



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

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

(Public)

WEDNESDAY, 8 MAY 2024

SYDNEY

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PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND FINANCIAL SERVICES

Wednesday, 8 May 2024

Members in attendance: Senators O'Neill, Barbara Pocock, Pratt and Scarr

Terms of Reference for the Inquiry:

Inquiry into recent allegations of and responses to misconduct in the Australian operations of the major accounting, audit, and consultancy firms (including but not exclusive to the 'Big Four'), via a detailed investigation and analysis of regulatory, technical, and legal settings, and broader cultural factors, including:

1. the global and national firm structures, including:
 - a. the legal basis for partnership, corporate, hybrid, and other structures;
 - b. issues arising from cross border structures and operations; and
 - c. the impact of such structures on confidence in the advisory and audit assurance market for regulatory supervision and accountability to public and corporate sector clients;
2. The extent to which governance obligations applying to a professional services firm may vary depending on the structure adopted, such as a partnership, a company, a trust, or other structure. Consideration of any gaps and international best practice in areas such as:
 - a. entity reporting and transparency;
 - b. executive accountability and remuneration;
 - c. fit and proper person requirements;
 - d. the structure of contracts and the fiduciary responsibility to public and corporate sector clients;
 - e. prevailing cultural practices;
 - f. consumer and client protection;
 - g. duties of care;
 - h. management of conflicts of interest; and
 - i. access to whistle-blower protections.
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 for:
 - a. accountability frameworks for governance obligations;
 - b. coverage of disciplinary bodies;
 - c. self-reporting policies and practice;
 - d. whistle-blower policies and established pathways to report;
 - e. interaction with and self-referral to regulatory bodies;
 - f. interaction between regulatory bodies; and
 - g. competition in the audit market; and
4. any other related matters.

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KWAN, Mr Geoffrey, Director, International Ethics Standards Board for Accountants

POLL, Professor Jens, Former Board Member and Tax Planning and Related Services Task Force Chair, International Ethics Standards Board for Accountants

WIJESINGHE, Mr Channa, Board Member and Firm Culture and Governance Working Group Chair, International Ethics Standards Board for Accountants

Committee met at 10:55

CHAIR (Senator O'Neill): I declare open this hearing of the Parliamentary Joint Committee on Corporations and Financial Services into ethics and professional accountability: structural challenges in the audit, assurance and consulting industry. I begin today by acknowledging the Gadigal people of the Eora nation, the traditional custodians of the land on which we meet, and pay my respects to their elders past and present. I extend that respect to Aboriginal and Torres Strait Islander peoples here today.

The committee will be conducting today's hearing via teleconference and in person. These are public proceedings being video streamed live via the parliament's website, and a *Hansard* transcript is being made. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee. Such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. Witnesses also have a right to request to be heard in camera. If a witness objects to answering a question, they should state the ground upon which the objection is made and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera.

I now welcome representatives from the International Ethics Standards Board for Accountants, or IESBA. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I note that the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I now invite you to make a short opening statement. At the conclusion of any remarks, I'll invite members of the committee to ask questions. Ms Dias, if you have one for us, please proceed.

Ms Dias: Thank you very much. The IESBA is an international standards setter that sets global standards for ethical conduct and independence for professional accountants. These standards are contained in the IESBA's international code of ethics. The code is used or adopted in more than 130 jurisdictions and is adopted by the 34 largest international networks of accounting firms for transnational audits. Our work is overseen by the Public Interest Oversight Board.

The quality and integrity of accounting services and the extent to which the public interest is served depend not only on robust processes and procedural rigour but also, crucially, on the conduct of the ones performing them. Putting ethics at the centre of every professional judgement and decision is therefore the gateway to high quality information and accounting services and the surest way to secure public interest in all that a firm does. This simple truth matters more than ever as the external landscape continues to evolve, presenting new dynamics and challenges. The IESBA continues to assess and evaluate where a strong ethical compass is necessary. This work has recently involved the development of standards on the ethical implications of technology and related developments and proposed standards relating to sustainability reporting and assurance, which should be approved by the end of 2024. Importantly, we just released the first global ethics standards on tax planning on 15 April. These standards aim at upholding ethical behaviour in tax planning services globally, responding to the erosion of trust in tax planning services in jurisdictions' tax systems caused by a pervasive succession of events ranging from Pandora and Paradise Papers to high profile cases of tax avoidance by multinational companies that have called into question the conduct of tax advisers.

While the standards are primarily directed to professional accountants, the IESBA strongly encourages other tax advisers to follow those standards. In this regard, the IESBA will welcome policymakers and regulators to consider extending these standards to other providers of tax planning services, creating a global ethics framework which would apply across the tax planning landscape. In fact, the IESBA has already taken the first step in making its standards more broadly applicable to others beyond the accounting profession as we are developing professional international standards for sustainability assurance. We have also begun exploring how to extend the applicability of the code more widely to all the providers of the same accounting or related services.

We are all aware of the critical and systemic role that accounting firms and their services play in national economies and globally. Their licence to operate stems from the expectation that they will ensure transparency, foster trust and uphold the integrity of our financial systems. However, persistent high profile cases of unethical behaviour in accounting firms in a number of jurisdictions have raised questions about their culture and governance. These questions go to the heart of what IESBA does—namely, ethics—which becomes a critical part of a firm's culture, governance, strategy and risk management backed up by enforcement. It is a matter of the public interest that ethics is not an optional extra but a constant and integral part of a firm's business. For this reason, we have recently launched a new work stream to explore the nature and extent of any standard setting or other actions that IESBA should take on accounting firm culture and governance.

We look forward to engaging in a constructive dialogue with you to explore how we can collectively address and respond to these issues, enhance ethical conduct, build a consistent and global response to these problems and restore public confidence. We must strive to ensure that professional service firms are not just guardians of financial integrity but also champions of ethical conduct. Thank you for your commitment to this important cause and for the opportunity to speak here today.

CHAIR: Thank you very much, Ms Dias. Thank you for that opening statement. We feel very fortunate that we are able to take evidence while the board is so well represented in Australia at the moment. Thank you. For Australians, the integrity of the audit and assurance sector really matters because all of us who are working have superannuation. The decision-making around superannuation is contingent upon truth telling by trusted sources to ensure the proper functioning of the market. So this is a matter of interest to every Australian. I think it has captured people's imaginations because we do understand that we have a share literally—probably many shares—in everything that is going on in terms of the financial sector. I think you will see if you get to stay here long enough that Australians also have a very well exercised sense of what is fair. People paying their fair share or doing their fair share is a common thing we will be saying. Fairness language is very strong here in Australia. That is why there has been such incredible offence about matters that have been traversed publicly with regard to particularly the big four, who are so fundamentally important to our markets. We have seen, I think, some concerns about regulatory capture as we have been undertaking our inquiries.

I am keen for you, in the time we have, to take on notice perhaps a detailed outline of the way in which your entity was formed; challenges to independence that you may have faced historically; what you are currently doing to deal with that; how your funding is sourced; and any transition that might be underway to ensure the full independence of IESBA. These things would be of great interest to get in a written form on the public record for us to understand the nature of what you do, how you came to be and what you are currently doing to make sure that you are a lighthouse entity of ethical behaviour operating at the highest levels of governance, particularly as you are a governing and setting standard board.

Senator BARBARA POCOCK: I will add to that the rules around your board membership and eligibility.

CHAIR: Thank you. I think you understand the intent of that question on notice. It's quite detailed. We will give you the opportunity to do that formally and in writing for the record. I will go to one technical question. How does IESBA define a firm in the context of ethical obligations?

Ms Dias: Well, the work that IESBA is doing is for what we call accounting firms. We do not only focus on the audit part of the firms but firms as multidisciplinary entities across the services that they provide. There is an initial statement in the IESBA code of ethics that says they have an obligation to the public interest. We take it that it is difficult to define. What we are working on—namely, in our more recent work on firm culture and governance—is the accounting firms entity, not only audit firms.

Mr Wijesinghe: I will add, Chair. It could be a partnership, corporation or a sole practitioner. The definition of 'firm' in the code is quite broad. It has the capacity to capture. It doesn't matter what your set-up is. In Australia, we have additionally said other entities. That means we are trying to capture trusts. With regard to the definition of 'firm', if you are concerned that a certain entity is getting excluded, that's not the case. It is broadly defined to capture.

Prof. Poll: And, even in the independence section, 'firm' is included in the whole network. So that is even the non-legal structure.

CHAIR: One of the concerns that this committee and others in the parliament have articulated is the murky and very unclear absence of a reveal about connections between international entities and the franchises that they have here as part of multinational conglomerates. International movement of money, skill and expertise is a reality. With regard to ethical standards for the same product in multiple jurisdictions, I guess your endeavour is to have a uniformity of discourse practices around that. But there seems to be one critical player that is outside the IESBA

frame, which is the US. Despite the benefit of shared discourse practices and a standardised articulation of ethics for people to grow in their capacity to operate ethically, can you elaborate for us the differences between IESBA's independent standards and those of the US SEC and the PCAOB?

Ms Dias: Well, in general, they are very similar. There are small differences in some of the independence provisions in the level of requirement. Sometimes the IESBA standards are a bit more stringent. In other cases, the US SEC is a bit more stringent. But there is a general equivalence, if I may say, between the two frameworks. Recently, the IESBA performed a benchmark exercise between the two frameworks. It is public. It is on the IESBA website and can be seen by anyone. We don't make any conclusions, such as that they are equivalent or one is more stringent than the other. We went through the two frameworks. It's clear, I think, from what is public that they are very much similar and equivalent. In the areas where the IESBA set standards and where they set standards, the requirements, or the framework, are very similar with small differences.

CHAIR: Thank you. I will table a couple of documents. You may need to give these some consideration. Perhaps you might want to put some responses to them on notice. This first article is entitled 'PwC fallout threatens big four partner model'. It is written by Mr Ronald Mizen and Edmund Tadros and is in the *Australian Financial Review*. I note that you have a series of critical matters that you are giving consideration as a board. They are themes that really are underpinned by a core question about who is the true client. You've got a government-taxpayer public-good piece in the work you are doing. You've made the public good very prominent in your comments this morning and in the APES documents. We see that there. I'm sure that's internationally the same. You are raising questions about the global firm and what that is; incentive chasing for revenue; the challenge of balancing audit versus consulting; the breakdown of governance; rainmaking partners and who responds to those sorts of issues; transference and transparency; and compliance and ethical principles. These are very significant matters. Almost every single one of them overlaps with the most recent document that has been provided by Treasury.

I take you to page 2, where there is a summary of the paper that the government provided on Friday, which deals with six key areas as summarised there. There are 17 points of inquiry. In your experience internationally, how is Australia placed by comparison to other jurisdictions? Where are we in the cycle of crisis and response? How critical is that to any change that you've seen in the sector?

Mr Wijesinghe: It's hard to rank countries. At the moment, it's fair to say that Australia is facing some challenges. That's part of the reason why the board has started on the firm culture and governance project. It's not only Australia. Look back over the last six years or so. We have had the UK and South Africa. The exam cheating scandals happened in the US and Canada and, more recently, in the Netherlands.

CHAIR: Yes. And Australia.

Mr Wijesinghe: And Australia. So all of these point to—

CHAIR: Was it KPMG in every instance that you just referred to there, Mr Wijesinghe?

Mr Wijesinghe: No.

CHAIR: It was KPMG in the Netherlands and Australia, and they've both been fined by the PCAOB. What was Canada?

Mr Wijesinghe: Canada was PwC, and the US is UA.

CHAIR: How is Deloitte going? They haven't been mentioned.

Mr Wijesinghe: I can take that on notice.

CHAIR: Please do.

Mr Wijesinghe: Yes. So that is what has prompted it. The board heard in its strategic work plan consultation that this recurring theme of ethical lapses by the large firms needs to be looked at. That's why the board has determined to create that as a strategic priority. That is one of two strategic priorities of the board for the 2024-27 period.

CHAIR: Thank you. There are many more questions that I want to put on notice. Before I go to other colleagues, I am going to do two things. I will table two pages from the government's document released on Friday that give an indication of how quickly the government has responded to the crisis that became publicly known in Australia. I am keen to get your response on notice to how similar or different this is from other jurisdictions. Frankly, I can say that I'm pretty pleased about how quickly the response has occurred in a judicious way. Something that strikes me from the evidence we've received and my knowledge about the work you do is that setting standards is only one part of an ecosystem that needs to be healthy in all parts. Clearly, the monitoring by key regulators and the enforcement needs to be of sufficient impost to basically encourage people to do more ethical behaviours. They are two other critical parts of what is going on. Professor Poll, can you speak to where you see current best practice in terms of those other parts to fit with the standards? Could you also take us to the most recent elucidation of your standards with regard to

tax planning, which I understand you only put out in April? It is very new but it seems to address many of the concerns raised in the inquiries through the Australian parliament. Professor Poll?

Prof. Poll: Thank you. I'm starting with a letter. The tax planning standard was motivated by certain scandals. Gabriela mentioned Paradise Papers, Panama Papers, LuxLeaks, Rwanda leak and many other cases. Not only the profession but also wealthy individuals or big global corporations, even politicians, were in the middle of the scandal. The question is: which unethical behaviour is behind that? We looked at our code. We saw that tax services were covered as a non-assurance service in the context of audit but there was no specific mentioning of this very broad and important service of tax advice. The board decided to have a known project and to address the tax planning ethical issues in the context of a pure consultancy service, not in any connectivity with other services. We had a lot of outreach. We saw that we are living in a fragmented world. That is perhaps the connectivity for the first phase of your question—that we have diversity in practice.

With regard to the tax regulation or standards we have published, we wanted to cover the tax service as a whole. Even though it's addressed to the professional accountant, it should also be applicable to everyone else who is providing tax services. For example, we had a very intensive exchange with the International Bar Association to get a global view on the legal profession. That is why we think that could be a model for other professions. It is not our remit in the first phase, but it could be a model for others. It depends—

CHAIR: We will be sending a question on notice, based on the evidence we received from Mr Hirschhorn, who has raised some concerns about the increasing number of lawyers being enmeshed in these multinational conglomerates.

Prof. Poll: And not only in the multinationals. I come from Germany. We had a scandal concerning lawyers being in a quite aggressive way involved in tax planning structures, double non-taxation or double dip or whatever you call it. So it is tax advice which in the perception of the public has to be regulated and not a specific profession. It doesn't matter whether it is a lawyer or a non-regulated profession. In many jurisdictions, tax advice is given by non-professionals. There is no regulation for tax advice. It's a free service, so to speak. Even more it is necessary that you have a certain minimum standard about how to behave in this context. That is why we try to be as broad as possible in this context.

CHAIR: Yes. We have a challenge in this country about who can call themselves an accountant at the moment. There's risk everywhere. The ethics are embedded in every interaction that has anything to do with tax. Everyone in the ecosystem is at risk and everyone really needs to understand the ethical dimensions and the responsibility to the public good.

Prof. Poll: Concerning the question of other jurisdictions reacting to independent ethical dimensions and collaboration in the whole ecosystem—and that is why I am mentioning tax—where an issue has occurred, normally legislators and regulators have reacted. We have phases. We had it in the US. In the early 2000s, we had some scandals in the audit sector, so they enhanced their standards. We had this in tax. We had this in Europe. After the financial crisis, we got a new director and European regulation to consolidate a bit the approach in the European market in multiple jurisdictions. At that time, it was 28 and now it is 27. The European Parliament decided to have a common legislative act for all PIE audits in Europe. The national enforcement institutions were enabled to get a broader scope and get more powers. You can see this nowadays. For example, in Europe—the Netherlands, the UK, France and Germany—there are quite established structures. It always depends on the policy decision because it is a lawmaking issue to give the power to a governmental, professional or other organisation.

Ms Dias: I will add that, I think according to the European framework for the PIE, it is mandatory that 27 state members put in place a public authority that is in charge of the supervision and enforcement of the standards independent from the profession.

Prof. Poll: That is the competent authority.

Ms Dias: Since 2016, supposedly, all the jurisdictions have a public authority in charge of supervision and enforcement of the rules directed to PIE, or public interest entities, and the audit framework.

CHAIR: Have you read the Switkowski report published here? It was purchased by PwC as an internal report into their culture and governance?

Mr Wijesinghe: Yes. I have read that report.

CHAIR: Are you able to provide a comment on how that report and the reveal of culture at PwC is interacting with the board's action? How common in other jurisdictions is what was recorded in the Switkowski report? How are the jurisdictions responding?

Mr Wijesinghe: I can't comment on how common it is in other jurisdictions. I think it was disappointing to read what was in the report, particularly in the non-audit space, because in the report I think it is clear that the audit practice model was best practice but in the other areas mainly profit and revenue were driving the behaviour. It seems that the governance structures were ineffective in controlling it or identifying the issues and dealing with it. Coming back to our—

CHAIR: Do you think it documents ethical failure at scale?

Mr Wijesinghe: I think breaches have occurred. Clearly, in the Collins case there were non-disclosure agreements signed that were breached, so breaches have occurred.

CHAIR: That is a technical part of one driver of a whole series of actions by PwC internationally. The Switkowski report went to much more than that, Mr Wijesinghe. It was a reveal of governance failure and, I would argue, massive ethical literacy failure and certainly ethical action failure. Can just stating ethical standards—restating APES 110—have any impact on such behaviours? Are governance changes of the kind that have been mooted in the public place, such as moving to independent board directors, really able to change a governance failure and a cultural failure of the scale that is described in Mr Switkowski's report? I will provide you with Professor Samuel's op ed recently. He very much doubts that can be addressed by an independent board member.

Mr Wijesinghe: I think that would be a good question to ask Mark Babington from the UK FRC. They've had independent board members operating in the UK for a few years, so he would be able to talk to practical experience on how it has worked in the UK by having independent non-executive directors.

CHAIR: I understand that KPMG Australia has had non-executive independent directors since 2017. That didn't stop them being fined by the PCAOB or stop a cheating scandal here that was echoed in the same company in the Netherlands. Do you have a view?

Prof. Poll: I would take a parallel from the corporate world. There we have the independence requirement. For example, there is the independent audit committee chair. It changes culture. In my main occupation, I am an audit committee chair in companies in Germany. I think it has relevance. If I take a parallel, because corporate governance is a broader issue than just for accountancy firms, it has some impact. It is not a quick change but it is a step-by-step change to have a view from outside. That is perhaps an observation that you can use as an example of what is good governance in principle and then ask whether these principles are applicable for the governance of professional firms.

Senator BARBARA POCOCK: There many professional firms with breaches of ethics despite the presence of an independent board member, are there not?

Prof. Poll: But there are also many failures in companies, although they have that. But it has changed behaviour, and that is a process. I wouldn't say it is the best and that—

Senator BARBARA POCOCK: It ends?

Prof. Poll: you have the solution. These are means to give an environment where it is easier. The same is true for whistleblowing systems, which are a great achievement but won't solve all the problems. It's one piece in the ecosystem to enhance and improve the felt negative or factual negative behaviour. I think that is one factor.

Ms Dias: It would be useful to look into these situations and see what each firm or jurisdiction understands by independent directors. The frameworks are different across jurisdictions. Japan also has a corporate governance culture for audit firms. It is voluntary but it suggests independent board members. I will go to the question of what is an independent board member.

CHAIR: To what ethical standards are they to ascribe? They are professionals. They are there because of their professional status. Are they compromised by belonging to a particular profession? Are they enabled by belonging to a particular profession? What is their interaction with the IESBA standards?

Ms Dias: They are independent. That is what we are going to explore over the next time with this project or this work on firm culture and governance. This is possibly one of the topics that we can be addressing. We are not promising, though, because it is early days. We are looking into all these issues and seeing if they can contribute. As Professor Jens Poll was mentioning, it is not to be the solution, the magic one, but part of an integrated response that can reinforce ethics.

CHAIR: Yes. That is the critical thing. It is having the literacy and the enforcement. Who would be the enforcer, then, of the independent board members? Where does that sit?

Mr Wijesinghe: I think in the UK it sits with the UK FRC. The UK FRC looks at the independent non-executives and has conversations. They have a dialogue. Mark should be able to speak to it. Also, it's hard to

find independent non-executives because effectively that means that they have to be independent of all the clients as well. So, by taking on that role, the actual independent non-executives are really limiting themselves.

CHAIR: Exactly. There's a question of remuneration in that context, then. I have asked questions about that. People say, 'It's only a part-time job and they'll be on about \$100,000 or so. You don't want them on the same salary as the lead executives.' We've had evidence here—I can't keep track of how many have gone from PwC, but I believe that Mr Seymour was on \$4.6 million. How independent is a board member on \$100,000 who is considered a part-time provider of information and has so many restrictions on what else they can do? How is it that the power resides in that role and speaks to the power that is employing it? That is a fundamental question for me. I would be interested in your thoughts and any reveal of excellence or innovation that is delivering really great outcomes in other jurisdictions. I have many more questions. I will put them on notice. I look forward to your responses. I will give the call now to Senator Pocock.

Senator BARBARA POCOCK: Thank you very much for being here. It's so valuable to us. How closely are you watching events in Australia? Let me just hear your answer to that—not just in PwC, but the larger questions that have emerged over the last year in relation to the big four generally. How closely are you looking and monitoring things here?

Ms Dias: Thank you for the question. Mostly, with respect to Australia, it is a question for Mr Wijesinghe. As an international standards board, we look at all the events in all jurisdictions. We don't look specifically to any jurisdiction. Of course, when things happen, our attention is directed to a certain jurisdiction, but it's not our objective or our mandate to solve individual jurisdictions' problems. Of course, events in recent times raise our attention. The fact that we come with the CEO of APESB in our board also helps us understand the programs in a closer way. In some way, together with what is happening in other countries and other jurisdictions with other firms et cetera, this is exactly what is making us reflect upon this topic of firm culture and governance. It's unfortunate that some events keep on recurring sometimes, not only in Australia.

Senator BARBARA POCOCK: Given that you are looking at these events and they have influenced your focus on culture and governance, do you have a role, as an international body affecting 130 jurisdictions, in socialising the lessons when things go off the rails, be it in Canada, the Netherlands or Australia? Clearly, some events here have important lessons. Do you socialise the experiences, the lessons, the implications for code structures and content and how these issues should be managed?

Mr Wijesinghe: Senator Pocock, all the IESBA board papers are public. The information we have given to you is already public. It will be on the IESBA website for the March meeting. The board meetings are held in public. It's livestreamed. Everything is done in a public and transparent manner, which means that any country can watch the proceedings and read the board papers. They have updates on how the projects are progressing. Everything is on the IESBA website, so there's full transparency of all the activities that are being undertaken in respect of standard setting.

Ms Dias: When necessary—it's not very common—we issue some statements or some press releases alerting, reminding or recalling professional practitioners of their duties according to the code of ethics. That's what happened last year in the summer, I think.

Mr Wijesinghe: July.

Ms Dias: July. The IESBA issued a public statement about the importance of having the ethics and independent standards very clear and very present in the profession's practice.

Senator BARBARA POCOCK: Thank you. When we look at the last century of change in the regulation of financial services, it seems that there are these moments where crises occur through very poor behaviour. Usually, when something surfaces, it is often through a whistleblower or an insider in a firm. They are moments that create real momentum for reform. They are moments that must be harvested for their potential to improve codes, monitoring and regulation. Do you agree with that?

Ms Dias: We agree with that—without overreacting. There is a period and process of reflection, a very mature reflection, upon the happenings and the events to avoid overreacting or reacting too quickly to the events and providing responses that are individual responses. Yes, we agree with that. I think that is exactly what we are doing. We are not doing anything different from what we have done at other times. But the fact that there are some events, happenings and facts that raise our attention—they feed our conviction and feed our direction.

Senator BARBARA POCOCK: Do you have any comment to make on where we find ourselves? If we look at the trajectory of ethical failure around the globe over the last 50 years, we see repetitive crises. Do you feel the trajectory is shifting in a more positive direction, or are we likely to continue to see really serious ethical failures of the kind that we are dealing with here today?

Ms Dias: I think there are some positive signs. For us, I think the most positive sign is that these discussions are happening. It's probably a small step compared to what we need. The fact that ethics is being brought to the table and discussed and that the crucial, systemic importance of ethics in practice is being subject to discussions like this one, we think per se is an improvement irrespective of the more concrete and practical solutions and developments that all of us may take forward. It is important to raise awareness among not only among policymakers, government decision-makers and standard setters but the profession as well. From the conversations we have been having with them, we think that at least in some parts of the world, in some jurisdictions, they are becoming very well aware of the importance of taking a different approach to this topic of ethics. It is for many reasons. There are reputational reasons and the financial and legal impacts that this may have to them and for the need to attract younger generations and talent, which are probably in need of seeing something positive, impactful and purposeful. We think there are positive signs. We think we have a responsibility there. That is why we are here today. Of course, we would always respond affirmatively to this invitation. The fact that the parliamentary joint committee is discussing ethics for us is per se a very important sign.

CHAIR: I want to put a question on notice that is totally related to what you've just said. The three critical ethics frames are a deontological frame, a utilitarian frame and then virtue ethics. They are quite different. We are talking ethics, but we have very different kinds of perspectives embedded in those different views of what an ethical disposition might look like. You are looking at compliance—rules, the letter of the law—which is really the deontological model. It seems to be the one that is alive, versus the dispositional dimension, which I think is more embedded in virtue ethics. Are you considering the type of ethics embedded in your call for the public good? Is there enough sophistication now? You might not be able to answer that now. Feel free to take it on notice. I think we need to get to the heart of some of that as well.

Senator BARBARA POCKOCK: You are taking that on notice, I understand?

CHAIR: I think that would be easier, yes.

Senator BARBARA POCKOCK: I will go to your role as an international body that, as I understand it, sets codes—consults with industry and all the players and constructs codes. You are constantly evolving a tax code. Increasingly, you're looking at internal culture and governance and an ethical code across what you now want to define as a broad range of services, not professions regulated at a service level, which makes a lot of sense to me. As I understand it, there are three elements from documentation you have provided around standard setting. There are these other very important layers as part of the system to make it work, which are monitoring and enforcement. I want to learn the lessons of that for our country as we come to the reform agenda. Is it fair to say that some countries are doing it well? There is a European approach across Europe, as I understand it. Might the Netherlands, France and the UK be put towards the front of the pack in terms of countries that are responding well? Do you want to comment on that?

Prof. Poll: I would say that it's very important in each and every crisis to make a root cause analysis. That is what Gabriela said. It is to take time to not only quickly fix something, which might be popular to do so because it is showing a quick reaction in itself, but to look at the root causes. That is why I think these three elements you are mentioning are very important. If it's a failure of the standard, it is us to fix it. Is it a failure of monitoring or of consistency? Is it a failure of enforcement or consequence management? Is it an internal issue? Is it a legislative act which is necessary? I think the problem in our world is that we have national implementations and that each and every jurisdiction is different. By that, we have complexity. That is why it's very difficult to say which is the best and most appropriate for a certain country. There are also different legal cultures. We have in many jurisdictions experience with self-regulatory bodies under public oversight. We have the other extreme—totally state governed organisations. I wouldn't say that one is better than the other. It depends on the environment and the appropriateness and the acceptance in a certain jurisdiction. That's why—

CHAIR: There's a cultural dimension?

Prof. Poll: Yes.

CHAIR: That's what you're talking about there?

Prof. Poll: Yes. That's why it's interesting to do these comparative studies to consider what is a core difference. Perhaps it is the independence and the structure. Sometimes it is the funding of the institution. We see it in Europe sometimes. We have the same legislative background, but the reality in certain jurisdictions is different because there's a different culture and they have different funding. They may have only two or three people responsible. Another has a total agency with hundreds of people. What is the background? For example, in Europe we have now the CEAOB, which is a group of regulators exchanging views and best practice on the enforcement side, not only on

the standard setting side. I think this kind of interaction between global players or important players in their own jurisdictions, where we have this exchange with others' experience, is crucial.

Senator BARBARA POCOCK: How does a committee like this and a country like this—other countries must be asking the same question because they are affected by the same misdemeanours and poor practice—extract the bones? I hear that you are saying it depends on your local culture and your legislative traditions. What are the bones that must be right? I know it's not what you do. What needs to be right in monitoring and enforcement? I go, for example, to the registration of individual providers in the US, which has given them a clearer insight about who is doing what and a road to enforcement.

Ms Dias: I will pick up on what Professor Jens Poll just mentioned. It depends a lot on the jurisdictional culture and adherence, voluntarily or not, to the standards and the rules. In terms of enforcement, I think our two big areas are financial sanctions and professional and individual sanctions. It probably also depends on the culture of jurisdictions and on the size of the entities et cetera whether these financial sanctions—fining the firm or serving the service provider with a financial sanction—are effective or whether it is more effective to take other kinds of sanctions that go more into the ability to continue providing the services during a certain activity or being kept with a licence to operate or not. As to the balance between the two, I think it's interesting to address it again on the basis of the jurisdictional culture and the practice in each jurisdiction. Examples can be observed.

Senator BARBARA POCOCK: So it also depends, does it not, on the size of the penalty? We have seen some very large penalties. You mentioned before one of the behaviour change incentives is attracting good people and hanging on to them. There is also the loss of business. We've seen a very significant loss of business where behaviour has not been up to scratch. In Australia, if you drive badly, you can lose your licence and be heavily fined and find yourself in jail. These are the tools available. They need to be effectively applied, don't they? The penalties need to be of a size that makes a difference?

Ms Dias: I think the response is, yes—effectively applied.

Senator BARBARA POCOCK: Can you give us an example where it has been done well and there are effective measures in place? Can you give us an example of practice as opposed to an attempt to set up a better system?

Ms Dias: I will not mention concrete cases. For instance, I can speak about some situations where some practitioners were not allowed to continue to provide services to a certain category of financial entities, such as banks or public interest entities or whatever. In some countries, as a sequence of certain actions, they were not allowed to continue providing services to these entities. That goes, again, to the loss of business that you mentioned.

Senator BARBARA POCOCK: When you observe that your standards have not been met in relation to any of your areas that you provide codes on, what is your response as an organisation to the failure? What steps do you take?

Ms Dias: We don't have the authority to do anything formally in that respect. That is the first thing. Secondly, we tend to be as neutral as possible. Of course, it is a matter of concern to us that, firstly, standards are breached and, secondly, that nothing happens as a consequence, because it goes to the strength and recognition of the standards. Therefore, it goes against the adoption of high ethical behaviours. So it's not—

CHAIR: That is the rainmaker's versus ethics challenge, isn't it?

Ms Dias: Sorry?

CHAIR: The rainmakers versus ethics challenge?

Ms Dias: Right. We don't have any formal authority to do anything in those situations. Of course, it's part of our custom dialogue with regulators and national standard setters and with the firms and practitioners. It is a matter of concern. It's a part of the strength of the framework that we create and offer. Of course, when it happens, it dilutes the usefulness of the standards that we develop.

Senator BARBARA POCOCK: Okay. I think about the recent international and Australian scandals, such as, clearly, the PwC breaches and big tax scandals, such as Pandora and all of those events. I think about the work that a code of practice has to do. Even if you get a Rolls Royce best possible code of conduct for governance and culture, for example, what confidence have you got that it has the authority and the capability to prevent future disasters?

Prof. Poll: Perhaps I can give the example of the tax planning standard. In the beginning, many stakeholders saw not the necessity to go for this project because people were perfectly right in saying, 'We have the code. We have the fundamental principles and the conceptual framework. Everything is in.'

CHAIR: For those who want to see it.

Prof. Poll: Yes. To have a specific part which addresses specific conflicts and dilemmas and give examples of how to behave, I think, is the answer from a standard setting point—to be more precise and more outspoken and not

too abstract. That is why each and every scandal or happening leads to the question whether we need something in the code or guidance materials, public statements, consultation making or outreach activities with certain stakeholders to understand what the problem is and whether it is us or someone else who can solve the problem. I think this dialogue is very important. As you say, we can have perfect standards and bad implementation. It is also the other way around, with bad standards and perfect implementation of a bad standard. I think that is why the dialogue between all the players in the ecosystem—the term you mentioned—is so important. It is then having it act in concert to make it better.

Senator BARBARA POCOCK: This is my last question. The chair will need to go to others. There is the role of whistleblowers and insiders. In the Australian experience and certainly internationally, it seems to be a vital part of a healthy ecosystem of financial services. What recommendations do you make around the protection of the voice of someone who says, 'Things are wrong here and I want to talk about it publicly'?

Ms Dias: The IESBA code already includes some provisions on that. NOCLAR states what can be done and should be done in case the practitioner faces situations of noncompliance with laws and regulations. This relates to a whistleblowing regime. We have a scalable mechanism according to which the practitioner may or should report, depending on the circumstances internally, to the audit committee, to those charged with governance and ultimately to an authority. Of course, this is subject to some conditions that are more friendly in some jurisdictions than in others.

One element is exactly the protection of the whistleblower and the protection of those who communicate anything publicly. We would very much recommend that this protection is put in place. We fully agree that this is a vital element of preventing small problems from becoming big problems. It is an essential element of firm culture in governance in the sense that it creates the right environment for a speak-up culture, which is definitely something that will help, according to our vision, uphold ethical behaviour in firms.

CHAIR: We did have some discussion early in our inquiries into these matters about the speak-up culture. We had some heralding of how good the speak-up culture was, which was followed promptly by the release of a review called the Broderick report. It explored the culture of one of the big four. It was EY. It revealed very quickly that the speak-up culture that the executive thought was in place was absolutely not the case because an independent review provided a very different perspective. I'm concerned about the language tone from the top. I'm concerned about speak-up culture. I'm concerned about our policies and procedures. I'm concerned about our values. All of these create many self-regulatory internal looking perspectives that just do not speak to the broader ethical demands, which you have really clearly put on the record in your documentation and in your conversation today, which is the public good. What seems to be a critical part of what is breaking down is this whole sense of the public good. We're going to have to suspend proceedings shortly.

Have you seen this book called *The Big Four* by Ian D Gow and Stuart Kells? Fairly early on in the book, they give a voice to what happened with the British railways and the Great Western Railway. They talk about Deloitte. After examining the registration books, he unravels the deception and exposes the extent and then this felonious fraud that gets found. It says:

Other rail companies rushed to engage Deloitte to check their share registers. Edwin Waterhouse, too, was paid to unearth frauds. It goes on to talk about the effect of that. It states:

The leading accountants were now in such a position of trust that the government began looking to them for advice about the legislation that would help keep the railways on track.

Perhaps the other critical thing that needs to be in here is trust, which I fear is sadly eroded.

I will check whether it is okay for us to take some photos today. Do the witnesses mind having some photos taken? We'll do that throughout the course of the day. We'll suspend now for a few minutes and prepare for the changeover of witnesses.

Proceedings suspended from 11:55 to 12:00

CONWAY, Mr Andrew, Chief Executive Officer, Institute of Public Accountants

GRECO, Mr Tony, General Manager, Technical Policy, Institute of Public Accountants

MALLET, Mrs Cheryl, President, Institute of Public Accountants

STYLIANOU, Ms Vicki, Group Executive, Advocacy and Policy, Institute of Public Accountants

CHAIR: I now welcome representatives from the Institute of Public Accountants. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I note that the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I now invite you to make a short opening statement. At the conclusion of any remarks, I'll invite members of the committee to ask questions. Mrs Mallett?

Mrs Mallett: Thank you, Senator, for the invitation to reappear here before the committee today. We last appeared and gave evidence to this committee on 6 October 2023 along with the other two professional accounting bodies. As we mentioned last October, the IPA was formed 100 years ago in 1923 and today represents 50,000 members and students in over 100 countries. As the IPA group, our main operations are in Australia, the UK and China. Approximately three-quarters of our members work in, or are advisers to, small business and small to medium enterprise sectors. However, as a professional association, we are also committed to acting in the public interest. This means ensuring that our members adhere to the highest professional and ethical standards in playing our part in a well-functioning market for professional services. The recent failings in the accounting profession and consultancy industry have been well-documented, with the government announcing a series of reviews over the next two years as well as legislation already before the parliament to address some of the more immediate concerns. We note that last Friday Treasury released two consultation papers on the government response to the PwC matter. One relates to the regulation of accounting, auditing and consulting firms in Australia and the other the tax regulator information gathering powers. The IPA will be making submissions as part of the consultation process.

Given these numerous reviews and inquiries, the IPA repeats our belief that we must take a holistic and coordinated approach to ensure that we achieve a cohesive and robust outcome in order to restore trust and confidence and to improve accountability and governance. With so many different options and models being offered, it will be critical to consider each package of reforms collectively if we are to avoid unintended consequences and a protracted legislative timetable.

In this sense, we emphasise that reform should be proportionate, given that the vast majority of accountants adhere to the highest professional and ethical standards, which are demanded of them by the regulators, the public they serve and their peers. It is worth repeating that the egregious actions of some or the culture of certain organisations are a far cry from the small accounting firms and sole practitioners serving small businesses and mum and dad clients on a daily basis.

From the IPA's perspective, as one of the professional accounting bodies, we have well-developed systems and processes with reporting requirements to the Financial Reporting Council, the professional standards councils and the Tax Practitioners Board as well as the International Federation of Accountants. Our quality review program, complaints and disciplinary system, CPD requirements and other functions are reviewed on a regular basis to ensure that they are fit for purpose and operating on best practice levels. This underpins the critical role that professional associations play in restoring and maintaining trust and confidence through appropriate regulatory frameworks.

Since we appeared last October, there have been various developments for the IPA in terms of new legislation and regulation coming shortly into effect. Firstly, like Chartered Accountants Australia and New Zealand, the IPA has undergone an extensive review of our complaints and disciplinary systems and processes as well as developed a new quality review program. The commencement of these projects pre-dates the PwC matter but they are now even more critical to our commitment to continuous improvement of the professionalism of our members. These projects are both now in the process of implementation.

Secondly, Andrew Conway and I undertook a national roadshow earlier this year, where we met with hundreds of IPA members. During the roadshow, Andrew and I presented a five-point plan that we believe will help address the issues presented. The development of the five-point plan emphasises to our members and to this committee that although we at the IPA and our members did not create the problems, we must, as an important part of the accounting landscape, be willing and able to help to solve them. The areas we addressed in our plan are transparency, independence, public interest, governance and inclusiveness. Our commitment to members was that we would seek reforms to enable us to openly share information with regulators, enhance privacy and whistleblower protection, fortify our investigative functions, advocate for the public good in all aspects, establish new governance standards for larger firms and expand the scope of our ethical code. Our duty to the public encompasses not only the

small and medium business sector but also the broader public interest. Our role as a professional association and co-regulator remains pivotal in a landscape overloaded with regulation, competition and digital disruption.

Thirdly, as you would be aware, from 1 July 2024, additional breach reporting obligations apply to registered tax agents under the Tax Agent Services Act, or TASA. These obligations require tax agents to report significant breaches of the code of professional conduct in the TASA relating to their own conduct and by other registered practitioners. The reporting regime is on identifying, managing and targeting non-compliance within the code obligations by registered tax agents with the objective of improving conduct, enhancing client protection and increasing community confidence. By introducing the obligation to report significant breaches of the code, the regime also helps to mitigate the risk of non-compliance. Consistent with the objects of the TASA and other statutory disclosure regimes, the expanded regime seeks to uphold and enhance professional and ethical standards across the sector. It also serves to provide the TPB, as regulator, and recognised professional associations with timely intelligence and data so they can support tax practitioners, provide education, information compliance and address systemic risks. The regime adopts a proactive approach to compliance and managing risk. The obligations will encourage the registered tax agents to self-assess and, on an ongoing basis, improve their voluntary compliance. By requiring the reporting of significant breaches of the code, it will also allow the TPB and the RPAs to focus their compliance action, strategies, education, support and services on targeting higher risk issues impacting the tax profession. The IPA's new quality review program, which I mentioned earlier, will also implement a deeper risk rating of members and has been modelled on the AML reporting requirements in the UK, which require a high degree of detailed risk assessment. Ongoing improvements and investments in technology are enabling a more rigorous approach to supervision and monitoring of member compliance.

We can report that 91 per cent of IPA members who hold a professional practice certificate are also registered tax agents, so the new TASA regime will apply to them. We, like many others, are working through the changes and how they will apply to our members. The IPA as an organisation has a co-regulatory role.

In terms of broader reforms, we believe that the new TASA rules may provide guidance to the regulation and oversight of non-tax sectors in the accounting profession and to consultants who don't come under any professional regime. The latest Treasury consultations provide the opportunity to critically evaluate what lessons and guidance can be gleaned from the new TASA rules.

At the IPA, we're quietly optimistic that these bold and broad reforms, along with the outcomes of these parliamentary inquiries, will eventually restore the trust that has been lost. However, there is still a lot of work to be done. In closing, I would like to say, as I've already said before, that the IPA welcomes the opportunity to work with the government and all stakeholders in developing an appropriate response to these issues. We look forward to answering your questions. Thank you.

CHAIR: Thank you very much, Mrs Mallett. I thank you and congratulate you on your submission, our submission No. 15. I recall from receiving evidence from you previously that you are a pretty straight shooter from Queensland. Is that correct?

Mrs Mallett: The Northern Territory.

CHAIR: Even more so. Even straighter. I know you were in the room when IESBA were giving evidence. I want to give you the opportunity to respond to what you heard this morning. That is an international frame for the challenges you are facing. Is there anything that you want to say immediately and on notice as well, if you wish?

Mrs Mallett: I think the main point I got out that I appreciated you asking about was the whistleblowing projects. I think that the whistleblowing protections need to be strengthened. I consider myself a very ethical person. If I were put in the position of having to blow the whistle, I would think very hard about whether I wanted to disrupt my family and my life, which is what happens to whistleblowers now, for the better good of society. That's my personal take on today's session.

CHAIR: That goes to evidence that you just gave in your opening statement. I don't know if we have a copy of it. You said that about 91 per cent of the practitioners in your orbit will be impacted by changes to the Tax Practitioners Board regulatory capacity. That has been significantly increased quite quickly, I would say, in response to the outrageous evidence that this committee received and the economics committee received at estimates and has been backed in by evidence received at the F&PA committee. Can you speak to the embedding of that change with regard to truth telling about what is going on where people are required to report and the capacity of the TPB to take that kind of evidence?

Mrs Mallett: I will hand to Mr Greco. Before doing so, I will just say that one of the messages that Mr Conway and I were trying to relate to our members when we did that roadshow was that this just doesn't affect them at the top

of the pile. It affects all of us. If we want to be an effective part of the landscape, we have to take it seriously and we have to take on board what is going on. That is one of the big messages. I will hand over to Tony.

CHAIR: Thank you.

Mr Greco: Thanks, Cheryl. I think they are quite wide-ranging, these new rules that have come into place. On 1 July, we've got what we call breach reporting. Effectively, every tax practitioner, which includes BAS agents, will be effectively the police on the beat. I believe Barbara had a big hand in those amendments. There are good intentions. I think over time, bringing that to the fore, it almost enforces compliance. We have to say that legislation that is now law didn't go through proper consultation process. It puts an onus on the regulator to bring that into the practical world. We're at that stage—I think it was last week, 29 April—where the regulator put pen to paper—

CHAIR: Which is, for the record, the Tax Practitioners Board?

Mr Greco: The Tax Practitioners Board. They issued a draft guidance in relation to how this breach reporting will operate. They are effectively the regulator for tax agents. That is still going through consultation. We were able to provide confidential feedback prior to its public release. We also had a meeting last week at the governance standards forum of key stakeholders. It is now open for public consultation. As I said, I think the intentions are good. There is no question whatsoever about what it is trying to do. We used to always get feedback from members that someone down the road was not applying the law correctly. We now have a mechanism where that can be addressed. That is an unfair advantage. We don't want that. We don't want cowboys. We all follow the same hymn book, and that is the tax—

CHAIR: Supposed to.

Mr Greco: Supposed to.

CHAIR: I think there are a few singing out of tune, though, Mr Greco.

Mr Greco: Well, let's say that tax isn't a precise science. There are black and white parts, such as the contributions for superannuation. There is a cap, and that's black and white. There are many aspects of tax law. Our test is that it is an arguable position. That is the relevant test. You could have five people in this room all come up with different positions on a piece of legislation. That's just our world. You use the word 'significant breach'. When that law was put before parliament, which has now been enacted—it has been signed by the Governor-General—it did not have an explanatory memorandum. It did not go through a consultation process. Those words are part of the legislation, but there's no explanatory memorandum to actually give effect to the limitation of what those words mean. If I use the words 'significant breach', what does that mean? We have to interpret that in its literal sense because there is no explanatory memorandum. What are the limitations around that term? Another is 'reasonable grounds'. You have to overlay that in the practical world. We're getting feedback already as to what it means. I will just give you an example.

CHAIR: Are any of the questions coming in being framed as, 'I am interested in making sure that, as a professional, I'm mindful of my responsibilities to the public good?' That is the ethical disposition that is embedded in APES, which is quite different from the 'I am going to continue with a technical, legalistic, deontological world view that is the prevailing practice', which has got everybody into trouble. I'm already hearing in your response, Mr Greco, the deep cultural experiences that people have and practices that are embedded. To shift and change them to reasonableness, which is the public perception, is quite a challenge. I'm glad that the conversation is well and truly underway. Hopefully, it will shift to the public good conversation rather than, 'Give me more technical terms. Give me more technical guidance', because that is not what I think Australians want from the sector.

Mr Conway: I think, Senator, I will reflect on your question around the IESBA evidence as well. I think you quite rightly called out the issues around the ethical theory being used and which theorem is actually being relied upon. A personal reflection is about the Kant view on utilitarianism. In this context, conduct is—this is my view—either ethical or not. You are not highly ethical or highly unethical. I think what we're trying to achieve in the conversation with our membership is these more academic conversations at scale. If an Australian walks in the door of a tax agent, they expect the best advice in the construct of the law that is right. They expect them to act ethically full stop. It's not 5½ out of 10 for ethics; it's 10. It's just ethical rather than not. I think that's where we're trying to get to with the membership as well—to remind them that it is a binary question whether you are ethical or not.

CHAIR: If you're not, that begs the question—

Mr Conway: What we do about it.

CHAIR: One hundred per cent. You've spoken about your complaints and disciplinary changes that are underway. We might come back to that.

Ms Stylianou: I will reflect on what the IESBA chair mentioned. I think she was talking about having the conversations now around ethics. That is something that we've certainly seen a lot more in our own membership and generally across the profession. Several years ago, it just wasn't something that people talked about. Now it seems like it's almost everything we talk about and not just because of this PwC matter. To your questions—

CHAIR: To what do you attribute it, then? Is that when a starter's gun really went off? People kind of knew it was around but now we actually have to deal with this? What do you think is driving the change that you've just described in terms of discourse, practices and attention being paid to ethical disposition and ethical professional action?

Ms Stylianou: I think it's a lot of different things. I think the general broader environment—the speak-up culture that we've talked about before—doesn't mean necessarily that people are going to speak up, but they are aware of it and it is starting to become part of the mindset. I think that's a big part of it. I think certainly for the IPA, with our changes to CPD, we are now putting a much bigger focus on ethics and governance. I think that is part of it. A lot of other different things have happened. We get constant—I would say almost daily—questions from members about ethical dilemmas. They don't necessarily always frame them in terms of the public good, but the common phrase is, 'I want to do the right thing. What is it?' They are looking to us to guide them in that ethical dilemma. That is a very common thing that we do as the professional association. In terms of the new breach reporting, one of the things we've talked about internally and with Tony that impacts us as well—this goes to whistleblower protections—is what we are expected to do with the information we get under the new regime. I think that part of it needs to be played out and we need guidance. For example, we get members saying, 'This is what is happening with my client. I need to tell someone.' Under NOCLAR, we refer to the public authority. For example, in my case, it's usually ASIC. That has to be reported. We go through that process. Sometimes they say, 'I don't want to do it. Can you do it?' We're very mindful of our situation. We are not an eligible recipient for whistleblower protection. We then have to work through that. We've had a lot of legal advice in terms of the privacy legislation and where it leaves us as their professional association. How do we make sure that we are protecting our members? At the same time, we have to also act in the public interest. One of the opportunities from this inquiry and everything that is going on is to put us in a position where we can act upon that kind of information that we're getting from members.

CHAIR: Thank you very much for that response. You've mentioned quite a lot there. I do note that you have been very clear in your recommendations with regard to whistleblower policies and established pathways to report. I note that. I also note that you have a few comments with regard to ASIC. We were in this room overseeing ASIC just the other day. You might have seen reports of Chair Longo's previous comments that they only audit a sliver of the work that is done. There were questions about resourcing capacity in doing their job. I want to give you the opportunity to put your view about the role of ASIC in the current context of the challenges you've just described that are facing the entire ecosystem.

Ms Stylianou: The IPA has in the past made many public comments about ASIC. I will start with the resourcing issue. That has been an ongoing thing with ASIC. We've studied the annual reports and the money they bring in and what they get out of appropriations et cetera. It is the allocation of their resourcing.

CHAIR: Which is determined by the board. That was made very clear the other day.

Ms Stylianou: Yes. It is determined—

CHAIR: It is the preference.

Ms Stylianou: Yes. It is determined by the board. We also comment in terms of the cost recovery implementation and the cost recovery guidelines. We've said to ASIC, as have many others, that a lot of their expenditure goes towards enforcement and supervision and yet the outcomes don't necessarily reflect where the resourcing is going. So there's a disconnect there. We've tackled areas of transparency. We've asked ASIC for a lot more information about how they allocate their resources. In terms of the guidance and the framework of the cost recovery guidelines, we've never been satisfied with what we've been given. Many times we've been given not very much at all. We've talked about doing FOI requests, going to the ANAO and seeing if we can build some kind of momentum to get the information that we want out of ASIC.

CHAIR: I will give you the opportunity to put on notice to the committee the questions that you feel are unanswered.

Ms Stylianou: Yes, definitely.

CHAIR: And those recommendations. Provide us with something on that.

Ms Stylianou: Yes.

CHAIR: I will go to the cultural element of the ecosystem in which you are operating and which you have referred to today. I think you used the word 'tarnished'. Of course, you are guilty by association. I know that you've tried to create a very clear understanding of the membership that you represent, but there's nonetheless an intersection with these big entities. You have members who are members of IPA. The code and its attendant complaints, disciplinary policies and bylaws et cetera apply. Not only are you guilty by general association; you actually have people you are responsible for who are embedded in the big four. I want to ask you this question in the light of the PwC leaks scandal and the extensive wrongdoing that has been exposed within the sector. How does the IPA propose to rebuild trust in the accounting profession and the consulting industry?

Mr Conway: Thanks, Senator. I think from our perspective, as we've made clear, and as Mrs Mallett has referred to in the opening statement around the plan—

CHAIR: This is the transparency and public good?

Mr Conway: Yes. The five points. In very short order—I appreciate time constraints—we're happy to also table this for the committee's interest.

CHAIR: Thank you.

Mr Conway: The transparency piece is around our ability to share information with regulators. We've said a number of times we're very happy to go completely open book with regulators on the basis that we are protected in doing so. I think there are already moves afoot that the parliament is considering around that information sharing. On the piece in relation to independence, we have flagged a motion. At the moment, of course, the three member bodies of the APESB, the ethical standards board, run our own investigation and discipline functions. We have flagged that there should be a conversation about bringing those functions together in a single discipline and investigation model to see whether that would help boost public trust and confidence so that it's not necessarily each of the three bodies doing their own regulatory and enforcement function.

CHAIR: In competition with some sort of turf war appearance to external players? If I hear you correctly, you are seeking to overturn that perception and work more collaboratively to, in a unified and standard way, have application of the codes that are relevant to the profession?

Mr Conway: That's broadly correct. From our perspective, the notion that the status quo can remain I think is untenable. It needs to change. I could envisage a time where an investigation and discipline function could have accountability to some form of agency, be it the FRC looking through to see the impact of the enforcement of those standards. That would create broader accountability, I think, in a public sense and perhaps meet the community's expectations of transparency and independence.

On the public interest side, the third pillar that we've suggested is around procurement and government contracts and having some form of public interest advocate appointed that is bound by a code. An example is the code that is administered by the Tax Practitioners Board to hold a person accountable on government contracts to monitor things like confidentiality in much the same way as you might on a large infrastructure project have a probity adviser.

CHAIR: That's a little different. I'm pleased that you've explicated that, because that's quite different. I wrote down 'public good' when I was listening; that's how I heard it. But you're talking about something quite different?

Mr Conway: Yes. A particular—

CHAIR: A public good is much broader than that. It goes to the ethical pieces rather than the technocratic pieces that you were referring to, Mr Greco.

Mr Conway: Yes.

CHAIR: I'm glad we clarified that. Do you have a public good element in your consideration?

Mr Conway: I would probably say all five relate and should spool up to public good in some ways, Senator, to be honest. That's the intention. The fourth element is the notion around governance. There should be a review of the governance of the partnership model in particular and perhaps a callout to the ethical standards board to be looking at governance standards for the larger firms. That's already been pretty well ventilated, I think, with this committee. We suggested in our last appearance and the last evidence we gave that perhaps we look at the large partnership model in the UK. You may have the benefits of the partnership structure, but it is publicly accountable. That would require referral from the states, of course, who administer partnerships.

CHAIR: I want to indicate on notice that we received evidence from Professor Graeme Samuel. We also have his recent opinion piece. Could you give a response to Professor Samuel's suggestions, which really are more about an operational separation rather than a structural separation? If time allows, I will come to that question. Please continue.

Mr Conway: We're very happy. We can certainly take on notice, if you like, Professor Samuel's submission and his comments publicly. The comment I am making here is probably more around the professional standard that could support a legislative approach. The fifth is around inclusion and inclusivity to ensure that the code of ethics that is set by the APESB could extend to other disciplines so that we have more of a singular approach to those who might not necessarily be bound by the code administered by the TPB.

CHAIR: I'm not sure if you were here when IESBA talked about a product—

Senator BARBARA POCOCK: Not by profession.

CHAIR: Yes. Not by profession. The product becomes the thing that binds those. If you are providing the product, whatever your qualification may be, you are caught up in the code. If you are working in the industry, this is the industry code. If you come in by dint of a degree or if you are there in some other role—formerly an engineer, now working as a standard setter and adviser in regard to tax or perhaps sustainability standards—the product becomes the thing that engages an obligation for ethical behaviour. I won't ask you to critique that on the fly. I want to note that. I will seek your response to that suggestion. We might send that to the other entities as well. The secretariat can go to CAANZ and the CPA as well, because I think it was important evidence this morning. In some ways, it's a good segue to the operational separation that Professor Samuel leads to, which might dovetail quite well with a product based requirement for ethical compliance. My next question is: what are your views on the separation of audit and non-audit functions within professional services firms? Do you more heartily support an operational or a structural separation? Why?

Ms Stylianou: In our submission, we've said that we don't really support the splitting of the functions. There has been a lot said about it. Our view on splitting out audit from non-audit, let's say, within the big four or anybody else is that there are already strong independence requirements. We certainly wouldn't support a structural split where they are forced to split. Certainly in terms of operational divisions, that is something that we think should be looked at in terms of—

Senator BARBARA POCOCK: Can you explain what you mean by operational divisions? Do you mean that a firm can only offer one form of service to a client and not both? Is that what you mean by that?

Ms Stylianou: Yes, exactly. So still within the same firm. We no longer talk about the walls that operate within the firm. Certainly structures can be put into place within the firm. So rather than splitting out the firm, within the firm there are operationally certain constructs that are put in place that enable that independence and so that they can still service the same clients but different parts of them. I think what has been happening more and more is that for the one client you don't do audit and non-audit services. I think that's a given. That is not what we're talking about here. If you're doing the audit, you're not doing all the other services.

CHAIR: That's the Samuels model in a nutshell.

Ms Stylianou: Yes.

CHAIR: He argues that it would be more productive and less—

Senator BARBARA POCOCK: Interventions.

CHAIR: Yes, interventions and less costly to implement as well, with some significant productivity gain. That is your view too?

Ms Stylianou: That is our view too. We have put that in our submission as well.

CHAIR: When reading your submission, I noted that you opposed structural separation. You claimed that efficiencies in shared expertise that result from audit and consulting functions being conducted from within one firm are designed to improve client service. My immediate response was: okay, but we've seen that model operating to such an extent that the public good disappeared from the equation. Can you give us any insights now, and further on notice, about the weight of providing that kind of service that you are speaking about? The big four have indicated that it would assist in helping them keep their workforce and skill up their workforce in a range of different areas. How could that be implemented while not sacrificing the public good?

Ms Stylianou: Yes. I think there has been a lot of work done by Deakin University and Professor George Tanewski and others especially around the regulation of audit and auditing in Australia. I know many people, as we have, have referenced the inquiry back in 2019 and 2020 that spoke to some of these things and looked at the impact of competition and all those sorts of things. Yes, we'll take that on notice as well.

CHAIR: Thank you very much. Do you have any views, in addition to what I've just asked about, about the gaps encouraged for unregulated professional service workers? They are stomping about in your field. A few precious goods are getting crushed under foot, frankly. What are your views?

Mr Conway: We would be very happy if that weren't the case, to be honest. It is an immense challenge in the broader community. It's so multifaceted. As you called out in the previous session, the term 'accountant' is not protected in Australia.

CHAIR: I note that in your submission too, thank you.

Mr Conway: Yes. We've got vast numbers of people. Last time we looked at the ABS census data, we saw that a large number of people who call themselves accountants are not members of one of the three bodies or any of the bodies, in fact. We don't have a simple solution. I think there is an issue about public awareness. I think many members of the public would be surprised to learn that is the case around this unprotected term 'accountant'.

CHAIR: A bit like cosmetic surgeons.

Mr Conway: Well, true.

CHAIR: You can see the damage very quickly there. People are sensing there is a problem here, right?

Mr Conway: Yes. That's right. I suppose my only comment on that is that we would be very keen to work with the parliament and other regulators to ensure that there's a greater public awareness of the importance and the value being brought. I think in some ways, professional bodies throughout this inquiry and elsewhere have been revealed. We have a lot of work to do. There's no question. Our view is that we're willing to step up to the plate. If we look at the core elements—

CHAIR: Together?

Mr Conway: Together, yes.

CHAIR: Together, because—

Mr Conway: Yes. You don't have arbitrage in this. The notion is that a professional who comes to us who doesn't like us throwing the book at them walks out and walks in the door of another professional body. That's in no-one's best interests let alone the brand of the profession as the trusted adviser. I think—

CHAIR: Mr Conway, thank you for giving that evidence. I haven't been able to get on the record that is actually happening in practice. Certainly that's what I have suspected and feared. You may be an unconscionable person. If you are operating unethically, there could be many reasons for that; some people in a crisis point in their life might lose their perspective. There are so many reasons. Others are just absolutely intent on profit making in the extreme for personal gain at any cost to anybody and with no sense of common good. We understand that there's a range.

Mr Conway: Yes.

CHAIR: You reference in your statement here strategy and professional governance obligations. In some cases, IPA members may be subject to two or three codes of ethics in addition to having the chance to go shopping for two or three different versions that implement codes of ethics. However, there is one common APES set of requirements, which are very clearly ethically based and informed and very clearly state and develop a discourse capacity around ethics. To be clear, Mr Conway, you're suggesting that we diminish these multiple codes and that the sector work collaboratively to establish proper, more transparent disciplinary structures that are uniform?

Mr Conway: I think that would always be the preference.

CHAIR: But it hasn't happened yet, Mr Conway.

Mr Conway: No. As you quite rightly point out, there are multiple layers. You've got statutory codes and we've got, of course, the TPB and the TASA code. We've got the APES 110. Obviously—

CHAIR: The separations.

Mr Conway: There's a range of codes that people are complying with. You could take a fairly utopian view of the world and say, 'How many codes does one need to be told to do the right thing?' That's really fundamental in this. What I was getting to is that the very nature and value of a professional association, I think, is really important to call out. There is real public benefit in maintaining strong entry requirements, minimum education and professional indemnity insurance requirements, professional standards schemes, ongoing professional education requirements and a discipline and investigation function. People who are masquerading as professionals are trading off that. With regard to our members who do the right thing, as Mrs Mallett pointed out, we've interacted with them in the last few weeks. They've had a gutful of the brand damage to them as individuals and as practitioners and to the profession. They are saying that we need to be working hand in glove with regulators to shape the reform, to shape the new way of working, because it's not necessarily their business model that is driving their interests. It is the communities they are working with. In our case, it is rural and regional accountants turning up to the footy club on a Sunday. They have sponsored the footy game. They are being held accountable. People are saying, 'What are you doing about your profession? This is terrible.' The members of the community don't look at a small practitioner or a partner of a big

four firm and see a difference. They see one and the same. I think it is fair to say that the practitioners around Australia, our members, have had a gutful and that we want it fixed.

CHAIR: I love that gutful expression. I feel the same. I think that is reflecting the mood. I'm very pleased that the papers came out on Friday from Treasury that indicate the government action. I'm very pleased to hear from you, Mr Greco, about the consultation for implementation. I don't think we could have waited, frankly, any longer for some redress. Yes, there is some catch-up work done to really tie it all together. Part of the conversation needs to be there about a change of ethical dispositions rather than giving more paper so I can weave a path between these letters to continue to provide unethical guidance. I think that is where we really are. This is my last question. I will then go to Senator Pocock. How does the IPA currently, given the limitations that we've just been acknowledging, encourage self-reporting amongst its members regarding criminal convictions or actions brought against them? How do you ensure adherence to the frameworks as they currently exist before we move into what might be a bright shiny new era? We've got to hope.

Mr Conway: I might offer an introductory comment. Perhaps Ms Stylianou might comment as well. We have an obligation, as I think all the bodies do, around members joining and then renewing. They are required to assert to us that they are not subject to any proceedings, either current or former. That is a requirement in our constitution and our bylaws.

CHAIR: What if I'm dodgy? What about a person for whom an attestation is absolutely no barrier at all or, in fact, is a joke? All I've got to do is fill in a bit of paper and say what the hell they want me to say and I'm in and I can start churning. I can hear that. I can hear that conversation. I can hear bragging to colleagues in the same way, sadly, we're talking about the crisis in domestic violence. It is because of the bragging about coercive behaviours and physical abuse behaviours that culture has been allowed to fester. We are talking about a cultural phenomenon here.

Mr Conway: Yes. I appreciate that. There are limitations. How do we contend with an individual who has just committed malfeasance, who just has it in their DNA? We would welcome any suggestions about how we might do that as far upstream as possible. Our processes of onboarding a new member, though, are that typically that inquiry would come through to our team. I suppose one of the cultural differences for us, given our relative size to other bodies, is that it's a very hands-on approach. Our member growth executives generally meet the person. There's a very close contact point for every admission that comes into the organisation.

CHAIR: There is also an in-built benefit to growing your membership. This is a competitive tendency to your entities which compromises the process.

Mr Conway: Yes. I think it is fair to say that it is certainly not a case of growth at all costs or at any cost in that sense. I can't speak for the other CEOs or the other boards, but I know in our situation we're consistently reminded of the fact that achieving one quarter's member growth at the expense of a 10- or 20-year brand impact is not worth it at all.

CHAIR: Have you ever had a sponsorship model in place where somebody could not make an application unless somebody of good character, a fit and proper person who is responsible, in line with the way it is articulated in the standards, puts their reputation on the line to bring them in?

Mr Conway: No. We haven't. I think that is a reasonable suggestion for us to look at in terms of the practicalities. You can see straight up the impact that could have in terms of effectively your professional community endorsing the admission. We try to do that from a management point of view. Can I put hand on heart and say that a member hasn't slipped through the cracks? No, I can't in terms of attestation. Ultimately, I'm accountable for that if that were to happen. I think it's important that—

CHAIR: But that's irrelevant if they've made millions of dollars and ripped people off along the way, right?

Mr Conway: I appreciate that. I'm talking about our processes at the end of the day.

CHAIR: They apply for people of goodwill who understand public interest, who care about their reputation and who have a genuine professional disposition. But we're in a battle about the lure of the holy dollar and the love of money. It's not about money or profit; there's nothing wrong with those things. It is the love of money and it is the desire for profit at any cost that is the problem we've got to confront. There are people out there who are doing that and bragging about it and being featured on social media. We see it in other parts of the social media world. Accountants are not immune to the current milieu of infamy.

Mr Conway: Yes. That's true.

Mrs Mallett: They are called scammers.

CHAIR: Dirty rotten scoundrels too. It is disgraceful.

Mr Greco: In relation to someone who has been disqualified for providing tax services, the law changed on 1 January. All our members cannot deal with a disqualified person, be it directly or indirectly. That legislation took effect from 1 January this year. We've got that. Again, there is overregulation in certain parts of the provision of services by accountants. You mentioned consultants. A uniform code doesn't seem to apply to a certain element. Again, I want to make sure that you're aware of those new laws that are now operative. We will get notified from the Tax Practitioners Board. If our member has been disqualified, that will come to us. In relation to tax agent services, I think we've got that covered.

CHAIR: Do you think there is sufficient transparency there so that people can just pick up the information? Every chain of movement of information is a potential point of breakage. Is it fit for purpose? It's only new. Is it operating as intended? What feedback are you giving into the system?

Mr Greco: We're basically telling our members that when they interview, they have to do some probity checks. That might be—

CHAIR: That is a change in practice for some.

Mr Greco: Absolutely. Standard contracts are being rewritten as we speak. We are encouraging members to do those checks.

CHAIR: And you are providing that kind of support—model contracts?

Mr Greco: We don't, because they are a legal document. We do provide the guidance that the TPB, the Tax Practitioners Board, has provided in relation to what you should do.

CHAIR: Wouldn't it be a productivity gain that you could achieve by actually having model contracts?

Ms Stylianou: We have been updating all of our engagement letters that we give members, which they use. All of those templates have been updated and the rest are all being updated. We give them a whole suite of technical resources and then guidance and fact sheets and stuff like that. We do provide that support. The AML stuff that is finally coming will also be a big change for them. It will help with those kinds of processes and the know-your-client stuff that is coming. I might go back to the other questions that you mentioned. Another thing we've got—it's not just the code of ethics and APES 110—is a code of conduct for members that goes to their personal behaviour. We do breach members if they breach the code of conduct. For example, we say to them, 'You are on notice 24/7. You must behave in a certain professional way.' If they go to a party or something and they become totally obnoxious, for example, and somebody makes a complaint against them, we can go through the investigation process. We also look at personal behaviour.

To answer your question from before, we have different touchpoints with members so that they can self-report. Obviously, it's not going to be perfect because for a lot of people it would be against human nature. We do find some members do actually report, especially if it is a criminal matter. They will come to us. We have the admissions that Mr Conway talked about. We've also got a process if they are attempting to leave the IPA. We have professional standards declarations. We have constant messaging to them about compliance and what is required. We've got various touchpoints along the way. We remind them about the code when they register for events. There are touchpoints along the way where we're reminding them of their obligations. The quality review program is a big one. We are becoming more reliant on technology in the way we interrogate responses. We will get to the point where more and more AI will be built into things so that we can discern what is going on more and more. So we're not just relying on them self-regulating or self-reporting, I should say.

CHAIR: Thank you very much. We are running 15 minutes behind. We may need an additional 15 minutes. Are you able to stay? I'm going to give the call now to Senator Pocock.

Senator BARBARA POCKOCK: I want to keep going on the question of the reform around reporting. It is requiring tax agents to report significant breaches related to their own conduct and that of other registered tax practitioners. I grew up in a small town. There wasn't even an accountant in my town. I certainly hear from people who live in suburban Adelaide and country South Australia who, as you said, have had a gutful of how their profession has been derided by the public discussion of egregious behaviour. They are not Greens voters, let me tell you. They are never going to vote for the Greens. They really don't like what has happened. They are pleased that there will be stronger reporting. They know the difference, exactly as you said, Mr Conway, between ethical behaviour and unethical behaviour. They are not down in the weeds of what is arguable around a specific tax deduction. They know what is going on, and some of them don't like it and they do want to report on it. Explanatory memorandum or not, what we're in the land of here is very clear examples of behaviour that none of us think was ethical. Look at the emails right back at the beginning. They give a very important insight into the clearly unethical sharing of confidential material to make money. I bet most of your members would have no doubt understanding that was wrong and that they would want the opportunity to report formally and see a response to a practitioner in their

profession who behaved like that. You are nodding. You have no problem with that. My question really is: your response to that is that is a good thing. In the absence of an explanatory memorandum, the community is in a process of looking at draft guidance that will assist?

Mr Conway: Yes. I was nodding. I do have to declare for the committee's benefit that I am a member of the Tax Practitioners Board. I was appointed in March 2022. We have a layer of lead in our organisation overseen by our board about my involvement in policy matters to do with TASA and TPB. I will step back, but my colleagues Mr Greco and Ms Stylianou will make comment.

Mr Greco: I appreciate that if those words you've just communicated to us were actually in the EM, I think everyone would be reassured. There is wrong ethical behaviour where someone is completely reckless and there is the PwC case; that is clearly unethical. In our eyes, that's just not on. When you look at the law, it doesn't say that. From what you've just said, if we had that in the EM—

Senator BARBARA POCOCK: But there are many ways, Mr Greco, where that can be communicated. I'm communicating it now in a personal view as a lawmaker.

CHAIR: And the guidance is—

Senator BARBARA POCOCK: And the guidance is formally out for consultation. I want to be really clear. It's really important that we don't beat up a non-existent unintended consequence. It is not the intention here to make every accountant nervous about every other accountant. It is about dealing with a really big problem where the pendulum has swung too far away from ethical practice and calling it out. We need to take the risk—this is my judgement—of creating a better pipeline or a new mechanism which has real meaning. It is a scary thing, the possibility of being reported and investigated. In my judgement, it was necessary.

Mr Greco: If I give you a practical example, it might illustrate some of it. The feedback we're getting is, 'I've misinterpreted the law. Is it a significant breach?' The guidance that has come out is basically taking a dictionary definition of that term. It says it is an indictable offence to make a misleading statement. When you break down 'a significant breach', someone not applying the law results in a misleading statement. So it's not about being reckless ethically. It's more that I didn't do the right thing or about my client's risk appetite for applying the law and ascertaining that arguable position, which can be a bit different to someone else's in the room. So it's not about not following and not being ethical. If the EM put the type of offence that you want to target—not being ethical, a total disregard of the law—in that context, we could apply it in a manageable way. But we don't have that. It doesn't say that.

Senator BARBARA POCOCK: But that's the practise of law in operation on almost every front.

Mr Greco: Sure.

Senator BARBARA POCOCK: Look at industrial law. It's the way in which the courts interpret that creates the knowledge base by which people know what is right or wrong, what is underpayment of wages and what is just a simple mistake.

Mr Greco: Sure.

Senator BARBARA POCOCK: I think it's really important, given your profession's interest in getting out of the mud that now sticks to the profession—

Mr Greco: Absolutely.

Senator BARBARA POCOCK: If we're going to clean that up, we're going to have to take some risks and we're going to have to allow important bodies, such as the Tax Practitioners Board, to read the circumstances and to make some judgements, which I'm sure will illuminate how we can go forward productively. I want to nail in that we just cannot sit here and wait year after year for everyone to just behave ethically. Guess what? We've got a lot of evidence that it ain't happening.

CHAIR: Or create the catalogue of every circumstance that is going to arise, particularly in a time of rapid change.

Senator BARBARA POCOCK: Yes, exactly. If everyone just behaved ethically—I'm totally with you on that definition, Mr Conway—we wouldn't be sitting here puzzling over how to fix this problem.

Mrs Mallett: Senator Pocock, I will make a comment. Even with this additional breach reporting, which is only new, relating to their own conduct, that is only regulating the good guys, if I can simplify it. It's not regulating the bad guys. We need penalties. PwC being fined \$50,000 was a joke. I'm surprised that CAANZ hasn't introduced—I don't know if they are able to legally—a percentage of turnover. We were saying before that, in some cases, if some of our members were fined \$1,000, it would be devastating for them. For somebody else, it is petty cash. I would like to see a percentage of turnover so that the penalties hit them and hurt them rather than have these standardised—

CHAIR: Is that your practice? You are suggesting it for CAANZ. Is that your practice?

Mrs Mallett: It's not our practice, no.

CHAIR: Are you recommending it for your own entity?

Mrs Mallett: I can certainly—

CHAIR: Put it to the board?

Mrs Mallett: Yes. I was only thinking about it today, to be honest.

Senator BARBARA POCOCK: But it is a role of government, isn't it, to give the financial services system reliability. Of course, the professional administration and management of your members is very important. But having a proportional and meaningful fine for egregious behaviour is something that is a recommendation that you are supporting?

Mrs Mallett: Yes.

Senator BARBARA POCOCK: You're all nodding. It certainly makes sense.

Mr Conway: Our capacity to sanction members is capped at the moment. We are going through the review at the moment about penalties and sanctions and our disciplinary process. It is all on the table.

Senator BARBARA POCOCK: But we don't, for example, let an organisation representing drivers impose the penalty on someone who caused a criminal death, for example, on the road. Governments and the judiciary determine that system. So there is a role for government in managing egregious misbehaviour, is there not?

Mr Conway: Yes.

Senator BARBARA POCOCK: So you have your role, but certainly government does too.

Mr Conway: That reinforces the co-regulatory model that we support.

Senator BARBARA POCOCK: Co-regulatory. So there are roles for different bodies?

Mr Conway: Correct.

Senator BARBARA POCOCK: But I think the point you've made, which is really important, I think, Mrs Mallett, is that the penalty needs to be meaningful.

Mrs Mallett: Yes.

Senator BARBARA POCOCK: And \$1,000 for one of your members is a huge fine in some cases, given whatever their annual revenue is, but in other cases \$50,000 doesn't touch the sides. They wouldn't even notice it. That is so important. Thank you. I want to go to this issue of how we regulate professions versus services. I know you've talked about it a little. I'm curious about your view on that. There is so much change happening in the professional services area. Look at all the AI changes coming down the tube. They really will affect professional practice. We need a lot of ethical consideration in relation to AI. We've got engineers doing it and economists all over the shop. Should we be regulating all the individuals who provide a service within an entity and move away from professional regulation?

Mr Conway: Thanks, Senator. From our perspective, we've looked at the evolving nature of our profession. As you quite rightly point out, it is changing really rapidly. You've called out great examples around AI. The other major transformation is, of course, sustainability reporting, which is having a dramatic impact on precisely the challenge you pointed out, and that is the need for us as a profession to welcome other disciplines in to our profession and consider how they get supported.

As an organisation, we've taken the approach of asking how we do that. Perhaps it is taking less of a focus on what certificate is hanging on the wall for a person—what degree they hold—as opposed to what competencies they possess. We've built a really comprehensive competency based model that we're putting the finishing touches to. We are looking to launch that in July. It has mapped over 19,000 individual competencies from around the world to say that the construct of these competencies is what the public is looking for in a public accountant. That is very much changing the nature of how we operate as a professional body and how we bring people in. I think there's still a role. I take your point around whether we look at the output versus the input. I think we need to somehow do both. Perhaps the output piece is really considering how the entity itself is regulated. We offer entity memberships, for example. Therefore, the entity is held accountable as well as the individual professionals. The output is a construct of some of the inputs.

Senator BARBARA POCOCK: But for regulation purposes and for providing confidence in the integrity of the system, it's not really where you came from in terms of competency; it is really the service you are providing that matters?

Mr Conway: Yes.

Senator BARBARA POCOCK: It is whether you will be held accountable as an individual who provides a whole range of possible services, from accounting assurance right through to consulting. I think we need to have some kind of system. In the case of PwC, Mr Peter Collins lost his registration for two years. PwC had a completely different—and, in my view, quite inadequate—set of requirements on them. We need to strengthen them for the individual, and we need to make sure we capture the scope of that service provider. You're nodding?

Mr Conway: Yes.

CHAIR: Not either-or.

Senator BARBARA POCOCK: Yes. Both the organisation and the individuals. Do you want to say something?

Ms Stylianou: Yes. This goes back to the unregulated consultants discussion. I think also when looking at who or what to regulate, we had a lot of difficulties when we looked at products within the financial services space. That was one thing. It is just easier, I suppose, historically because we've always talked about it in terms of regulating professions or trades or whatever. I know that IESBA is trying to standardise and have a professionally agnostic code. That means it's going to end up being so high level that, in order to apply it, it's going to have its own difficulties. Let's put that aside. I know this has come out in many submissions. Why would lawyers, for example, who are far more rigorously regulated, want to come into the realm of accountants, who are nowhere near as highly regulated? I think a lot of that stems from the fact that no-one can go out there and call themselves a legal practitioner whereas in accounting that's not the case. That is why we keep harping back to the point that, if the terms 'accountant' and 'accounting services' were defined in legislation, it would be a lot easier to have those kinds of discussions. Until you level the playing field in that sense, I think it's going to be just really difficult.

Senator BARBARA POCOCK: Don't we have to go the other way? Rather than defining more tightly the fiefdoms of professions to enable regulation according to service provision, what about the definition of the service you provide? I can understand why you might want a fence that is as strong as that around a legal practitioner, but how does that assist the regulation and integrity of a system of service provision?

Ms Stylianou: I think because it is a lot easier, in my view anyway, to regulate a profession or a trade that is defined than a service. Look at what is happening, for example, with sustainability. You've got so many different multidisciplinary situations happening. How you define the service is more fraught with difficulty and ambiguity than being able to define a profession or a trade for now. That might evolve in the future. If we are looking at doing something quickly or in the medium term, I think that would be easier. We've already got the precedents. We've already got the infrastructure. We might move to the regulation of services later. I personally just don't think we're there yet.

Mr Conway: I will add to the question you are posing about a service based definition for regulation. I think we currently operate on that basis in the UK in the profession with tax services, auditing services and financial planning services. The challenge I would reflect back to you respectfully as a lawmaker is: how long would that list be? I go to the earlier comments that Tony was talking to. We want some examples, from an EM perspective, of a significant breach. It is probably a similar dilemma. How long would that list of service be? Is there a simpler and more elegant way of regulating that? It would be a challenge, I think, for lawmakers.

CHAIR: On notice, can you look at the IESBA evidence?

Mr Conway: Sure.

CHAIR: The committee will guide you there. It is the federal 15 per cent tax and further advice that comes in underneath the overarching ethics. It deals with some of the things that have just been raised by Ms Stylianou.

Mr Conway: Yes. We're very happy to.

Senator BARBARA POCOCK: I want to go to the question of the size of the entity. Mr Conway, you've previously said that while you don't advocate for the removal of partnerships, the committee is going in the right direction by looking at the current cap of 1,000 partners for accounting firms. You asked in the last evidence how a 1,000 plus partnership model manages its affairs transparently and accountably. They really don't in a real partnership sense. In the Commonwealth Treasury paper, there is the question whether the current limit is too high. You have suggested looking overseas, particularly at the UK, and additional measures to make those partnerships publicly accountable. What lessons specifically do you think we should be drawing? What did you mean by additional measures? You might want to take it on notice.

Mr Conway: Yes. I'm happy to make an initial comment and I'm happy to take it on notice as well, Senator, if it helps. I think the issue of transparency goes to part of our plan as well. The point of transparency is that, in some cases, these large multinational firms and large multidisciplinary firms will have hundreds of subsidiary companies

under the one banner. I think it is that piece. Surely a simpler governance model could be applied whilst ensuring the firm can maintain the partnership structure that it seeks to adhere to while removing some of that opacity that exists in the models with several hundreds of entities underneath it. Some would say that is a market driven solution. Well, the market driven solution hasn't necessarily delivered the outcome.

Senator BARBARA POCOCK: Shaped by legislation, clearly.

Mr Conway: Yes. So I think there is that piece looking at the actual legal structure itself. That is why we've called out the UK as an example of the partnership model, because it does give the limitation on partnership and the public accountability piece. To us, that is the most logical, but we can come back with some further comments on notice for you.

Senator BARBARA POCOCK: Great. Thank you. I would be interested in what is inside some of those boxes you are referring to that we could look at implementing. I want to go to conflicts of interest. There are so many conflicts of interest that we have seen in our evidence. I assume that you provide guidance to your members to understand their obligations in relation to conflicts of interest. What are the ways in which you monitor compliance with any guidance you give on conflicts of interest? Do you have a watching brief on that?

Mr Conway: Yes.

Ms Stylianou: Yes. I must say that the conflicts of interest are probably the greatest area of disciplinary action at the IPA. We spend a lot of time talking about conflicts of interest, including how to identify them and how to manage them. APES has a really good framework around how to identify and deal with conflicts of interest. We do a lot of CPD with our members. I think we said before that members now have to do, on average, a minimum of seven hours a year just on ethics. All of those things come into play there. Apart from talking about it endlessly and the framework, it is a very common question, I must say. When members call us, as I said before, almost on a daily basis with an ethical dilemma, conflicts of interest is a major part of it. We go through our disciplinary processes and our quality review processes. We've mentioned our quality review program, which has undergone a lot of transition. We are now a lot more reliant, for better or for worse, on technology. As Mrs Mallett said in her opening statement, we're spending a lot of time looking at the risk of assessment. Conflicts of interest is a big part of that. We've spent a lot of time looking at AML in the UK, partly because our technology provider is based in the UK. We have our operations in the UK. We spend a lot of time talking to them about compliance with the UK's AML laws, which are very strict and onerous. A lot of what we're looking at is based very much on a very sophisticated risk assessment which picks up a lot of the conflict of interest situations. I suppose we're moving further away from members just self-reporting. That will never go away; we expect that. As an organisation, we are becoming more and more reliant on our systems and processes as they become a lot more sophisticated. So all of that is part of the story.

Senator BARBARA POCOCK: This is the last question.

CHAIR: On notice regarding the question that was just asked, you put a very important section in your submission about information sharing. You talk about the Tax Practitioners Board and some efficiencies there, including productivity gains. You also suggest a safeguard mechanism. In the second part, though, you talk about the investigations of the IPA and ASIC and the constraint on ASIC so that you have to actually go searching for the information about people who are the subject of regulatory discipline by ASIC. You have to find them out through your own investigatory processes. What would a better system look like? That is the question in response to that. It goes to the heart of the question that was asked. Over to you, Senator, Pocock, for the last question.

Senator BARBARA POCOCK: This is the last question. What do you say to the view of the Financial Reporting Council that there is the potential for perceived or actual conflicts of interest in professional organisations like yours in setting, monitoring and then disciplining yourselves in relation to ethical behaviour? What is your response to that?

Mr Conway: Look, I think the issue of the perceived conflict is clear. There is an interest for our organisation to bring members in and generate revenues to then reinvest. I think it is pretty clear for all to see that there is a challenge. We want the membership to be as large as possible. To the earlier point, it is not at all about costs. It is about the quality of the membership which is fundamental. I think it is about how we very overtly and transparently hold members accountable to their requirements to us and to the law and how, where they breach them, we openly publish through our website and our journal those cases and matters. We've got to be enforcing the professional standards we impose and be seen to be doing that in a very transparent way. Certainly my reflection on it would be that I absolutely understand the FRC's perceived conflict issue. I would probably push back on the actual conflict piece in the sense that it is in none of our interests to have rogue members coming in just because they are paying their subs. Why would we do that? It is a recipe for disaster.

Senator BARBARA POCOCK: Thank you. That's very helpful. What is your view, then, about the reform that we were very keen on in the last round about making sure that people who have a current financial interest in a big four firm can't be part of regulatory machinery? That is kind of the spirit of one of our amendments to the Tax Practitioners Board. Do you have a view about that? Do you support that?

CHAIR: You're in a very interesting situation, Mr Conway, which you've already declared.

Senator BARBARA POCOCK: I'm not talking about your role. I'm talking about people who are in receipt. Lots of people have great experience and should be part of all these machinery. It is where you have a direct financial interest in one of the very significant firms that is being regulated.

Mrs Mallett: I will start. My view is that you might be missing out on a bit of diversity. A lot of those people at that level are very smart people. Isn't it the rule that if you have more than 100 employees, you can't go on the Tax Practitioners Board?

Senator BARBARA POCOCK: I'm not aware of that.

Mrs Mallett: That's the rule, isn't it, Andrew?

Mr Conway: Yes.

Mrs Mallett: That is what I was referring to.

Senator BARBARA POCOCK: Sorry? If you have more than 100?

Mrs Mallett: If you have more than 100 employees, you can't go on the Tax Practitioners Board.

Senator BARBARA POCOCK: There are many members historically who have been part of firms with thousands of members.

Mrs Mallett: Exactly. To me, that doesn't make sense, because now you are just cutting off diversity of thought. There are some smart people there. I think it could be conflicted. They could be recused if it were something that was affecting them. You are missing out on some talent if you put too many restraints in about these people being regulators.

Mr Conway: I will make a general comment about regulatory boards, if that's okay, in the sense of professions. For example, in the health sector, I don't think the community would expect that Ahpra or one of their primary health regulators should be composed entirely of laypersons. The notion of having the appropriate expertise at the board table is really important. The fundamental question is if a conflict arises, how it is managed. I think there is an expectation that in any board, be it a regulatory board, a public board or an incorporated association, conflicts of interest, perceived and real, need to be managed effectively and very transparently. There needs to be that erring on the side of caution in having a direct approach.

CHAIR: But that is an ethical disposition that is required. It is like being a Catholic and deciding you need to go to confession. It's not very popular.

Senator BARBARA POCOCK: It's also about broad leadership. We've seen limitations on that.

Mr Conway: Culture as well, yes.

Senator BARBARA POCOCK: We've seen in the room in recent events who should not have been in the room for decisions that did affect their firm. Thank you for that. I take that point. Thank you, Chair.

CHAIR: Clearly, there are going to be a number of other questions on notice. Senator Pratt has a question on AI just before we close.

Senator PRATT: I want to ask, on notice if need be, a bit more depth about how you think AI will help support ethics and transparency versus any particular risks associated with it. You gave some evidence about ethics and most of your inquiries being about ethics. You then highlighted conflicts of interest. I'm interested to know whether there is any evidence you can give us on the predominant nature of conflicts of interest or some examples of the diversity of them and whether you've got any evidence about how people have gone about resolving them.

Mr Greco: I might start the response. Well before the PwC, we made a mandatory CPD requirement for ethics training because we recognised through the complaints that complacency is probably the biggest enemy in relation to the code of professional conduct. People just become complacent. You have to put it back in their face and remind them of the ethical obligations. I will give you an example. As Vicki said, we get constantly asked, 'Is this an ethical dilemma?' That is what encouraged us to make it mandatory. People were asking things that they should have understood as causing an ethical issue. I will give you an example. Let's say that a husband and wife separate. Can I continue to provide a service to both parties? The answer is no, absolutely not. They are practical issues that suburban accountants face all the time. We have to put it back on the table that this is the code of professional conduct. We have APES 110 being embodied by the Tax Practitioners Board. It is just constantly re-engaging that

they are obligations. PwC has just made it very obvious that we have to go back to basics. Sometimes you have to go backwards to go forward. With all those professional obligations that define a professional, complacency gets in the way. Obviously with the big four, the profit model puts some of those ethical obligations at risk. They need constant monitoring. Our part is to make it mandatory and to make sure that they recognise when that scenario presents itself.

Mr Conway: I will quickly comment, Senator Pratt, on your question on AI and give you a very practical example as to how that is happening. Again, we can take it on notice to provide some further evidence, if required. I think it is a really important point because many of our interactions are data based. We are getting many data touchpoints with members. One of them is the way in which our members interact on a professional community we provide them access to. In the context of ethical conduct, it gives us a chance to not so much monitor but observe the conversations that members are having amongst themselves in that forum to then determine whether there is further training required that we can develop to meet a particular need or whether there are some particular areas of concern about conduct that we could perhaps zero in on. That is one micro-example of how we're using data and interactions with members in a digital community model to actually zero in on ethical conduct as well.

CHAIR: Thank you, Senator Pratt. At the very end of your submission, you put on the record a matter that I was unaware of. I am surprised. I didn't even think that this could be happening. This is for small and medium enterprises to actually have access to consultancy and to build out a more sustainable and varied range of options for government to engage with to make sure that competition is in there and that we get the productivity and cost benefits of that. The establishment of having 20 per cent of contracts sourced for SMEs is clearly a pretty important structural reality. You note that the report of the ANAO in 2017-18 with regard to that requirement found that two of the big four firms had been classified as SMEs. This was a jaw dropping moment for me in reading your submission. Do you know whether that is still the case for any of the people who are within your purview?

Ms Stylianou: We would have to take that on notice, Chair. We would have to check. It was pretty jaw dropping for us as well. We have also noticed in some of the government procurement areas, especially because we deal a lot with SMEs, is that despite the 20 per cent, it's not necessarily enforced across the government or consistently across the government. So it is easy to bring yourself into that 20 per cent in terms of how you are structuring. If you have a large business, it is to say, 'It's this part of it, this subsidiary, that is applying for this government project.'

CHAIR: Which I think would absolutely outrage people on the sideline at sport on the weekend. It would absolutely drive them nuts to think, 'Who do these companies think they are that they can play a game to shrink themselves down, as in *Honey, I Shrunk the Kids*, to sufficient size to pretend that they are an SME?' It's absolutely beyond the pale.

Mr Conway: I think it will form part of our submission to the Treasury paper around procurement as well. The extension of that is that I think we've got to be conscious that we talked about the construct of firms and the governance arrangements and all of that. The challenge is that we don't have an unintended consequence of then structuring out SMEs from procurement contracts. That becomes—

CHAIR: I am very clear that is absolutely not going to happen. The game playing needs to be called out in the first instance. We are very keen to get your advice. We might put that on notice to any other relevant entity that could give us a bit of shape and form on whether that continues to happen. We have certainly seen some of it with black cladding processes that have been enabled by the big four, who should know a lot better, and hopefully not by other members of your august body. Thank you very much for being here to give us evidence today. The committee is going to suspend for a lunch break.

Proceedings suspended from 13:24 to 14:31

SCHMULOW, Associate Professor Andrew, Private capacity

CHAIR: Good afternoon, everyone. I understand, Associate Professor Schmulow, that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I note that the giving of false or misleading evidence is a serious matter and may be regarded as a contempt of the parliament. Do you have anything to say about the capacity in which you appear today?

Prof. Schmulow: I'm an associate professor in the law school at the University of Wollongong and a visiting associate professor in the Nelson Mandela Institute in the School of Law at the University of the Witwatersrand in Johannesburg.

CHAIR: Thank you very much. I invite you now to make a short opening statement. At the conclusion of any remarks, I'll invite members of the committee to ask questions.

Prof. Schmulow: Thank you. Good afternoon, Chair, and good afternoon to your colleagues on this inquiry. Thank you for the opportunity to share with you my thoughts. I think that inquiries like yours are integral to the preservation of democracy and the maintenance of accountability. I am indeed grateful for the opportunity to contribute to that.

I thought I would tell you a story. It is a funny story. It might be the funniest story ever told. Whether it is funny amusing or funny pitiful I will leave you to decide. The story goes like this. Two PwC tax partners walk into a bar and sit down at a table. One partner says to the other, 'I've got an idea for the greatest con that has ever been conducted.' The other partner says, 'Go on.' The first partner says, 'What we're going to do is we're going to create a problem. The problem that we're going to create is multinationals that pay no tax.' The second partner says, 'That sounds a bit risky.' The first partner says: 'Well, I haven't even started. Once we've created that problem, we'll then go to the government, once that problem has become good and rancid, and offer to give them a solution to the problem we created.' The second partner says, 'I don't like your chances.' The first partner says, 'Not only will the government accept our advice, but, in giving the government advice, we'll give them advice that is fundamentally flawed, advice that contains all sorts of back doors built into it so that we can continue to enable our multinational clients to evade tax and in the process make ourselves extraordinarily wealthy and exacerbate the problem so that the government will continue to seek our advice on how to solve that problem.' The second partner says: 'Good luck with that. That is sounding ambitious.' The first partner says: 'But there's more. In addition to giving the government flawed advice, what we'll do is we'll get the government to set up and pay for the maintenance of structures through which we'll give that flawed advice. We'll call one the Board of Taxation and we'll call the other the tax advisory panel. Those boards will have a direct line to the Treasurer so that, in the event that our tax-evading multinational clients encounter any problems evading tax, they can let us know and we'll have those problems sorted out very quickly.' The second partner says, 'This is starting to sound more like a fever dream than a scheme.' The first partner says: 'But there's more. We'll get the government to pay us for serving on the Board of Taxation and the tax advisory panel. I'm thinking \$140,000 a year each for one meeting a month, over and above the millions of dollars we get paid as partners.' The second partner says: 'So let me get this straight. You're going to come up with a scheme where the government will pay you \$140,000 for a meeting a month to provide flawed advice to fix a problem we've created?' The first partner says, 'That's correct.' The second partner says, 'You will never find anyone that stupid.' Well, here is the punchline, Chair: it turns out we were that stupid.

For more than 10 years, they have been sucking down a taxpayer funded salary so that they could provide advice, the nature of which is to enable tax evading multinationals to come to this country, make billions of dollars in profits and pay no tax. At this point, you might be saying to me, 'Well, that doesn't sound very good, but we cannot conclude, surely, that this is anything other than some bad leadership in the local branch of PwC. We shouldn't assume that this is part of some deeper, wider malaise.' If you were to say that to me, my response would be, 'Au contraire. This has happened before elsewhere.'

I draw the inquiry's attention to the House of Commons Public Accounts Committee report that was issued in 2015, almost a decade ago. The chair of that inquiry, the Rt Hon. Margaret Hodge MP, said the following. I will give you a few excerpts from that report from 2015. She said:

This is the second time we have had cause to examine the role of large accountancy firms in advising multinational companies on complex strategies and contrived structures which are designed for no purpose other than to avoid tax.

We believe that PricewaterhouseCoopers's activities represent nothing short of the promotion of tax avoidance on an industrial scale.

Contrary to its denials, the tax arrangements PwC promotes, based on artificially diverting profits to Luxembourg through intra-company loans, bear all the characteristics of a mass-marketed tax avoidance scheme.

She says:

We consider that the evidence that PwC provided to us in January 2013 was misleading, in particular its assertions that "we are not in the business of selling schemes" and "we do not mass-market tax products, we do not produce tax products, we do not promote tax products".

She says:

The fact that PwC's promotion of these schemes is permitted by its own code of conduct is clear evidence that Government needs to take a more active role in regulating the tax industry ...

She says:

We have published relevant reports in December 2012, April 2013 and June 2013.

She says:

Like the other big four accountancy firms, PwC provides tax advice to its clients in line with an internal Code of Conduct. PwC's Code does little more than shroud the way PwC exploits flaws in international tax law to devise and offer aggressive tax avoidance schemes to its clients.

A report in the *Guardian* in 2013, 11 years ago, states:

The so-called "big four" accountancy firms are using knowledge gained from staff seconded to the Treasury—this might sound familiar to you—

to help wealthy clients avoid paying UK taxes ... Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers have provided the government with expert accountants to draw up tax laws. But the firms went on to advise multinationals and individuals on how to exploit loopholes around legislation they had helped to write ... Margaret Hodge, the PAC's chair, said the actions of the accountancy firms were tantamount to a scam and represented a "ridiculous conflict of interest" which must be stopped. "The large accountancy firms are in a powerful position in the tax world and have an unhealthily cosy relationship with government," ...

At this point, you might be inclined to say: 'Well, okay. These things happened 10 or 11 years ago. Is there a pattern?' Well, in that regard, I refer you to the testimony of Michael O'Neill, the CEO of the Tax Practitioners Board, in evidence he gave to Senate estimates in February this year. I will paraphrase what he said. He said that the Tax Practitioners Board has evidence that PwC has inserted itself throughout the OECD to influence tax policies and tax treaties and tax regimes to favour their multinational tax evading clients.

So the first point I want to make is that the activities we have seen in Australia are not an aberration. This is not an anomaly. It is not a mistake. This is not on this occasion. This is not their first rodeo. This is their business model. This is what they do all over the world. It is a business model employed by what I would describe as an international criminal cabal, a mafia. Of course, at this point you might say to me, "Mafia" is a strong term to use, especially when providing testimony to a parliamentary inquiry, especially for a witness who is protected by parliamentary privilege.' I would say yes, I agree. Luckily that term is not mine. It is a term used in the title to a report written by one of the most eminent members of the House of Lords, Baron Prem Sikka, Lord Sikka of Kingswood, in a book entitled *The Pin-Stripe Mafia: How Accountancy Firms Destroy Societies*. If I may, I would like to read you a couple of points from a summary of his book.

CHAIR: Thank you, Professor Schmulow. After that, we might go to questions, if that's possible, thank you.

Prof. Schmulow: He states:

They—

the four major firms—

employ thousands of individuals for the sole purpose of undermining tax laws which does not create any social value, but enables corporations and wealthy elites to dodge corporate tax, income tax ... and anything else that might enable governments to improve the quality of life.

The loss of tax revenues is a major cause of the current economic crisis that is inflicting misery on millions of people. Tax avoidance is part of the guerrilla warfare conducted by accountancy firms ...

He estimates that in 2011 the UK tax tribunals heard around 11,000 cases. Many of them related to dodgers who had no economic substance. He says:

The UK is estimated to be losing around £100 billion of tax revenues each year and a large part of this is due to the activities of the Big Four accountancy firms.

Before we go to questions, I thought I would end my opening statement with some brevity, something that may amuse you. This is a quote from *Living our purpose and values*, PwC's code of conduct dated April 2021. I will quote from page 18:

We never trade on or inappropriately disclose inside information.

Boom, boom. Thank you.

CHAIR: Thank you very much. I will take you to one part of your evidence. Thank you for your submission, No. 68, where you talk about the revolving door. We have had some discussion about this. I am particularly interested in your perspective and recommendations about what a suitable response might look like, apart from the establishment of a working committee. What elements of a proposed framework for preventing the phenomenon of a revolving door have you already given consideration to? I will let you speak to that part of your submission. I think my question is quite clear.

Prof. Schmulow: Thank you, Senator. I've had a fair amount of involvement in this question. I've conducted research into strictures in South Korea, where they have a very advanced regime for preventing the revolving door. In 2022, I was invited to produce a white paper for the European Parliament, which I delivered in Brussels at the end of 2022 on combating the revolving door. The revolving door is an insidious, corrosive and corrupting phenomenon. It is what Senator Elizabeth Warren describes as a pre-bribe. The way it works is this. Nothing need be said, but there is an understanding: 'If you look after us in government now, we will have a cushy position for you later.' As I say, Senator Elizabeth Warren describes this phenomenon as a pre-bribe. It enables large consulting firms—and not just consulting firms, it must be said, but firms that produce goods and services for defence procurement or whatever the case may be—to get preferential treatment. It enables them to get preferential access. It enables them to corrupt and corrode good, arm's-length, dispassionate, rational procurement. It can be stopped. There are procedures and processes in place in countries such as South Korea and now with the EU oversight authority that enforce gardening leave, as it is called. But it has to be enforced.

One of the things that the inquiry conducted in that other place heard was about a gentleman by the name of Corcoran, who was a senior official in the Department of Defence who went to work for KPMG. He was given a 12-month period of gardening leave. KPMG, in terms of the testimony that was heard, openly boasted about the fact that Mr Corcoran was violating that gardening leave. One of the things that the European Union has done with the creation of the EU ethics oversight authority, which I provided input into, is to ensure that there are mechanisms to check or to enable people to report when senior officials breach their gardening leave and that steps can be taken to bring sanctions down upon them and the firms they work for. Otherwise the temptation is just too great.

CHAIR: Regulatory gaps and enforcement failures are cited to us in multiple submissions and in evidence that we've received in the course of our public inquiries. Have you mapped or do you have any insights into the regulatory gaps that are evident in the Australian system with regard to the revolving door that you've just described?

Prof. Schmulow: My understanding is that in terms of the regulatory strictures in place, there are none. We shouldn't feel too bad about this because prior to debate in the European Parliament about the creation of an EU ethics oversight authority, they had the exact same problem. They had requirements for gardening leave that nobody was appointed to check on or enforce. I can tell you that if you don't have some mechanism by which to enforce these strictures, it is nothing more than, at best, the legislative version of virtue signalling.

CHAIR: Given that real threat of declaration without action, how would that further undermine confidence and see the consequences that we fear continuing? I note that you've also said that it is not just about public servants. There are big entities that are moving into the Public Service as well as out of the Public Service. You talked about Defence in particular. Where would such a compliance and enforcement entity sit in our current structure? To whom would you entrust that task?

Prof. Schmulow: If you asked me to give you a solution that was a quick and dirty one, I would say one way to do it would be to provide—

CHAIR: A quick and ethical one would be the best one.

Prof. Schmulow: I should choose my words. Especially in this context I should choose my words more carefully. For a quick and ethical one, I would say give the authority to the NACC, the National Anti-Corruption Commission. I say that because it is an entity that, in my observations, is well insulated from undue pressure and from corrupting forces.

CHAIR: Regulatory capture and then fined.

Prof. Schmulow: Yes. Exactly. Perhaps they might need some additional budget. They might need a subdivision within the NACC to ensure that gardening leave is enforced. There would need to be an eye on the kind of political fallout that always comes with trying to establish a new agency and some portions of the community wailing about extra costs and the government only getting bigger and setting aside the costs to the community of not enforcing this stuff.

CHAIR: It is echoing back to your original story with which you commenced.

Prof. Schmulow: Yes. I would say that to provide that to the NACC, to me, would appear to be a logical solution.

CHAIR: Thank you for that. I will go to another matter that you discuss in some detail, which is that auditing and consulting should be separated. We've had some evidence that talks about the benefit of separation that is operational rather than structural. You have a particular view. Could you expand on your view and compare and contrast it with any other public evidence you are aware of with regard to perhaps Professor Fels or Mr Samuel?

Prof. Schmulow: I will address first the issue of structural versus—

CHAIR: Operational.

Prof. Schmulow: operational. I cut my teeth as an academic observing the practices that gave rise to the banking royal commission. Where did the rot begin? With financial advice. We were told by the proponents of integrated financial advice, the proponents of vertical integration, that conflicts of interest could be managed, that there's nothing to see here, that we've got everything under control. The reality is that in theory conflicts of interest can be managed, but the greater the conflict, the more widespread the conflict, the more attenuated the conflict, the smaller is the chance that you're going to get it right. It's just a question of risk. Everybody in the industry understands risk until it comes to them managing conflicts of interest. Then all of a sudden they lose their minds. The point was made to the proponents of financial advice that you are going to end up product flogging. They said, 'No, we've got it all under control.' What happened? They ended up product flogging. If you want to build regulatory structures that work, instead of having faith in the ability of people to manage conflicts of interest, why not have faith in people's inability to manage conflicts of interest and design regulation accordingly—design for the worst-case scenario? Hope for the best but plan for the worst, except ignore the hope for the best part. Just plan for the worst. If you plan for the worst, you start to say that operational separation is still going to present opportunities for conflicts of interest. We will be told the same boring twaddle about Chinese walls and insulated floors and god knows what else. None of that stuff works. We've seen it doesn't work. How many times must we see it fail before we say that stuff doesn't work? Rather, let's have structural separation. If you look at the—

CHAIR: Professor Schmulow, does it really have to be an either-or, or is there a layer of operational separation that provides a first level of response and further structural reform embedded in under that? Could that possibly work?

Prof. Schmulow: I have a cynical view of human nature, particularly when people are confronted with the opportunity to make themselves wealthy on an intergenerational scale. I think that the temptation is too great and I think that when you have a half-baked separation, what you end up with is a spot of rust. You know what happens with rust? It spreads. There is nothing you can do to stop it. It will spread until it has taken over the entire structure. We have seen instances where there have been—give it any name you like—layers of insulation, buffers or efforts to insulate one part of a business from another. Ultimately they always break down because people are presented with an opportunity to make money out of conflicts of interest. So here's an idea: don't give them the chance. In the United Kingdom, the Brydon review and the Kingman review looked at this, as did the House of Commons Business, Energy and Industrial Strategy Committee in their report entitled *The future of audit*, which they published in 2019. I'm not sure if your inquiry is familiar with that report. They recommended in no uncertain terms structural separation. I was interested to hear some of the testimony provided by the Institute of Public Accountants before I appeared today.

CHAIR: The IPA, yes.

Prof. Schmulow: The testimony was what I would put in the category of 'it's too hard'. I can put it in the vernacular—'It's too hard' or 'It's too difficult'. It's not. When you've stuffed up for so long, in so many instances, then you're going to have to put up with the hard work of creating something different that will no longer abuse the public's trust and damage the public good. The future of audit inquiry, if I can just quote, stated this about conflicts of interest and audit independence:

There are still fears that auditors are conflicted by the commercial culture in which they operate. The culture of advisory services does not sit easily with the culture of challenge required by audit.

Audit is cross-subsidised. Whenever audit is cross-subsidised, somebody is going to have to pay the piper. They say on page 32 of their report, where they talk about structural separation:

The CMA's "structural split" is the most radical proposal. It involves splitting audit and non-audit into two separate and independent legal entities.

They say:

We believe that there is a strong case for independent audit firms.

That is their conclusion.

CHAIR: You would be aware of the counterarguments to that, too, Professor Schmulow?

Prof. Schmulow: I am, and I find them, to be frank, whiny. They tend to go to a place of dark and amorphous fears about unintended consequences and the possibility that the sky will fall on our heads. What nonsense. The sky is already falling on our heads.

CHAIR: They frequently speak about the inability to recruit into such a structure and the importance of engaging with a new generation in work that is more enriching, more enabling and more interesting than what is required in audit. Do you have a response to that proposition?

Prof. Schmulow: What nonsense!

CHAIR: Okay.

Prof. Schmulow: May I say that auditors have never been people who go for living on the edge. There's a very particular kind of person who goes into audit. They get born that way. They come out of university. They want to do audit. They'll do audit. It doesn't matter what happens with the rest of the firm. They want to do audit. They'll stay in audit.

CHAIR: Professor Schmulow, it has been put to me that there is a very different set of responses to the work that we're doing through this committee and to the reports that have been put out by the government, that the audit teams are livid that they've been caught up in some general malaise of PwC and other conglomerates as well because the practice of audit is so culturally different from what is surrounding them under the heading of those multiple alphabetical combinations. Do you have a view about the quality of audit and audit as a part of these businesses already being in a different kind of realm from the other parts—the consultancy sector, the tax advisory sector in particular?

Prof. Schmulow: Yes, I do. I actually have a great deal of sympathy for that position. As you may know, I am not shy about criticising big audit or PwC. PwC's audit function is arguably the best of the big four. There is a certain type of person who goes into audit. They are probably not the most exciting people to talk to at a cocktail party, but they are very dependable. They are hardworking and diligent. They have their head down. They are the kind of people who are enthused about work that other people might not be.

CHAIR: It is quite exacting work.

Prof. Schmulow: Very. I have no doubt that there are many people in audit—not just at PwC—who are looking at the rest of this bacchanalian feast that is going on under their roof, and they are going, 'We want nothing to do with this man. This is not who we are.'

CHAIR: I really appreciate you putting that on the record, because I think in the evidence that we have received from lots of people they are very despairing of the entire sector being caught up by the actions that have now become prominent. But, can I put to you one of the corrections that has been much touted—in fact it is considered by some in PwC in particular to be so worthy of adoration that this committee should just pack up and move on—and that is the suggestion that governance is going to fix matters. Now the people you have just described—auditors—are represented by partners in the audit sector who are on the board, and who share in the profits of the entire company. Current governance arrangements clearly did not allow them to discern what was going on with what you described as the bacchanalian feast occurring in other parts of their own partnership. So governance does not give me great comfort as the response that is going to solve the problem, which I think is well understood now. What is the impact, practically, of having independent board members in these entities? Is that sufficient to fix problems of the scale that we have seen? Rather than that, you might have some suggestions, and I invite you to make comments about the number of partners.

Prof. Schmulow: That is a bait-and-switch trick. Independent directors of PwC may be independent in the strict sense, but I can assure you that no independent directors will be appointed who are not team players, who do not understand the need to be one of the boys. They are not going to appoint me as an independent director, I can assure you. What they do is that they will get people like—

CHAIR: Perhaps don't name an individual but describe a character.

Prof. Schmulow: Well, there is a person who did a report for PwC—

CHAIR: I think that is probably a little too identifying. I would prefer you to talk about what the fundamental problem would be, rather than particular individuals.

Prof. Schmulow: The fundamental problem is: the partnerships will make sure that independent directors who are appointed will not be of a kind who will rock the boat.

CHAIR: On notice, could you have a look at KPMG, who instituted that in 2017, and, if you have any insight into how that has led to better practice in KPMG, I would love to be comforted. I fear that might not be the case. Also please give us any other insights into where independent directors on boards has made change of the scale and

order that is required. If you have time later, or perhaps on notice, please speak further to your views around partnership and the number of partners that might be a functional model. We have some questions from Senator Scarr and Senator Barbara Pocock.

Senator BARBARA POCOCK: Thank you, Professor Schmulow, for being here. I want to ask you about your personal experience as a witness in giving evidence to our committee. I am conscious that the entities that are under investigation here are very large and influential, and I have heard from witnesses that some people have felt pressure in the way that they have responded to us as a committee. I wonder if you could tell us whether you have felt any pressure or had any experience—you are a very forthright witness—which has caused you discomfort or which has been brought to bear.

Prof. Schmulow: Yes. I must make full disclosure. I am not a shrinking violet, and I am sick and tired of seeing what is going on in the industry, and I see a very close connection between what is going on in the industry and the destruction of society. So I have called it out, in no uncertain terms. But that is my right to do. I live in a democracy, I enjoy the right of free speech, and I enjoy the right of academic freedom. What I have found is that, on three occasions, PwC in particular has attempted to come after me. In the first instance, a fellow by the name of Peter Dombkins or Donkis—something like that—started to engage with me in a debate on LinkedIn and I said something fairly innocuous like, 'If you don't want to represent parliament, go and operate in North Korea, and he immediately said I am bullying a fellow academic, because he has got some kind of adjunct at UNSW. I said to him, 'You are not an academic; you are a full-time partner in PwC Legal. Don't come the raw prawn with me about "I'm a fellow academic and I'm being bullied on line". But what he did was he made sure to copy in my head of school. In a university that is risk averse and with a human resource department that is risk averse, they got very nervous about the whole thing.

CHAIR: Before you go any further, I know that some of this is already on the public record. There may be elements that you are putting on that are fresh and new today. I just want to make sure that you are aware, and anybody who is listening is aware, that there will be a right of reply for somebody as a natural course that the Senate would allow. That is procedural. Please continue.

Prof. Schmulow: When that was not sufficient to shut me up, PwC had their lawyers write to the University of Wollongong and make what I can only describe as a somewhat secretive complaint. I have never seen the complaint. I was not allowed to see the complaint. They brought the complaint against me under confidentiality provisions which are designed to protect vulnerable complainants. This is a global \$53 billion annual revenue firm. They are not vulnerable. They are certainly not vulnerable to me. Instead of making some claim that I had defamed them or something like that, they tried to troll through the university social media policy and try to get me fired. That was an unpleasant experience, obviously, but it was one that I was able to bat away fairly easily. When my human resource department asked me to justify the things that I had said, put it this way: after about 45 minutes they said to me, 'Okay, we have seen enough.' I was like, 'But I've got more.' When that wasn't enough, I noted that Peter van Onselen, in the *Australian*, called for my invitation to address this committee to be rescinded. He neglected to mention that he is married to Ainslie van Onselen, who is the CEO of Chartered Accountants Australia and New Zealand, who I've also criticised for her and her organisation's lack of determination, in my view, to tackle these problems. I am sure I haven't heard the last from PwC. I can't say how, but I have it on inside information that they are waiting for things to die down, and then they will come after me again.

Senator BARBARA POCOCK: It is a real concern to me, as a senator on this committee, that an organisation would apply pressure like that, and I must say that I've heard from a number of insiders—inside big consulting firms—who have been unwilling to give me their names or any personal details but have provided information. So there is a feeling of intimidation among other witnesses as well. So thank you, Professor Schmulow, for putting that on the public record.

CHAIR: Senator Pocock, before you go, I just want to read this in, because it has not been read here since this morning, and I think it is pertinent. This is an excerpt from the opening statement that was read this morning: I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. Witnesses also have a right to be heard in camera. Please continue.

Senator BARBARA POCOCK: I want to go also to your view about the fact that PwC International specifically has been unwilling to provide to the Australian public, and certainly to us as senators representing their interests, the Linklaters report, or to provide specific details about who internationally is implicated in the PwC scandal of monetising confidential information about assisting multinationals to avoid tax. What is your view, as an expert witness, on that withholding of that international report and information?

Prof. Schmulow: I would query whether the report is confidential to begin with, because I think there is an argument to be made that Linklaters is not acting as PwC's solicitors but as a conflicted crisis manager. After all, they are audited by PwC and they have a number of other linkages with PwC, so I would put a question mark over that.

CHAIR: Can you provide that further detail to us on notice and continue answering the question? We will provide you with a set of questions.

Prof. Schmulow: Let's assume for a moment that the document is protected by privilege. The privilege is in the possession of PwC; they are the possessors of that right. That means that they can waive that right just like that. There is nothing to stop them doing so. They have said they can't waive that right because it is confidential. Yes, but they can waive confidentiality when it is their confidentiality. So their back-up argument has been, 'But it names individuals, and that would breach their privacy.' So? They had reports written in Australia that named individuals—Bersten, McNab, Douglass, Calleja, Konidaris, Collins, Seymour. Many of those people objected to being named. They said they had not been given a right of reply. At least one of them is suing for being named. So it is interesting that, when it comes to their Australian partners they are okay with breaching their privacy, but when it comes to the gods of PwC in London and New York it is different rules, apparently.

Finally, they have said that those partners' safety may be at risk. What gives them that idea? These are the partners who are in Australia, who live in Australia, and who are partners in a firm that has betrayed Australia to the dirty 34—the world's 34 most notorious tax evaders. We have not had any reports that their safety has been threatened. So for a partner in London or New York, living in a jurisdiction where the vast majority of people don't know what is going on here and don't care anyway, why would their safety be at risk? These seem to be straw men arguments. As regards the inability to produce that report, that report was commissioned by an entity called PwC International. PwC International is a holding company, not a trading company. The only thing it does is manage the global network, and it does so through a board of directors. Sitting on that board of directors is an individual by the name of Patricia Carney. As a director of PwC International, she has either been given a copy of the Linklaters report or she is entitled to see it. That is the nature of being a director. Ms Carney is a partner in PwC Australia. For all intents and purposes, when PwC Australia says that they can't give you the report because they do not have it, I would suggest that either they already have it or they are entitled to get it. And all that Kevin Burrowes would need to do would be to put his head around the door of an office that is probably two or three doors down from him and say, 'Paddy, show me the report.' So why are they not showing our parliament the report?

CHAIR: It seems the sterile corridor might be working in this instance, Professor Schmulow.

Prof. Schmulow: No, I don't think that's the reason. I think the reason is that PwC International, an international accounting and assurance behemoth, with global reach and infinite resources, has nothing but arrogated contempt for our parliament.

Senator BARBARA POCOCK: In view of what you have just said, I wonder whether you could comment about the experience that we have heard about from Kristin Stubbins, who was briefly in the role of Acting CEO in PwC and had a 30-year career, which she described to us in evidence as a wonderful 30-year career in audit. So she is one of the people you described as loving their job, with a very distinctive work program separate from the matters that were unfolding in other parts of the firm she was employed in for those three decades, but she was unceremoniously dismissed from the acting CEO role, long distance. And we saw Mr Burrowes come in—

CHAIR: Against her will.

Senator BARBARA POCOCK: Yes. Certainly Kristin Stubbins was enjoying the role and expected to continue in it and looked forward to that. What is your view about the structure, which is very opaque, of the international structures of PwC and their influence and reach in the domestic entity of PwC? What do we see here before us in terms of control, relationships and power?

Prof. Schmulow: To provide a shortcut to my answer, what you are actually seeing is something that is very personal. It is not really about the international agreement or the international structure. It is about something very personal. There are 22 individuals who are the most senior, the most powerful, the most influential partners in a global accounting and audit behemoth who acted in congress with partners in Australia to undermine the authority of the Australian Tax Office, to obfuscate the rule of law, to frustrate our judicial system, who acted in congress to attack the interests of his Australian Majesty the King. They do not want you to know who they are. They don't care about the local partners—Mc Nab, Bersten, Calleja, Konidaris. Throw them under a bus. They are—

Senator BARBARA POCOCK: Collateral damage.

Prof. Schmulow: Collateral damage. Thank you. That is exactly the term I was after. But the gods in London and New York will do whatever is necessary. And whatever is necessary is turning out to be something quite

extraordinary. They are endangering their position in a G8 economy. They cannot claim to be a global accounting and assurance firm if they do not have a footprint in a G8 economy. They are willing to jeopardise that to protect the identity of 22 individuals, and that is what it comes down to, in my view.

Senator BARBARA POCKOCK: Can we take that a little further, thinking about the role and the capability of the nation state, and the capability of a parliament. In your opening statement you talked about the chronicle of repetitive behaviour. In very resourceful and robust governments such as those of the UK and the US, we have seen repetitive examples of poor behaviour, and you have pointed out to us that this is not a one-off; this is not an aberration. There is a repetitive pattern of behaviour and a business model which leads to these very challenging and appalling circumstances that are difficult for a government to manage, given the multinational character of the organisations. What are the lessons, then, for the nation state and for a parliament? Are they ungovernable or are there ways forward for us to manage this so that the Australian citizens are not back here again—2015, 2018, 2023, 2025?

Prof. Schmulow: Without doubt, you have a fight on your hands, make no mistake. If I may, let me read you part of an email that I got from a member of the House of Lords on Monday night. I won't identify his or her name. This is about the separation: 'Hi Andy. Thanks for coming back so quickly. I'm not sure the UK was going to go for complete separation but there were some good reforms proposed. If I'm honest, I think the Brydon review ended up with too much in it, which had the effect of overload, and helped those who were trying to push back. Then it got entangled in the issue of capital market doldrums, with chairs and CEOs saying it was a deterrent to UK listing. So in the end we get nothing, not even all the things that the earlier Kingman review proposed.'

Then this person says, 'The stranglehold of the accounting firms and, more widely, consulting firms, including those specific to industry such as transport, is a dead hand over everything. If you want to know what is killing the UK capital markets, it is these consultants who are not only threaded throughout government but now essentially control government procurement systems, making it difficult for companies to get on the ladder, and, with no government procurement, private procurement tends also to be blocked.'

There is no doubt you have a fight on your hands. But, if you understand individual components of this problem, there are without doubt things that you can do. The first and most obvious component is the misuse of legal professional privilege. If you want to provide advice to a client that encourages them to commit the crime of tax evasion, you take an enormous risk that advice will be discovered. And, if it is discovered, the person providing that advice could go to jail. That advice will not be discovered if you cover it with legal professional privilege. In *ATO v. PwC* Mr Justice Moshinsky was asked to review 44,000 documents covered by legal professional privilege. He conducted a sample. If his sample had found one, 2 or 3 per cent of those documents shouldn't have been covered by privilege, you could say, 'Oh well, it is a difference of interpretation.' If it been 5 per cent, well, that is one in 20 documents in 44,000 that might be covering up the crime of tax evasion. Do you know what figure he came out at?

Senator BARBARA POCKOCK: I do, but please illuminate.

Prof. Schmulow: It was 58 per cent, 25,500 documents.

CHAIR: For the record, so that it is here with your evidence today, the selection of the documents was agreed by both parties, I understand, so half of those ones that were determined to be the 58 per cent were actually nominated by PwC themselves. That is my understanding. Do you know if that is correct?

Prof. Schmulow: That is also my understanding, but I have not delved deeply into the way in which the 116 sample documents were chosen.

CHAIR: Let's just get that clarified for the record. Thank you. Go ahead.

Prof. Schmulow: So how is this legal professional privilege caper conducted? And let me point out to you that this is not a caper that gets conducted only in Australia. In the Prudential Life case in 2013, the UK High Court found that PwC was routinely abusing legal professional privilege to hide advice that may be criminal. So how is this advice created? It is created by having an internal law firm. It is a play-play pretend law firm. It is not a real law firm. Nobody goes to PwC Legal to get their conveyancing done or lease agreements done. In fact, PwC did not even use them in their complaint to the university about me. They used Allens. The role of that law firm is to be an internal PO box. So every time you give advice to a client that may be encouraging tax evasion you send it through the internal PO box and they then on-send it to the client and they will then turn around and say, 'It has been seen by a lawyer. It is legal advice. It is covered by privilege.' That is not what privilege is for. Or they will put a junior lawyer in a meeting. That lawyer can sit there with his headphones on and listen to the footy. It doesn't matter. As long as there is a lawyer in the room, they will turn around and say, 'The discussion that was had in that meeting was legal advice and therefore it is covered by privilege.' In fact JBS, the Brazilian based meat packing company, and a notorious international tax evader, actually wrote to PwC and said, 'We want all of your tax advice styled as legal

advice, so that it is covered by privilege.' How do you fix that problem? Easy. You prohibit accounting firms from owning law firms. They should never have been allowed to own law firms in the first place. In fact, lawyers and auditors will at times be on opposite sides of a conflict. I think of trading in insolvency. I think of faulty or defective financial statements. To have lawyers in the same firm as an audit firm is absolute lunacy; it should never have been allowed to happen, and it is very quick and easy to unwind. Unwind that, and all of a sudden, 'How do we provide advice that encourages tax evasion when we don't have the internal PO box?'

Senator BARBARA POCOCK: The things that you are describing are repetitive across different countries and in different firms, as are the cheating examples that we have heard a lot about, and others as well. Are we looking at sleepy states—state forms that are too sleepy to capture and respond to? Is there a pressing case—it seems there is—for a more muscular state, a more muscular Senate, for a legal, regulatory response that is a lot stronger? At the moment, we are a well informed Senate with a lot of resources and a year's work, and yet many people are unaware that a cheating event has occurred in multiple countries, that the hiding behind legal professional privilege is not just a strange set of unusual events, but has been a repetitive strategy. What do we need to do to build the muscular response, and also do we need to guard more assertively against state capture of our regulatory machinery, not just in Australia but internationally?

Prof. Schmulow: To much of that yes, and to some of it no. The inquiry that has been conducted in that other place, chaired by Senator Colbeck, is to my mind one of the most outstanding examples of parliamentary oversight that I've ever seen. The vision of three senators from three different parties—yourself, Senator O'Neill and Senator Colbeck—working closely together, putting partisan politics aside to pursue the public good, has been an uplifting, life affirming and immensely satisfying experience. But it is unusual. I take you back to the 2019 inquiry headed by Senator Paterson, an inquiry that was precipitated because Ernst and Young was found to have lied by omission on a statutory report to the Australian Prudential Regulation Authority. That is just—who does stuff like that? The outcome of that inquiry was a slap on the wrist, and it was bitterly disappointing. I'm afraid that, in a few years time, there may not be people in the Senate as well equipped as yourselves, or as diligent, resourceful and meticulous. So I would like to see you strike while the iron is hot and do something different. Something different means a board of oversight that has real power and authority to bring down crippling punishments for misbehaviour. That speaks somewhat to the Treasury recommendations made last week, but only somewhat.

Senator BARBARA POCOCK: Could you expand on that? I do not want you to go on, as our time is limited. You may take that on notice.

CHAIR: Yes, maybe take it on notice. I assume you are referring to the two Treasury documents that are released on Friday. We have before us legislation, the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023, which in schedule 1 deals with promoter penalty law reform. So these are already in place, ready to go in the parliament, the extension of the tax whistleblower protections, the Tax Practitioners Board reform and the information sharing, all of which have featured in the discussion this afternoon. Could you refer to that as well, because that is on the cusp of being adopted within the parliament.

Prof. Schmulow: Can I answer that now, because I think it will enable us to progress here today.

CHAIR: Great.

Prof. Schmulow: The solution is implementation, and implementation is all about who you have on the board. You cannot have partners from big audit on the board. Audit firms are like termites; they build nests. They nest with each other and they look after each other, and so, 'Today I am not going to discipline you because today it is me versus you but tomorrow the roles might be reversed.' So, once again, it is the boys club; we don't rock the boat. Who do you have to have on the board? Retired judges, retired attorneys-general and nobody from big audit, nobody from the firms who are being judged. The moment you let them on to the board, the good old boy mentality comes back. It is that simple.

Senator BARBARA POCOCK: And do you believe that question of regulatory capture is alive in every country, and do you believe it's a significant question here for us?

Prof. Schmulow: Absolutely. The scholarship around regulatory capture includes the work of Nobel laureates like Marver Bernstein. It has been observed in financial regulations since the 1860s in the work by Charles Francis Adams Jr. Wherever manipulating government gives private entities—private enterprise or private individuals—the opportunity to make significant wealth, they're coming after you.

Senator BARBARA POCOCK: This is a little shift in terrain. How do you think the big four benefit from being partnerships rather than corporations, and what are your recommendations or thoughts on that question?

CHAIR: And maybe that is where you might address the size issue as well.

Senator BARBARA POCOCK: Good, yes.

Prof. Schmulow: The partnership law is completely inadequate to the task of a partnership of 1,000 people. The partnership law is an interesting law. It is designed to automatically activate, even if people don't consciously say, 'Let's be partners.' To be a partnership, all you need is two people or more who decide to do something not that will make a profit but which they hope will make a profit. That's it. If you hope you are going to make a profit with your mate next door, bang, you are a partnership. The law activates automatically in order to protect people in those positions—in order to protect their rights and enforce their obligations. When you expand that to a partnership of 1,000 people, how is it possible that 1,000 people can be watching each other—because, remember, partners are jointly and severally liable for one another's debts. How can 1,000 people be exercising oversight over one another? It is absurd. On top of that, you have partnerships that are pulling down half a billion dollars in taxpayer funded projects per year per partnership—not in total—and those partnership arrangements are opaque and there are no enforceable directors' duties.

At this point, I have to say that one of the problems with Australia is that we don't enforce directors' duties very well, but that is a long, torrid and very tragic tale for another day. But, at the very least, there is at least a remote possibility that, in a firm that has directors, those directors could be held liable for breach of directors' duties. There are no directors' duties with partnerships. They can do whatever they like, and you can't come and ask them what is going on because it is a partnership. Everything can be kept secret. This is not what the partnership law was designed for. My suggestion is not to force these partnerships to incorporate, but rather say to them, 'You don't have to incorporate, but, if you want to touch one penny of government money, you have to incorporate.'

Senator BARBARA POCOCK: Because that is the special thing, is it not, about the big four or larger contracting firms to the government—that a significant part of their revenue is public money, so the accountability requirements should meet a higher threshold?

Prof. Schmulow: Of course there should be accountability requirements when you are pulling down half a billion dollars in taxpayer funds.

Senator BARBARA POCOCK: So do you have any thoughts on size specifically? What is an appropriate size of a partnership in this space?

Prof. Schmulow: Law firms, I believe, are limited to 300—

Senator BARBARA POCOCK: It is 400.

Prof. Schmulow: It is 400? I'll be generous and say 400. At this point, firms like PwC might say, 'Well, we can't do big audits. We won't be able to do Westpac or National Australia Bank.' Where there is audit money to be made, partnerships of 300 will cope admirably.

Senator BARBARA POCOCK: Thank you. I understand our time is limited.

CHAIR: Senator Scarr has some questions.

Senator BARBARA POCOCK: Can I ask a last question?

CHAIR: Yes.

Senator BARBARA POCOCK: Do you have any views on the publication of and more transparency around settlements, with the big four or with organisations paying tax who make an arrangement with the ATO when they have transgressed? At present there isn't a lot of transparency around such settlements in Australia. Certainly, there was the example with PwC, if I have my story right. Sometimes I remember things wrongly. What are your thoughts about being more open about settlements with large firms?

Prof. Schmulow: I understand the counterargument. The ATO will make the argument that, in order to have settlements and in order to avoid going to court, sometimes we need to do these things behind closed doors. But my response is, 'Do you really?' Louis Brandeis said, 'Sunlight is the best disinfectant.' I think there are some very worrying opportunities for the rules to be applied differently for the wealthy or for large corporations in reaching tax settlements versus the man or woman on the Clapham omnibus. That is not good for democracy. It is not good for inculcating the confidence of the public in the government and in the institutions of government.

Senator BARBARA POCOCK: And it really is a free kick for someone with deep pockets, which most citizens do not have. Is that the point you are making?

Prof. Schmulow: Yes. And I think part of the reason why it is often applicable to entities with deep pockets is because the ATO says, 'It is easy for us to do the low-hanging fruit, the corner milk bar, because what resources have they got? But if we are taking on Glencore or BHP, well, they might have a litigation budget that is bigger than ours. So, I'll tell you what, they owe us \$100 million; let's settle for \$50 million.'

Senator BARBARA POCOCK: Thank you for all of your answers Professor Schmulow.

CHAIR: Before I go to you, Senator Scarr, can I just take you back, Professor Schmulow, to part of the evidence you were giving to Senator Pocock with regard to the 22 partners, and you declared that they don't want us to know who they are—'they' being PwC International. We do know the holding company in Britain that has the Linklaters report that we have such interest in. We do know the board members of that. Do you know—or is it public knowledge in some form—the 22 partners to whom you refer?

Prof. Schmulow: It has been reported in the media, and I think that was a quote taken from perhaps Jeremy Hirschhorn. I can find that for you. I think it might have been reported in the *Mandarin* by my colleague Tom Ravlic.

CHAIR: So around the traps people do know who those people are. You have referred to two particular jurisdictions in your response to Senator Pocock's questions, the US and the UK—you said New York and London—but we know that the make-up of the holding company PwC International in London has representatives from other jurisdictions as well. Can you put on the record what those jurisdictions are? Do you know who that is?

Prof. Schmulow: I could look it up. PwC International's board of directors is a matter of public record, and it is listed on the UK companies register. It lists who the board members are and what jurisdiction they hail from. There is only one from Australia. Most, I think, are from the UK and the US.

CHAIR: Yes, but there are representatives from the Asia-Pacific region as well, and the EU.

Prof. Schmulow: Yes.

CHAIR: So we are truly talking about an international body. We can probably access a fair bit of that publicly. But can I just ask if there is any further information that you have access to—that number of 22 partners and any further information about that would be of considerable interest to this committee? I also ask you to think about the nature of the questions you have been asked thus far and to think about any points of distinction or any actions that indicate a different culture operating within EY, Deloitte and KPMG, because I would be interested in your view. From your observations and interactions with those other entities, is there is any difference, or are we talking about the same business model in essence but just with a slightly different flavour?

Prof. Schmulow: I don't have any further information on who the dirty 22 are. In terms of a difference in the ethos of other firms, as critical as I have been of PwC, I think KPMG is worse.

CHAIR: And on what do you make that assertion?

Prof. Schmulow: I grew up in South Africa, and KPMG's conduct in South Africa was not just egregious; it was spectacular. They actively aided and abetted the former president Jacob Zuma to steal everything that was not nailed down. They tried to assist President Zuma—it is quite amusing—to get rid of his minister of public works, a man of unimpeachable integrity by the name of Pravin Gordhan. They issued a smear report in which they accused Minister Gordhan of running a brothel in the headquarters of the South African Revenue Service. Where would you run a brothel in the headquarters of a revenue service—in the basement or in the records room? All of this came out in a series of articles in the *Sunday Times*. That then led to the Nugent and Zondo commissions of inquiry. Mr Zondo is now the country's Chief Justice. It led to President Zuma going to jail, and the conduct of KPMG was found to be so egregious and so disturbing and so gormless—running a brothel in the headquarters of SARS!—that South African companies, including my alma mater, the University of Witwatersrand, fired KPMG, to the point where it looked like they wouldn't survive. And their chief higher overguard, whatever his name is, went to South Africa and did the little apology two-step, 'These are not our values.' They always mention 'on this occasion'. 'No-one is more disappointed than we are. We are going to transmit these learnings, the lessons we have learned, all over the world.' Three years later, in Australia, a thousand of them were caught cheating on what kind of an exam? An ethics exam! You couldn't make this up.

CHAIR: And we have seen PCAOB fines of KPMG here in Australia and also in the Netherlands for a repeat performance of the same test scam.

Prof. Schmulow: And then, of course, for the CEO, it wasn't enough for him to suffer the humiliation of being caught lying to parliament once. He came back and did it again. And the partnership of KPMG did not turn around and say, 'This guy is toxic. We can't have this guy representing us. He has been caught lying to parliament twice'—actually three times. The second time he lied was when he said, 'We too narrowly interpreted the question,' and, as you pointed out, you read out what the question was—

CHAIR: We have had the same technique applied to this committee. I might move on from there, but can I invite you to have a look at the evidence we received from IESBA today, who clearly outlined an international set of standards that is adopted across 130 jurisdictions, largely in line with what is operated out of the PCAOB, but not the same, and we see the influence of the PCAOB operating here into Australia at odds with what is going on here. We would be grateful for any further insight you can provide us with, why you think the PCAOB is having some impact,

and how we might better deal with the multilateral nature of these entities that we are encountering in any creative way. I would love to ask you for that. But can you take it on notice, because Senator Scarr has questions. He may have another line he wishes to pursue.

Senator SCARR: Thank you, Professor, for being with us. At the outset, as a lawyer by profession, can I say how much I enjoy your quoting *Henry VI*. I did appreciate the rhetorical flair in your submission, and clearly there is a lot of passion behind the forceful submission that you have made.

Prof. Schmulow: Thank you.

Senator SCARR: In relation to the evidence we previously heard from Professor Samuel, and you refer to him rightly as a regulator's titan, his proposition is that we should consider prohibiting a firm from providing non-audit services to an entity that it is providing audit services to. If we go beyond that, that would amount to overreach. I just want to give you an opportunity to explain what your concern is in relation to that proposition and what you see the gap is.

Prof. Schmulow: Thank you. If I may reiterate, I hold Professor Samuel in the very highest regard, so it is with the very deepest respect that I respectfully disagree with him. His solution is, if I recall, to say: 'If you are providing audit services, you shouldn't provide other kinds of services, but if you want to provide the other kinds of services then you relinquish the audit function.'

Senator SCARR: Correct.

Prof. Schmulow: The problem is that, in that transition, there are opportunities for a kind of regulatory capture. There are opportunities to, for example, say to a firm, 'We have some misgivings about your audited financial statements, but I'll tell you what, we'll turn a blind eye because we would like to relinquish the audit work, and if we turn a blind eye maybe you could look at us favourably for some consulting work.' You just don't want that kind of stuff happening. And it is much easier to prevent that kind of stuff happening if you just have a structural separation.

Senator SCARR: But how likely is that to happen, in the context of the example you have given, Professor? The firm on the one hand is saying, 'We are currently providing the audit service, we can turn a blind eye to XYZ,' but at the same time they are relinquishing the audit service, so there is going to be a new audit firm arriving on the scene who presumably will pick up whatever the previous audit firm picked up.

Prof. Schmulow: If I could answer your question with a question, how likely is it that the CEO of PwC, Tom Seymour, would state on the record that only Peter Collins was involved in selling Australia's tax secrets to the dirty 34—until it became apparent that not only was it not only Mr Collins, not only was it up to 70 partners at PwC, but it also included Mr Seymour? Who would have thought such a thing would happen?

Senator SCARR: I guess the point I am making is the check and balance in terms of the structural reform is that the firm, under your example, would be relinquishing the audit service, as a matter of fact, to provide non-audit services, then there would be a new auditor providing the audit services and presumably they should pick up, if the system is working, the audit issues which form the basis of the promise to generate non-audit services work. Do you understand what I mean?

Prof. Schmulow: I do, and I very respectfully must disagree with the proposition of the question, because audit is not a forensic exercise; audit is simply an exercise where auditors confirm the veracity of documents that the firm has chosen to show them. So whether a new auditor would pick up something that was wrong in the past is questionable, and I take you to some of the spectacular audit failures that have happened in the last 10 or 15 years—Carillion is an example. I have in my notes several others. But there have been a whole number of spectacular audit failures—Carillion, BHS et cetera. So I think that putting a degree of faith in the inviolability of audit is misplaced. In fact, one of the things that the Brydon review in the United Kingdom would have done, had it been mandated, is require auditors to take a more forensic approach. So that forensic approach is lacking.

Senator SCARR: Can I move on to another question. As I understand the position in the UK, the Financial Reporting Council moved down the path of what I will refer to as operational separation of audit and non-audit services within a single firm. From your perspective, do you have a view with respect to that approach?

Prof. Schmulow: Half-baked.

Senator SCARR: Okay. Is there any jurisdiction at the moment, to your knowledge, which actually has successfully implemented this approach of completely separating—basically presumably setting up audit-only accounting firms, so the only things these firms can do is audit? Has this ever been applied anywhere?

Prof. Schmulow: No, but that is what was called for by the House of Commons review in 2019—a complete separation.

Senator SCARR: Okay. Do you have any views with respect to, if we were to do this, how it might impact the provision of audit services? I am happy for you to take this on notice. Has there been any research undertaken with respect to the issue? At the moment we have a shallow pool of firms that can provide audit services, especially for the large corporates. That has been commented on, and I think that lack of competition is a weakness of the system. How would this approach impact that issue in terms of the supply of audit services? Do you have any views with respect to that?

Prof. Schmulow: I don't think it would affect the supply of audit services at all, because, if it is a thin bench at the moment, then it will be a thin bench after the separation. People who do audit are people who do audit. If they are doing audit at the moment under a combined model, in all likelihood they would be doing audit in the future under a separated model.

Senator SCARR: I will move on to the next question, which is that big audit be prohibited from owning legal practices. Is the issue big audit or is the issue firms that provide taxation services owning legal practices? Under your scenario, the audit firms would only do audit anyway, so that would be how that would be addressed. But, from your perspective, the issue in terms of legal practices seems to be attached more to the provision of taxation structure and advice rather than provision of the audit services. Is that correct?

Prof. Schmulow: I would say that provision of legal services and the conflicts that arise with the provision of tax advice is the thin edge of the wedge. But it is not confined to that. Auditors and lawyers are expected to be on opposing sides in cases of trading in insolvency or defective financial statements, and I think lawyers and accounting firms should not be mixed.

Senator SCARR: In my experience, sometimes the same law firms can actually be on the same side as a particular accounting firm, and you might have liquidators appointed from within an accounting firm, and the liquidators need lawyers, and obviously there would be lawyers representing creditors and other stakeholders. So there are situations where lawyers and accountants can actually be on the same side. That is the case, is it not?

Prof. Schmulow: Yes, but they come to being on the same side through an arms-length association with one another. An audit-only firm appointing lawyers to assist it in a case of trading in insolvency is not the same as auditors dealing with a case of trading in insolvency and roping in their own tame law firm which operates at their behest. That is the nature and crux of the conflict of interest.

Senator SCARR: Alright. I understand the point. In terms of this legal professional privilege point and the inappropriate taking of legal professional privilege, let's assume that accounting firms no longer have legal practices. The issue could still arise, could it not, in terms of an accounting firm having a business relationship with the legal firm, so that when the accounting firm provides advice the legal firm is providing advice. On your example of a lawyer being present at the meetings, instead of a lawyer coming from within the firm, they simply get the lawyer to come from an external firm. So it is not necessarily going to cure the entire issue, is it?

Prof. Schmulow: An accounting firm calling upon a separate law firm to do things which in that law firm would raise eyebrows is, I think, a far more difficult row to hoe and a far more difficult arrangement to strike than simply snapping your fingers, if I can pick up a phone and say, 'Send us one of your apprentice lawyers. He can sit here with his headphones on and listen to the footy, as long as he is in the room.' I think that if an audit firm called up a law firm and said, 'That is what we want you to do for us,' the law firm would be able to say, 'Well, we are not a play-play pretend law firm; we have other clients, we have other businesses we look after, and, if we severely damage our reputation, then all of those other businesses that we look after will turn away from us,' whereas if you have a law firm that is a part of an audit firm, they do not have any other businesses they look after. The only business they look after is PwC.

CHAIR: Senator Scarr, I believe there might be time for one more question from you, and I believe there is then one question from Senator Pratt. Professor Schmulow, I just want to draw attention to your submission number 68, page 7, where we discuss Peter John Collins and the tranche of emails a lot with regard to the matter of confidential material that was used. But, importantly, you note in your submission to us that the former ATO deputy commissioner Mark Konza said the misuse of legal privilege was an issue of longstanding concern, and that the latest tranche of PwC emails released last week show that LPP was routinely applied to all internal discussions on how to exploit information provided by its former head of international tax, Peter Collins, through his role as an adviser to the government. So that dimension of the legal protection is well evidenced in those 144 pages, in addition to the dominant story that is told out of those documents. We will have a last question from you, Senator Scarr, and then one from Senator Pratt.

Senator SCARR: My last question is in relation to the 10-year clean slate recommendation. Feel free to take this on notice, but I would be interested to know if there are any examples of that sort of approach being taken in any

jurisdictions and how those issues are managed in terms of imposing that sort of penalty, just to assist us getting our heads around an appropriate time on the bench as it were.

Prof. Schmulow: I am not, offhand, aware of such arrangements elsewhere. I can tell you that, for example, for facilitating corruption in South Africa, McKinsey was banned from doing work in the United Kingdom. I believe that ban was overturned after they challenged it in court. But I would say this: I believe that a 10-year ban, or a requirement that a firm report any scandal that had been attached to them in the last 10 years, is a fantastic idea.

Senator SCARR: Thank you, Professor.

CHAIR: We will go over to you, Senator Pratt, for the last question.

Senator PRATT: In relation to internal audit and non-audit—and I guess by 'non-audit' we mean audit for non-financial matters such as aged care, child care and those kinds of standards—some of these firms are involved in the audit of regulatory matters rather than just financial ones. That is certainly the case here in Australia, for example, within aged care. I would like to know how we go about making a clear recommendation about how those should be divided in terms of what firms are allowed to do what. In that context, how often do non-audit services move at the same time as an audit function does, because financial audits are required to rotate by law?

Prof. Schmulow: Senator Pratt, I am not qualified to answer that question. I do apologise.

Senator PRATT: No, you are eminently qualified by the fact that you do not consider yourself an expert in those things! That just gives me confidence in what you have already said in evidence.

CHAIR: Thank you, Senator Pratt. I will ask this—again on notice. There will probably be further questions on notice. Associate Professor Schmulow, for the section of your submission where you talk about walking both sides of the street and how you deal with the public sector and private sector work separately—I note the evidence that you've given there—I was wondering if you could provide a recommendation of what you think best practice might look like. As I read your submission, I didn't really pick up on a recommendation around it; it was more of a description of what the problem was, and I think we're certainly aware of that. I'll just leave that question with you, if I can.

We thank you very much for your evidence today, Associate Professor Schmulow. Questions on notice should be provided to the committee by 29 May, and the committee will continue very shortly with evidence from the UK Financial Reporting Council.

Prof. Schmulow: Thank you, senators. It's been a privilege to serve your inquiry.

CHAIR: Thank you very much.

BABINGTON, Mr Mark, Executive Director, Regulatory Standards, UK Financial Reporting Council; Member, International Ethics Standards Board for Accountants

[16:06]

CHAIR: I welcome Mr Mark Babington from the UK Financial Reporting Council. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I note that the giving false or misleading evidence is a serious matter and may be regarded as a contempt of the Parliament.

We did have the International Ethics Standards Board for Accountants—IESBA—here in person this morning, and they suggested that there were many questions we asked that you would be able to assist us with, so we give great thanks ahead of your evidence. I invite you to make a short opening statement, and then the committee members will have some questions for you.

Mr Babington: One of the issues that is obviously of great relevance to the committee and to the work that you're doing is how we ensure that audit firms have an appropriate focus on the importance of audits and don't lose sight of the public interest mandate that they have in delivering that work. One of the things that we have wrestled with in the UK is that, in a multiservice business, audit represents a comparatively small percentage of the revenue that's earned. Therefore, there needs to be a regulatory regime that ensures that audit is almost protected within that regime.

In the UK there are four broad areas that we've looked at. The first is that we have our Audit Firm Governance Code, which puts in place the need for public interest representation within the governance of large audit firms carrying out listed-entity audits and audits of public interest entities. I also submitted to the committee details of our operational separation regime whereby, for the largest audit firms in the UK, we have put in place a virtual ring fence around the audit business where audit is the majority of that business' focus. What we require is for there to be a separate board, focused on delivery of high-quality audits in accordance with that public interest remit. What it also requires is that that audit business understands the risk posed by conflicts and is also able to demonstrate that the audit business is standalone and to earn revenues to maintain it.

We also look very carefully at the prohibitions over the non-audit services that auditors are allowed to provide in our ethical standard. A number of years ago we moved away from a list of prohibited services to a narrower list of permitted services for public interest entity audits, and we look at additional prohibitions where we feel those are necessary.

We also operate in the UK, under legislation, a non-audit services cap which puts a maximum on the level of non-audit services that an audit firm is allowed to offer to its clients. Of course, these are all measures that we've put in place within our regulatory regimes. One of the things we continue to work with colleagues in government over is the need for appropriate legislative underpinning of some of the measures we have in place.

Those are my opening statements, but I'm very happy to take the committee's questions and deal with any issues you want to raise.

CHAIR: Thank you very much. Can you provide clarification around the revenue? You mentioned the revenue of the audit section. We've had evidence here about audit now being a loss leader. That's been denied and then it's been affirmed and then there are figures that show that it's the case and then they're disputed. There's so much static on the line. What's the situation with revenue? Is it corralled for the partners who are involved in audit or is it shared across the entities regardless of the operational separation?

Mr Babington: We require the ring fenced audit firm to be sustainable in its own right, so therefore the revenues that are earned from the audit business, from the business that's within that ring fence, need to be sufficient to sustain that business. So there can't be—in a sense—a subsidy from other parts of the business. If there are transactions between the audit practice and the rest of the firm, they need to be conducted and priced on a full arms-length basis, so there's no revenue to the audit practice in the form of fees for introducing business to other parts of the firm. And as part of that, we require the audit practice to provide us with a separate profit and loss account also explaining the overhead absorption of its costs on an equitable basis.

CHAIR: In my envisioning of the future response to such a structure here, I can hear people talking about how it's overregulation and that requirements of further documentation are not necessarily going to change anything. And it doesn't answer my question about what happens to the profit from the audit part of the company and the sharing of that profit with partners in the whole firm.

Mr Babington: The profit that the audit business makes is distributed amongst those in the audit business. So partners in the firm only receive their remuneration from the audit business. Those who are in the consulting

business do not receive money from the audit business and vice versa. So if you're an audit partner, your distribution, your profit, is only from the earnings of the audit business within that ring fence.

CHAIR: The requirement for them to report—I think you mentioned profit and loss statements—in some ways makes them a little bit more transparent, like a company might have to report. Is it essentially turning these partnerships into companies in terms of their reporting requirements?

Mr Babington: The reporting requirements on limited liability partnerships, which all of the large firms in the UK are, still require them to produce financial statements, so this is almost a separate financial statement for a component of that business. We also have a requirement for audit firms to produce a transparency report annually, which also shows the revenues earned from their public interest entity audits as well as detailing the number of public interest audits they carry out.

CHAIR: I genuinely appreciate of you being here, and I don't intend to be rude, but I want to put to you some of the arguments against the UK model that have been put to me. I can sum up as: it's just too complicated; it will never work in Australia; they think they're doing a good job in the UK, but it's not going to work here; it would cost too much anyway; and there's not enough business in Australia to make that model work here. That's the scuttlebutt that's going around. Feel free to take personal offence! Can I give you an opportunity to give me the counterargument?

Mr Babington: I suppose the main counterargument is that we proposed these principles for operational separation in 2020 and asked the largest firms to implement them on a voluntary basis ahead of government passing legislation. The fact that all of them have been able to implement these principles on a voluntary basis indicates to me that it can't be as difficult and challenging as, perhaps, some of the other witnesses that have given evidence to your committee have stated. One of the things that we try to do is make sure that these principles operate in a way that can be delivered without an excessive regulatory burden but in a way that supports public confidence in the audit market.

CHAIR: That's very helpful. The other argument that's mounted is that there aren't sufficient people training to be auditors or who are interested in being auditors for this model—which you've implemented seemingly successfully—to be sustainable. The argument is that, ultimately, the work of the audit-dedicated entity would just become overwhelming because there wouldn't be enough people to do the job, and that is more of a risk than doing nothing. What's your response to that?

Mr Babington: I agree that the audit market globally is constrained. There is a shortage of talent, and there is difficulty in recruiting new people. But I don't believe that is due to operational separation requirements or anything else. There is a need for the profession globally to step up and ensure that the profession is attractive to new entrants. It is just a reflection of the fact that the business model has changed.

In the UK, we have been successful in making a career in audit a more attractive option. A number of years ago, for instance, the professional bodies in the UK provided a route for qualification for school leavers—people who hadn't gone through university and didn't have a degree—and that has brought a new cadre of people in. But it's really important that the profession doesn't ossify and just say, 'We do things in the same way.' There is a need to bring in new talent and new skills, and that's true in any profession. The audit profession needs to develop as new skills are needed in the space of sustainability and dealing with data, digital and AI technology. All of those are new skills, and it just shows the need to continue to develop. So, saying that there aren't enough people is, I think, looking for an easy way out.

CHAIR: That skill development gap that you're describing is currently being filled only by bringing in people who are supposedly experts in those other subsidiary elements of AI, cyber and IT capabilities. But you're proposing a model that embeds those skills as a matter of course as part of the audit function, because they are clearly required.

Mr Babington: We know, from the way in which the qualification develops in the UK, for instance, that professional bodies are looking at the syllabuses that they use to train trainee accountants to make sure that they have that broad range of skills. But there will always be people in audit that specialise. For instance, for years and years there has been the existence of valuation specialists. They're critical to supporting an audit. That model is just leveraged and applied to other areas of specialism.

CHAIR: What about the board structure? The great salve to the PwC Peter-John Collins scandal here has been a concession to change the structure of the PwC board and put in independent board members. That has been sold as the solution to the problem. The new CEO imposed by PwC International, Mr Burrowes, is calling, through the media, for this committee to move on and the whole thing to be forgotten. Is a governance change that involves putting in independent board members sufficient to fix the problem, and how do board members who are in the corralled audit sector now interact with the rest of the board?

Mr Babington: We recognise that this is a real challenge, because in our model in the UK the audit firms are limited liability partnerships, so therefore those who sit on the boards are ultimately the owners and have a vested interest in the business. Therefore, under our principles for operational separation, we require there to be a separate audit board that provides independent oversight of the audit practice. This is its most senior governance body, and it's tasked with ensuring that there's independent oversight on how that firm delivers high-quality audits. We require that board to establish and promote a culture that's focused on supporting the public interest, and that board needs to be chaired by a non-executive member and have a majority of its members be non-executive members. That provides a way of ensuring that the most senior leadership of that audit function has an appropriate level of independent challenge and that it has appropriate skills to be able to ensure that the public interest is properly supported and represented in that decision-making, and that provides independent oversight of the chief executive or managing partner of that audit business and also of how that business delivers the strategy that it's set out. So it does provide tension in the system by ensuring that the leadership and management of that business are not, effectively, solely represented by the owners.

CHAIR: Thank you. There are many more questions in my mind, but I'm going to go right now to Senator Pocock.

Senator BARBARA POCOCK: Thank you, Mr Babington, for being here. I just want to go back a little bit over the things you've already said. I'm sorry if that is painful, but I want to make sure I understand clearly what you have put to us. You've described it as a 'ring fence around audit work' and just clarified that their governance structure is entirely independent from other board structures within the firm. Their ruling board is this independent audit board with its non-executive membership and so on. They aren't nestled under a larger board. Is that correct?

Mr Babington: Effectively, you may have a board that runs a multidisciplinary firm, but the audit business is required to have its own board, and that board has a majority of its members being non-executive members and is chaired by a non-executive member.

Senator BARBARA POCOCK: Yes, thank you. Can you say a little more about the permitted services—the list of permitted services—and what effect that has?

Mr Babington: The intention of the list of permitted services for public interest entity audits is intended to make sure that the services that an auditor is able to offer are closely linked to the audit itself. What you have within the list of permitted services are, for instance, services to support regulatory or legal reporting by an entity—for instance, client assets reporting in a financial services business, or a regulated entity reporting on regulatory financial statements. Examples of permitted services that are subject to the non-audit services cap may include the provision of assurance on interim financial information that's reported to markets—things that an objective, reasonable, informed third party would not consider would compromise the independence of that audit firm; extended assurance within the annual report and accounts, so in the front half of the annual reports; and other things—for instance, reporting on government grants. So it's meant to say that what these services are is closely linked to your role as auditor, but they're not wider services.

Senator BARBARA POCOCK: So they can't be a valuation of a government program or a consulting service to another firm?

Mr Babington: We don't include those consulting services within the list of permitted services. The permitted services are those that can be provided in a way that doesn't threaten the independence of the audit firm. It's a narrow list of services, but it's also subject to a non-audit service cap which limits the amount that the audit firm can earn from these services.

Senator BARBARA POCOCK: Give us a sense of what the dimensions of that cap are within the larger business of audit.

Mr Babington: In law the non-audit services cap is a 70 per cent cap. It's worked out on a rolling three-year basis. Non-audit services should not exceed 70 per cent of the audit fee. In practice, from the largest listed firms in the UK, they tend to operate at a much lower percentage—on average, between about 20 and 30 per cent of the audit fee. The provision of non-audit services by the auditor in a public interest entity has to be agreed upon by the audit committee in advance. It can't just be something that is agreed upon between the auditor and management.

Senator BARBARA POCOCK: Could you walk us through the process of implementation, which you pointed to in responding to Senator O'Neill's question? From what you said, the legislation was proposed in 2020 on a voluntary basis with the possible threat—if I can use that word—of going to legislation, but the voluntary adoption was strong enough for you not to have to do some things in legislation. Am I reading your answer correctly?

Mr Babington: It's correct that we do not have legislation in the UK yet. We proposed the principles in 2020. We consulted on those principles and we issued a final version in 2021. We told firms that they had an implementation

period of four years, from when those principles were finalised. Firms have made progress in each of the years since. But, by the end of 2024, there will be a full implementation of that operational ring fence. We will have that operational separation that was set out in the principles.

Senator BARBARA POCOCK: Do you believe that what you are doing is giving you integrity in the system and eliminating that conflict of interest risk? Are you satisfied with the consequences of what you're seeing?

Mr Babington: We are satisfied with the way in which the process has worked. It addresses an inherent challenge. I believe this challenge is one that is very relevant in your context in Australia, where your large audit firms earn quite a small percentage of their revenue from audits. Therefore, the public interest focus, which is absolutely critical to the delivery of audit, may get overlooked by more commercial interests. What we've done is ensure that those who are running the audit business are focused on the integrity of audits and ensuring that the business is being run in accordance with those public interest objectives.

CHAIR: Thank you for your language around public interest. I think, on page 4 of your submission, you make it very, very clear. We've had some considerable discussion about it, and I think, just for the record and for those who might be listening, this description is worth putting out in a public place: 'Public interest is an abstract concept for which there is no single definition. Its meaning depends on the context. Public interest can be described as being about putting the common good and wellbeing of society above the interests of an individual or a small group of individuals. This meaning resonates across a range of different contexts.' I think that that is very clear and probably very useful for us in our deliberations going forward and in clarifying, for the public, what the IESBA declarations about public interest are too. Back to you, Senator Pocock.

Senator BARBARA POCOCK: What advice might you give a country like Australia, based on your experience, as we attempt to deal with this particular challenge around the integrity of our audit and mixed business questions?

Mr Babington: One of the things that I'm very mindful of is that, when you're looking at the audits of large corporates, we have only a limited number of providers in that market, and therefore, in a sense, you have to protect it carefully. One of the things that we can't afford is for a small number of firms to become a smaller number of firms because of either a failure of audit or a failure of integrity that undermines public confidence. Therefore, people will tell your committee that you shouldn't rush to legislate and that you shouldn't rush to put measures in place, but there is a significant risk that a failure will undermine an already precarious market and that would result in fewer firms being able to provide that service. So my advice would be for the committee to consider how it can provide a clear and operable regulatory framework but one that offers an appropriate protection to audit, which is an important public interest function.

Senator BARBARA POCOCK: That's a very useful answer. I just want to go to a story that's been reported here in Australia today about your fining of EY and PwC to the total tune of over nine million pounds, which goes to your previous answer where the FRC judged that there were serious failures in relation to London Capital & Finance and a massive loss of 237 million pounds to investors. I just have a few questions around that. One is: I understand, that process took you four years—I imagine that was very resource intensive. I'm conscious that I'm looking at a table provided by our Treasury department about resourcing around audit quality, and I understand that your organisation has 128 audit quality inspection staff, while we have 13 in Australia, according to this table. I'm referring to a table on page 36 of the Treasury submission to this committee. My question is around resourcing. Our resourcing looks very lean in relation to the pursuit of very big cases like this one in London Capital & Finance.

My second question is: is this an example of what you're saying—that you've managed to keep a number of firms in the game, but your legislation allows you to pursue them where there are failures, in a more muscular way?

Mr Babington: I will deal with the second point first. We have powers, under legislation, to take enforcement action. We have a public process that is set out on our website that anyone can look at. Our enforcement team carries out investigations and then will propose sanctions. That sanctioning regime was subject to an independent review by a former judge who provided us with their advice and input—again, we made that report available. The intention of our sanctioning regime is that it drives the right outcomes so that it provides a deterrent effect. But, although a lot of the headlines will focus on the level of the fine, equally important is the ability of our sanctions regime to be able to impose non-financial sanctions—requirements, for instance, for additional training or areas of focus. Ultimately, in all of our enforcement cases, if an audit firm chooses not to settle and accept the sanction, they have the right to go to an independent tribunal. That's an important part of that public process and the transparency that we have.

You're right that it does take a significant amount of resource. We have invested in that resource over a number of years. As an example, I joined the UK Financial Reporting Council in 2015. At that point, the UK Financial Reporting Council comprised around 160 staff. At the moment, we are just shy of 500 staff, and that is an investment

in more people in audit-quality inspections, in our enforcement function to be able to progress investigations at greater speed, and in our policy functions to allow us to continue to respond to things that emerge as a result of our work. We're very careful to take the lessons from our inspection and enforcement work and to consider the policy implications of those.

Senator BARBARA POCOCK: Thank you for that.

CHAIR: Could I put a question on notice? We've had evidence from ASIC about their decision to change the audit structures to do risk-weighted audit inspections and to move away from random audit inspections. I have heard, in other contexts, that this is at odds with best practice internationally. What is your view about that practice?

Mr Babington: When we carry out audit inspections, we do consider risk in our selection of those audits that we look at, and that risk could be determined by lessons learned from previous inspection rounds or in response to particular things in the market. For instance, when we had the COVID pandemic, we selected more businesses that faced operational risk as a result of not being able to open. So there is a role for a risk based sample, but it is important that you get that wider market coverage.

I should say that we are carrying out around 150 or 160 inspections a year, which allows us to properly cover the public interest entity market that we're required to inspect and provide an appropriate focus for the work of the largest audit firms. If you're an auditor of small public-interest entities, and you were to do one or two audits of public interest entities, you may get inspected only once every five or six years. However, if you're one of the largest firms, you are inspected every year. We may be looking at, say, 20 of your audits to ensure that the work is being carried out to an appropriate standard.

CHAIR: Thank you very much.

Senator BARBARA POCOCK: I wanted to go to your penalties regime and its effectiveness. It's something I'm turning my mind to. You fined KPMG a record 21 million pounds for their role in Carillion's collapse, which, of course, was one of the biggest UK corporate failures—I understand that was owing to inaction that led to the financial collapses of those firms that were caught there. This fine today for EY and PwC is 9.8 million pounds—maybe a little more—which, relative to revenue, is probably a fairly modest fine, if I may say so. Do you think your regime of fining is actually doing the job?

You mentioned that you've got other penalties there, and training was one of the penalties that was imposed on PwC here. Are people, for example, losing their licence to audit when they have been personally associated with a failure of audit? What licensing, or other penalties are there that really give effect—you've had this massive failure with Carillion; now, with other firms, is the message getting through and are the penalties diverse enough and strong enough?

Mr Babington: I would say that there are three strands to any sanctioning regime. We can take enforcement action and impose a sanction on the audit firm. We can also impose a sanction on the audit partner—the engagement partner who signed the report. This either can be a financial penalty or it can be that they are barred from the profession for a period. There are examples of sanctions where we have required an audit engagement partner to be barred from their profession either permanently or for an extended period. That deals with that issue.

The other regime that we operate is one where the FRC also licenses public interest entity auditors to operate. For a public interest entity auditor to operate they have to register with us, and that registration regime also gives us the opportunity to impose conditions on that license where there are justified concerns about the quality of work. Although the headline number that gets most coverage is, 'What did you fine the audit firm?', there's also a regime that operates over the audit engagement partner and will house the public interest entity auditor registration mechanism, which provides additional regulatory tools.

CHAIR: In this instance, Senator Pocock, there was the addition of naming the person. In the public reporting that I've seen—for example, EY was reported here in an article by Justin Cash of *Financial News* as saying that there was a seven-million-pound EY payment, but Neil Parker, for their role in the audit, paid 75,000 pounds. For PwC it was a seven-million-pound fine, and there was a 150,000-pound fine for engagement partner Jessica Miller. This article also talks about a third auditor, naming Emma Benjamin of Oliver Clive & Co, where the company was fined 60,000 pounds and Emma Benjamin was fined 20,000 pounds.

We don't really see that on a regular basis here in this country. It's pretty unusual to see that. What are the consequences for those individuals once named, and where is that made known? We've had evidence today about how difficult it is for one of our co-regulators, the IPA, to find out what happens when ASIC sanctions somebody. Where are these people known to the public and to their sector? Is just in the public place through media, or is there a special register?

Mr Babington: We operate with full transparency. The powers that we have in terms of sanctioning audit firms and individuals allow the FRC to make it a matter of public record that that has taken place, unless there is a justification for not doing so. On our website you will be able to see decision notices for our major enforcement cases that set out the basis for the sanction and why the investigation concluded it was appropriate. We issue a press notice to inform people of sanctions that have been issued or, for instance, when we close an investigation, because we believe it is an important measure for supporting public confidence that people can see that there is an enforcement regime that operates and does so in the public gaze. I think that is an important part. We consider transparency to be an important element of the sanctioning regime and the enforcement regime that we have in order to be able to underpin confidence.

CHAIR: Does that stay up indefinitely? I mean, it's on the internet, so I suppose it's always there.

Mr Babington: Once they're out there, they're a matter of public record.

Senator BARBARA POCOCK: You were continuing.

Mr Babington: We are also aware that where these are reported there is an impact on individuals personally. Therefore, it is important that it is handled transparently and fairly. If you were to speak to my enforcement colleagues within the Financial Reporting Council, one of the things they would tell you is that consistency and fairness in our procedures is a really critical part of it. But it is there to underpin public confidence.

Senator BARBARA POCOCK: Thank you for that. I've got one last question before handing back to the chair. I wanted to hear about the governance arrangements for the council. What are the arrangements for the membership and the regulation of the composition? I'm curious because the question of capture of regulatory bodies has been something of real interest to this committee. For example, is it possible for an existing partner in a large consulting or financial services firm to be part of the council? How do you manage your governance to ensure independence and integrity?

Mr Babington: The Financial Reporting Council is an arms-length body. We are sponsored by the Department for Business and Trade in the UK. Our board appointments are all made by ministers. There is a full public appointments process that governs people being appointed to our board. Specifically, in response to your question, a serving practitioner cannot be a member of the FRC board. So if you have been a practitioner there is a requirement for you to have undergone a 'cooling off' period—which, from memory, is five years—before you can sit on the FRC board. Although we can have retired practitioners, we are not allowed to have current practitioners sitting on our board.

Senator BARBARA POCOCK: Can a retired practitioner be in receipt of a trailing retirement income and still sit on the board? You may need to take that on notice, but I'm curious.

Mr Babington: If you don't mind, I will take that one away and check. The public appointments process does not make any condition over income that individuals earn, although we do have a full public register of interests of members of the board that are all disclosed.

Senator BARBARA POCOCK: Thanks so much for your evidence, Mr Babbington.

CHAIR: You would be aware, I'm sure, of the PwC situation here in Australia and the fact that Kristin Stubbins came in as the Australian former head of audit to take over as the CEO after Mr Seymour left. She has given evidence to this committee that she wanted to continue in the role. We didn't know, at the time that it occurred, that Mr Burrows was actually imposed on the Australian PwC franchise by the global board. Since that occurred and has become publicly known, we found it very difficult to get clear answers and what we consider appropriate responses from Mr Burrows and PwC with regard to accountability. The latest example is the refusal to provide the Australian Parliament with the Linklaters report, which was commissioned by PwC International—a holding company or entity set up as part of PwC in London, as we understand. This report that I'm referring to examines the complicity of overseas partners in the Australian tax heist. Does the FRC have a copy? Do you have possession of the Linklaters report?

Mr Babington: I do not know.

CHAIR: Could you request that, Mr Babbington?

Mr Babington: I would have to take that away and find out. I can't answer that question at the moment, but I'm very happy to come back to you once I've been able to take advice.

CHAIR: Thank you very much. We had some evidence today from Associate Professor Andrew Schmulow, which I'll make sure the committee sends to you, who spoke about the wholesale use of client owned legal professional privilege, and a refusal to waive that client privilege despite multiple requests from this parliament of Mr Burrows, as the head of PwC Australia, and by this committee and its parliament of Mr Bob Moritz, and a refusal

from him. We have, I think, sought to find out if we could get any information from the Australian representative on that holding company—PwC International in London—and we have not been able to get this document, by hook or by crook.

We think it is a very important document for the international awareness, in the same way that you've just described your enforcement procedures to sunlight being the best disinfectant. We think this is not just of interest to us. We think this is of international import. I'd urge you, Mr Babington, to give it consideration and assist our committee in any way that you can. Whether that needs to go through IESBA or the PCAOB or some other entity—perhaps the OECD—we're all for getting that document in the public place. That's the context of my request to you, Mr Babington.

Mr Babington: I understand that. One comment I would make in response is that I think international cooperation in audit regulation is extremely important. The FRC is a member of IFIAR, the International Federation of Independent Audit Regulators. Because audit businesses are global businesses, it's important that we work with other regulators in order to be able to share information and to be able to ensure that we have appropriate oversight of these fundamentally important global entities. I think there is much more that could be done on that international footing to make cooperation broader and to share information better.

I would certainly welcome and encourage any consideration that your committee might make about emphasising the importance of regulators working together in looking at these global businesses, because they have absolutely fundamental implications to national jurisdictions, but they require us to work together to address them.

CHAIR: One thing is clear: the communication lines across these international conglomerates are very open and active amongst themselves, and they have a very significant structural advantage in that regard over any regulatory authority if its regulatory authority ends at the edges of our countries. I look forward to thinking about the ways in which we might find a smooth path to sharing information to get around the hiddenness of some of the practice and the repeat performances of it in different jurisdictions one after the other—at considerable cost to the public good.

PwC and other consulting firms have repeatedly attempted to frame their issues of ethical failure as a result of a few bad apples. Clearly the UK has had similar issues, whether it's the Bains ban due to state level corruption or EY's audit failures with Thomas Cook or Fujitsu's gaslighting of the British Post Office. Is there something inherently wrong with the consulting and tax industry?

Mr Babington: I don't think there's anything inherently wrong with it. The issue that you raise in your question really goes to the heart of the importance of the leadership of any firm setting the right culture, because if you follow the example that's put to you that it's a few bad apples—the culture in the entity allowed those bad apples to grow and to continue. I would say that one of the important aspects of our supervisory work over audit firms is to actually look at the culture and governance that's in place, because that is the mechanism through which you seek to identify these issues and address them before they cause a more significant problem. So the importance of culture is really critical. You've mentioned obviously that the IESBA chair has given evidence to the committee. One of the things that IESBA is looking at is whether or not we need to develop the code in a way that looks more specifically at requirements around the culture and governance of firms.

CHAIR: I will hark back to my commentary around the international nature of offence, in my view, that we should take from what we've seen—particularly with the 144 pages of emails and the information flow across an international network with PwC—that these jurisdictional issues of how to regulate firms that operate everywhere and nowhere really do present a serious dilemma not just to the Australian government but also internationally. The control of the PwC franchise here—indeed for all of the big four—is something that was certainly unknown to us until we found out about the imposition of Mr Burrowes. Do you have a better insight into the business model and the power structures of these big entities that are so fundamental to the proper functioning of the markets?

Mr Babington: Only to say that, yes, I am aware of the way in which the global networks operate. Indeed the model tends to be one where the global entity licenses the provision of certain things—for instance, branding, technology, methodology—to member firms. The issue perhaps that your question brings to the forefront is that, in many jurisdictions, the regulatory framework focuses on the regulation of audits. As we've discussed already, in the Australian context, audit is a small percentage of the business that is actually tasked with delivering it. It may be an even smaller percentage of the global entity that is responsible for the leadership of the network. That's why we set great store by the regime that we put in place—to put, in a sense, a regulatory focus and a regulatory ring fence on the delivery of the audit business to ensure that we're able to understand and address the risks that are posed through the delivery model.

It's a slightly unusual state of affairs, isn't it, where you might have an entity that's critical for the functioning of capital markets and critical for confidence in business, where maybe 15 per cent of its activity is regulated and the rest isn't?

CHAIR: Mr Babington, in whose jurisdiction do you think these firms really hold their authority and to whom are they collectively accountable?

Mr Babington: In terms of accountability, from a UK perspective of course the large audit firms are all limited liability partnerships, so their accountability is to their members who ultimately are the people delivering the services. Every audit firm, in most jurisdictions, has a requirement to register. That gives a route for accountability, as I explained earlier, with our Public Interest Entity registration scheme. That's why I talked about the importance of regulators working together. These international networks are perhaps in a grey area; they are not subject to the regulation of any individual national regulator. Do we come together to challenge and hold to account effectively? I think, because of the questions you're asking, the answer is: more has to be done.

CHAIR: Is there a broader international piece that needs to be put in place to oversee these firms? At the moment, we're sort of just relying on the US having reach beyond its borders to take action. The US PCAOB standards are not the ones that are operating in as many jurisdictions as the IESBA standards.

Mr Babington: Yes. As I mentioned earlier, there is a body, IFIAR—the International Forum of Independent Audit Regulators—that brings together regulators like the FRC, the PCAOB and ASIC from Australia. Unfortunately, the footprint of IFIAR is far from complete, because it has 56 members. Therefore, there are areas where there is no voice in some of these international discussions. I do think it shows the importance of being able to work together. I'm very pleased that we, for instance, have close relationships with a number of other regulators in order to address some of these issues. But you are right, in a sense. We are looking at an international issue through the lens of national regulation, and it doesn't always join up.

CHAIR: That is certainly my observation. I guess, the question then is: do the current international agreements, as they stand, need to be critiqued in terms of whether they are fit for purpose in regulating these firms which are showing wilfulness in skirting every possible avenue of accountability, wherever they possibly can do so?

Mr Babington, we are absolutely grateful for your willingness to go on the public record here, and hopefully build at least one more connection for the necessary international perspectives that are required to get past the game playing of: 'Let's have a crack at ripping off a few people in Australia, and if it works there, we'll try it somewhere else. We'll have our cheating scandal in Australia and get over that, but we'll keep it going in the Netherlands until they find us there. In the meantime, we'll just pursue profit at any cost, including the lack of public good.'

I thank you once again, Mr Babington, for your hard work in supporting the proper functioning of the markets in your jurisdiction, and for sharing your knowledge with us here in Australia. There will be questions on notice, I'm sure. Could you assist the committee by responding, if possible, by 29 May. If there's anything that you think we should know—that we aren't wise enough to ask yet—we would certainly appreciate any further information that you think may assist the committee in our deliberations before we really start to get to the point of thinking about our recommendations to the Parliament of Australia.

Mr Babington: Obviously I'm very happy to answer any further questions that the committee might have. I will certainly be watching the proceedings and recommendations of the committee with great interest. I think this is a really fundamental public interest issue, and the work that you do is really critical in underpinning public confidence and making sure that we have an effective regulatory framework around these important providers and services.

CHAIR: Absolutely. Every Australian with superannuation wants to make sure that they keep what they have, and they get a whole lot more because it's done safely. Mr Babington, I've just received notification that Senator Scarr has one more question.

Senator SCARR: Sorry about that. One of the curses of doing this remotely is that you get distracted at times by people in the office. Is the operational separation that's occurring in the UK currently being implemented? Are there any learnings from how this is working in practice? Is there anything we can learn from it, in terms of considering that as a potential model?

Mr Babington: The firms have been implementing operational separation progressively from 2021. By the end of this year, the implementation period will be complete. One of the things that we have always said is that we would report on how the regime is working and whether or not it requires any further tweaks or consideration. But we do have in place already the independent audit board that sits over the audit businesses of our largest audit firms. They do have in place the operational ring fence. The large firms are able to demonstrate that their audit business is viable and sustainable and pays its own way. We've also ensured we have a regime around the provision of non-audit services that mitigate threats to independents. We do publish publicly anything that the FRC produces. If there are

any reports that I can point the committee's attention to that would be helpful, I'll go away, look at those and alert the committee staff.

Senator SCARR: I think that would be very helpful. To the extent we consider it as a potential model, we can refer to reports on how it's working in practice and see progress on implementation. That would certainly be something I would be keenly interested in.

Mr Babington: I will go away and look at that for you.

CHAIR: That concludes today's hearing. Thank you to our secretariat, to broadcasting and to Hansard. Thank you to all witnesses who have attended, including our international guests and members of the public who have been in attendance in the course of the day.

Committee adjourned at 17:06