a PAO like CPA Australia. It is important to note that there are no legislative limitations on the use of the term "accountant", nor is there any requirement for membership of a PAO to be registered as a tax agent, auditor, liquidator or financial planner. While the role of PAOs in maintaining standards could be strengthened, care should be taken to avoid creating a disincentive to be a member of a PAO due to the comparatively higher level of monitoring and review, relative to those unregulated firms and service providers. Such an outcome would likely lead to reduced standards overall due to the diminished coverage of the professional services by professional organisations.

² Table 2: Source of relevant complaints, [CPA Australia professional conduct 2022](#).

66 complaints were from members of the public while 76 were internal reports by CPA Australia business units, demonstrating our staff's commitment to maintaining standards in the profession. Twenty per cent (35 complaints) arose from adverse outcomes from statutory, regulatory or professional bodies with a further six complaints from criminal or civil proceedings.

³ Table 4: Number of Members that have appeared before a Disciplinary Tribunal in the relevant years, [CPA Australia professional conduct 2022](#)

⁴ See [Member conduct and discipline | CPA Australia](#) for CPA Australia process

3f. Interaction between regulatory bodies - statutory monitoring and enforcement

Regulatory authorities such as the TPB and ASIC hold statutory powers to monitor and engage with registered professionals. Regulators are responsible for compliance and enforcement of both members and non-members as no statutory registration regime in Australia includes a requirement to be a PAO member. These responsibilities cover audit, tax, financial planning and insolvency services.

Information about the behaviours and actions of advisers is collected and held by a range of other government agencies including the ATO, AUSTRAC, Border Force and various Ombudsman and Inspector-General offices. CPA Australia supports efforts to enhance the disclosure of actionable intelligence between agencies while highlighting the need to ensure due process, ethical management and proper oversight of shared information.

We also emphasise the need to ensure that regulatory bodies are not only enabled to work together effectively but are also adequately resourced to properly manage their own risks. For example, the recent changes at ASIC in relation to audit supervision and financial reporting should ensure that ASIC is able to maintain proper monitoring and enforcement oversight through its surveillance activities, that it can continue its local and international stakeholder engagement and that it has sufficient capacity to implement and enforce expanding corporate reporting and assurance requirements.