

Watchdog or Show Dog? Incentives and Competitive Advantages of the Big 4 under Australia's Professional Standards Acts

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Professional indemnity schemes sanctioned under Australia's Professional Standards Acts have allowed major accounting firms to expand and make most of their revenue from multi-disciplinary consulting services while protected from professional and personal liability by statutory limits intended to cover only traditional audit and insolvency services. In effect, the "Big 4" and other large accounting partnerships compete with other non-accounting consulting firms that do not have the same cover. The indemnity scheme assists the Big 4 to operate as quasi-corporations rather than being subject to the personal liabilities usually assumed of a partnership. By allowing consulting services to be treated in the same way as traditional accounting services, the Professional Services Council has favoured the commercial expansion of the Big 4 rather than prioritising the obligations of accounting firms to consumers and society generally.

INTRODUCTION

The "Big 4"¹ remain the world's largest audit firms but trade in a multitude of non-accounting consulting services with the assumed integrity, acumen and independence of public accountants, whose "distinguishing mark ... is ... acceptance of the responsibility to act in the public interest".² But the Big 4 are no longer solely, or even mainly, public accounting firms. Whereas the period from the 1930s to 1980s saw the Big 4 emerge, expand and come to dominate public accounting, the period from the 1990s has been characterised by their expansion and ultimate dominance of consulting and advisory services.³ In 2024 the Big 4 firms earned some AU\$330 billion dollars globally,⁴ an annual income only slightly smaller than Microsoft Corporation⁵ and larger than the national GDP of some 70% of nations.⁶ Of this, about one third was earned via independent audit oversight of corporate and public sector managers, the other two thirds, some AU\$220 billion dollars,⁷ was earned selling consulting and advice to these same corporate and public sector managers. The same year in Australia saw the Big 4 firms charge fees of

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¹ The "Big 4" firms are Deloitte, EY, KPMG and PwC, each a "global network" of entities formed under relevant law in each jurisdiction.

² Accounting Professional & Ethical Standards Board, *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* (Compiled as at January 2025) 54 [100.1].

³ Colin Ferguson et al, "Why Did the Big 4 Get So Large? Evidence from Australia" (2025) 30 *Review of Accounting Studies* <<https://doi.org/10.1007/s11142-025-09871-x>>.

⁴ Raphael Bohne, *Big 4: Revenue by Function 2024* (Statista, 6 January 2025) <<https://www.statista.com/statistics/250935/big-four-accounting-firms-breakdown-of-revenues/>>.

⁵ Forbes, *Forbes Global 2000 List* (12 June 2025) <<https://www.forbes.com/lists/global2000/>>.

⁶ World Bank, *GDP (current US\$)* (World Bank Data, 2024) <<https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=US>>.

⁷ Bohne, n 4.



AU\$10.1 billion Australian dollars, AU\$0.9 billion dollars larger than the Lend Lease Group,⁸ and twice that of Transurban Group.⁹ Of this, one third came from independent oversight of corporate and public sector managers, the other AU\$7.4 billion dollars from the sale of non-audit services to this same pool of corporate and public sector managers.¹⁰ To operate at this scale has required radical growth such that the Big 4 now have a global headcount of 1.5 million people,¹¹ with 41,000 staff¹² and more than 3,000 partners in Australia, of which a minority perform audit or public accounting.

This global transformation from audit institution to commercial phenomenon has prompted a wealth of theory concerned with the cause and effect of this change. A particular focus of the literature is concerned with impacts on the independence and reduction of the quality of Big 4 audits. Brackley et al's 2024 research paper "Reward for Failure: The Paradox of Audit Partners' Record Payouts Amidst Poor Audit Quality" provides a useful example of this genre, examining audit quality and Big 4 audit partner remuneration in the United Kingdom between 2010 and 2022. That study found three quarters of the 250 public company failures occurred without the auditor raising prior concern. In the same period audit partner salaries of the major firms grew 31% and the average size of regulatory penalty equated to 0.16% of Big 4 firm revenue,¹³ seeing that study's authors warn that:

auditors are currently incentivised to maintain good client relationships, rather than apply the principles of professional scepticism and enforce prudence ... ineffective regulatory, oversight and sanctions system and the limited liability for audit ... provides little disincentive partners at audit firms will continue to reap huge financial rewards, despite continued audit failures that harm business confidence and our economy more widely.¹⁴

The changed scale, role and observed problems of Big 4 professional and ethical misconduct in the United Kingdom, United States and elsewhere sees a relatively wide body of literature provide theories concerned of the fundamental conflict between the institutional logic of accounting professionalism and the commercial logic of very large, corporate-like structures within the same professional "habitus" as the companies they audit.¹⁵ Some have argued that audit is key to the wider commercial objectives of the Big 4 firms, with the logic of professionalism used to maintain and defend the beneficial commercial position and commercial behaviours of these firms.¹⁶ But a much more limited field of research has considered the

⁸ Transurban Group, *Corporate Report for the Year Ended 30 June 2024* (Report, 2024) 115 <<https://www.transurban.com/content/dam/investor-centre/04/2024-Corporate-Report.pdf>>.

⁹ Transurban Group, n 8.

¹⁰ Public sector entities are audited by the responsible Auditor-General but portions of this work are contracted to Big 4 and similarly large accounting firms.

¹¹ Calculated from: Deloitte, *Global Revenue Announcement FY2024* <<https://www.deloitte.com/global/en/about/press-room/global-revenue-announcement.html>>; PwC, "PwC Global Revenues Rise to US\$55.4 Billion" (Press Release, 2024) <<https://www.pwc.com/gx/en/news-room/press-releases/2024/pwc-global-revenues-rise-to-us-55-4-billion.html>>; EY, *EY Global Facts and Figures 2024* (Report, 2024) 4 <<https://www.ey.com/content/dam/ey-unified-site/ey-com/en-gl/campaigns/value-realized/documents/ey-gl-facts-and-figures-10-2024.pdf>>; KPMG, "Robust Growth for KPMG as Global Revenues Rise 5% to US\$38.4 Billion" (Press Release, 2024) <<https://kpmg.com/xx/en/media/press-releases/2024/12/robust-growth-for-kpmg-as-global-revenues-rise-5-percent-to-us-dollar-38-point-4-billion.html>>.

¹² Headcount figure calculated from Deloitte Migration Services Pty Ltd, *Submission to Jobs and Skills Australia: Draft Core Skills Occupations List Consultation, Jobs and Skills Australia* (28 May 2024) 4 <<https://www.jobsandskills.gov.au/sites/default/files/2024-08/Deloitte.pdf>>; Consultancy.com.au, *Big 4 Firm EY Is Both Axing and Promoting New Jobs in Australia* (3 March 2025) <<https://www.consultancy.com.au/news/10871/big-four-firm-ey-is-both-axing-and-promoting-new-jobs-in-australia>>; KPMG Australia, *About KPMG* <<https://kpmg.com/au/en/about.html>>; PwC Australia, *Annual Report 2024* (20 June 2024) <<https://www.pwc.com.au/about-us/reporting/PwC-Australia-Annual-Report-2024.pdf>>.

¹³ James Brackley and Adam Leaver, "Reward for Failure: The Paradox of Audit Partners' Record Payouts Amidst Poor Audit Quality" 3 (Report, Audit Reform Lab, 19 May 2024) <<https://auditreformlab.group.shef.ac.uk/reward-for-failure/>>.

¹⁴ Brackley and Leaver, n 13.

¹⁵ Craig Spence and Chris Carter, "An Exploration of the Professional Habitus in Big 4 Accounting Firms" (2014) 28(6) *Work, Employment and Society* 946 <<https://doi.org/10.1177/0950017013510762>>.

¹⁶ Neil J Dunne, Niamh M Brennan and Collette E Kirwan, "How the Big 4 Maintain and Defend Logic Equilibrium at Concurrent Performances" (2023) 94 *Critical Perspectives on Accounting* 102479 <<https://doi.org/10.1016/j.cpa.2022.102479>>. Neil J Dunne, Niamh M Brennan and Collette E Kirwan, "Impression Management and Big 4 Auditors: Scrutiny at a Public Inquiry" (2021) 88 *Accounting, Organizations and Society* 101170 <<https://doi.org/10.1016/j.aos.2020.101170>>.

effects and incentives in their larger role as consultant-advisors to corporate and public sector managers; or how work of this type is managed within the public interest and professional duties of these firms and their partners.¹⁷ An even more limited range of scholarly work considers the finer detail of the Big 4's unique Australian legal form, internal operating structures and resulting commercial incentives, matters of which the public debate in Australia and elsewhere had remained "rationally ignorant".¹⁸

Our paper seeks to begin to bridge these gaps by describing the development of and economic implications from Australia's *Professional Standards Acts*¹⁹ and the subsidiary accounting liability capping schemes benefiting the Big 4 and similar firms.

We argue that the 2007 expansion of the PSC-approved scheme administered by Chartered Accountants Australia & New Zealand (hereafter, CA ANZ) provides competitive advantage to the Big 4 accounting firms in consulting markets. We argue further that firm managers and principals profit from the sale of audit opinion and consulting services for which none of the partners, nor its managers, have any practical level of accountability. The scheme tends to encourage professional and managerial "rent seeking" at all levels of the Australian Big 4 firm, accelerating the globally observed cultural transition of accounting firms from audit "watchdogs" to consulting "lapdogs", largely dependent on client favour to sustain a high cost, high return and thinly capitalised operating model.

By negotiating a professional standards scheme that favours Big 4 and other large accounting firms against their non-accounting competitors in consulting markets, CA ANZ and its member firms have freed themselves to compete in the consultancy market to provide virtually any service, for which they bear virtually no liability or risk. Premised on lifting professional standards, the CA ANZ scheme has ultimately equipped the Big 4 to fully acquire the enterprise culture theorised by Sikka,²⁰ Morris,²¹ Grey²² and others, with no apparent disincentive. An enterprise culture in which revenue growth, expansion of the firm's activities and client base, and ultimately growing revenue and profits become the indicators of firm success.

In an enterprise culture, the historical ideals of public accounting serving the public interest, underpinned by professional conservatism, honesty and a spirit of collective integrity and accountability, survive in the Big 4's image of social responsibility and professional legitimacy.²³ Those traits are costly to uphold and are no longer inculcated as the defining priority in the Big 4 firms' internal operations and culture.²⁴

¹⁷ Bertrand Malsch, Marie-Soleil Tremblay and Jeffrey Cohen, "Non-audit Engagements and the Creation of Public Value: Consequences for the Public Interest" (2022) 178(2) *Journal of Business Ethics* 467 <<https://doi.org/10.1007/s10551-021-04777-5>>.

¹⁸ Spence and Carter, n 15.

¹⁹ *Professional Standards Act 1994* (NSW); *Professional Standards Act 1997* (WA); *Civil Law (Wrongs) Act 2002* (ACT); *Professional Standards Act 2003* (Vic); *Professional Standards Act 2004* (Qld); *Professional Standards Act 2004* (SA); *Professional Standards Act 2005* (NT); *Treasury Legislation Amendment (Professional Standards Schemes) Act 2004* (Cth).

²⁰ For example, see P Sikka, "Some Questions About the Governance of Auditing Firms" (2004) 1(2) *International Journal of Disclosure and Governance* 186. P Sikka, "Enterprise Culture and Accountancy Firms: New Masters of the Universe" (2008) 21(2) *Accounting, Auditing & Accountability Journal* 268. S Sikka, "Financial Crisis and the Silence of the Auditors" (2009) 34(6-7) *Accounting, Organizations and Society* 868. P Sikka et al, *Technical Report: Reforming the Auditing Industry* (2018) <<https://doi.org/10.13140/RG.2.2.15538.04802>>.

²¹ Paul Morris, "Freeing the Spirit of Enterprise: The Genesis and Development of the Concept of Enterprise Culture" in Russell Keat and Nicholas Abercrombie (eds), *Enterprise Culture* (Routledge, 1991).

²² Christopher Grey, "On Being a Professional in a Big Six Firm" (1998) 23(5-6) *Accounting, Organizations and Society* 569, 569-587.

²³ Andrew Whittle, Frank Mueller and Chris Carter, "The 'Big 4' in the Spotlight: Accountability and Professional Legitimacy in the UK Audit Market" (2016) 3 *Journal of Professions and Organization* 119, 119-41. A Duff, "Corporate Social Responsibility as a Legitimacy Maintenance Strategy in the Profession Accountancy Firm" (2017) 49 *British Accounting Review* 313.

²⁴ Neil J Dunne, Niamh M Brennan and Collette E Kirwan, "Impression Management and Big 4 Auditors: Scrutiny at a Public Inquiry" (2021) 88(C) *Accounting, Organizations and Society* 101170. Neil J Dunne, Niamh M Brennan, and Collette E Kirwan, "How the Big 4 Maintain and Defend Logic Equilibrium at Concurrent Performances" (2023) 94(C) *Critical Perspectives in Accounting* 102479.

By encouraging the PSC to expand the CA ANZ scheme's coverage to protect their consulting services, the Big 4 and CA ANZ appear to have successfully "captured" their regulator.²⁵ Big 4 firms have benefited handsomely, while the PSC is now left to justify how it has met its statutory objectives and served public's interest by expanding a liability capping scheme, intended for qualified accountants, to approve globally unique firm-wide liability caps to the Big 4 and similar audit cum consulting firms.

BACKGROUND

Professional standards legislation exists in every Australian jurisdiction,²⁶ providing a national system of statutory liability caps protecting certain approved professions in "tort, contract or otherwise".²⁷ Enacted between 1994 and 2005, these concurrent state Acts sought to remedy difficulties impacting the availability and cost of PI insurance for auditors, and some other professions.²⁸ The Second Reading speech addressed the intended effect of the legislation as providing:

limited liability for members of professional ... associations ... [and] ... greater protection to users of services ... by requiring ... insurance ... risk management ... and ... a complaints and disciplinary structure.²⁹

A key innovation intended of the Act was its creation of the statutory *Professional Standards Council* (PSC), designed to serve as a "meta regulator".³⁰ The PSC decides the creation or renewal of a professional scheme and is charged with monitoring the performance of each professional association's application of its scheme and enforcement of the profession's standards. "Meta regulation" by the PSC recognised deficiencies in both public regulation and self-regulation alone, and sought to combine elements of each in search of better incentives for professions and their associations to maintain and improve technical and ethical standards. The PSC acknowledges its oversight role as:

monitoring [each professional] associations' compliance with risk management strategies is an explicit statutory function of the Councils.³¹

Schedule 1 of the *Professional Standards Act 1994* (NSW) provides a model code of conduct that provides insight to the priority intended of the professional regulation role of associations with approved schemes. That Schedule specifically discusses disciplinary actions, where a covered professional:

has acted (or has failed to act) in such a way as to justify ... disciplinary action.³²

The model code provides sanctions ranging from mild reprimand, compulsory education, and supervised practice to expulsion from the professional association and thus a loss of the protections of its scheme.³³

In this article we focus on the effects of the recently renewed CA ANZ professional standards scheme, which caps civil liability for 38,000 Chartered Accountants in Australia; but also protects 2,674 consultants³⁴ and

²⁵ RG Walker, "Australia's ASRB. A Case Study of Political Activity and Regulatory 'Capture'" (1987) 17 *Accounting and Business Research* 269. K Pai and TD Tolleson, "The Capture Firms: Some Evidence" (2012) 13 *Journal of Applied Business and Economics* 84.

²⁶ *Professional Standards Act 1994* (NSW); *Professional Standards Act 1997* (WA); *Civil Law (Wrongs) Act 2002* (ACT); *Professional Standards Act 2003* (Vic); *Professional Standards Act 2004* (Qld); *Professional Standards Act 2004* (SA); *Professional Standards Act 2005* (NT); *Treasury Legislation Amendment (Professional Standards Schemes) Act 2004* (Cth).

²⁷ *Professional Standards Act 1994* (NSW) s 4.

²⁸ Note: The *Professional Standards Act 1994* (NSW) was enacted following a series of large damages claims against audit firms; the momentum for concurrent legislation was created of the collapse of HIH Group in 2001 discussed later in this paper.

²⁹ New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2934 (John Hannaford, Attorney-General).

³⁰ Professional Standards Councils, *21 Years of Regulatory Innovation through Professional Standards* (2015) 8.

³¹ Professional Standards Councils, [online] "The Role of the Professional Standards Councils, Presentation Materials of Iain Summers, to 'Responding to Risk – Insurance and Improvement Strategies'" (conference, 7 April 2022) <<https://psc.gov.au/news-and-publications/professional-standards-forums/responding-risk-insurance-and-improvement>>.

³² *Professional Standards Act 1994* (NSW) Sch 1 s 3.

³³ *Professional Standards Act 1994* (NSW) Sch 1 s 7.

³⁴ Senate Finance and Public References Committee, Parliament of Australia, *Inquiry into the Management of the Integrity of Consultants* (Public Hearing, 23 February 2024) 2 (Vanessa Chapman).

the consulting services of Big 4 and similar firms.³⁵ The PSC sought obligatory public comment by 5 February 2025. In reaching its decision the PSC referenced specific concern of public exposure of the Big 4 firms:

the Councils had regard to emergent risks to integrity and professional standards ... [resulting in] significant concern among members of the public and the profession, and include: systemic cheating ... at KPMG Australia ... disclosure of confidential ... tax laws for commercial gain at PwC Australia ... [and] integrity and professional standards in general at the “Big 4” accounting and consulting firms, and scope of audit quality oversight.³⁶

Despite its concern the PSC took just three weeks to consider public submissions on the CA ANZ accounting liability scheme before renewing it to operate unchanged for five years saying:

it remains appropriate for participants in the CA ANZ scheme... to receive the benefits of a professional standards scheme.³⁷

THE EVOLVING LIABILITY OF ACCOUNTANTS

Before introduction of the *Professional Standards Acts*, it was “axiomatic”³⁸ that Australian accountants and other professions carried unlimited liability for damage to clients and proximate third parties.³⁹ Generally, accountants cured their exposure through professional liability insurance,⁴⁰ usually held on an “each and every claim” basis.⁴¹ From the 1960s Australia’s economy fostered larger, more complex public companies, creating opportunity for larger transactions and potentially more complex and costly accounting mistakes or misconduct and hence larger damages claims.

1970–1980s

By the late 1970s, the Big 8 firms (now Big 4) dominated public company audit, assurance and accounting services⁴² and held the principal exposure to enlarged claims for damages. The 1985 award of some half a billion dollars against EY⁴³ and a similarly large claim against EY and KPMG⁴⁴ in following years proved a watershed for professional liability of accountants. Indemnity insurers responded by reducing the level of insurance cover available to the Big 8 audit firms, with no material change to the cover of other, smaller accounting firms.⁴⁵ Large damages overlaid by reducing insurance cover meant that all partners of a culpable Big 8 firm would be personally exposed, where damages exceed the sum insured.⁴⁶ Within months of the 1985 decision in Cambridge, Commonwealth and State ministers instituted an

³⁵ Senate Finance and Public References Committee, Parliament of Australia, *Inquiry into the Management of the Integrity of Consultants*, n 34, 4 (Ainslie Van Onselen).

³⁶ Professional Standards Councils, *Chartered Accountants Australia and New Zealand Approval* (2022) <<https://psc.gov.au/news-and-publications/latest-news/chartered-accountants-australia-and-new-zealand-approval>>.

³⁷ Professional Standards Councils, n 36.

³⁸ New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2934 (John Hannaford, Attorney-General).

³⁹ Justice Andrew Rogers, “Professional Responsibility: An Overview” (Speech delivered at the Supreme Court of New South Wales, 1 May 1987) <<https://supremecourt.nsw.gov.au/documents/Publications/Speeches/justice-rogers-collection/19870501.pdf>>.

⁴⁰ Companies and Securities Law Review Committee, “Civil Liability of Company Auditors” (Discussion Paper No 3, November 1985) [45] <https://takeovers.gov.au/sites/takeovers.gov.au/files/2021-04/civil_liability_company_auditors_1985.pdf>.

⁴¹ NSW Attorney General’s Department, *Issues Paper: Limitation of Professional Liability for Financial Loss* (NSW Government, 1989) 4.1.2.

⁴² D Gilling and PS Gilling, “Changes in the Structure of the Auditing Profession in Australia” (1978) 14(1) *Abacus* 3, 3–94.

⁴³ *Duke Group Ltd (in liq) v Arthur Young* (1990) 55 SASR 11.

⁴⁴ *Cambridge Credit Corporation Ltd v Hutcheson* (1985) 3 NSWLR 114.

⁴⁵ NSW Attorney General’s Department, n 41, [4.3.1].

⁴⁶ *Partnership Act 1892* (NSW) s 12(1).

urgent review of professional liability of auditors, partly or primarily in response to proposals from the Big 8 firms and professional bodies.⁴⁷

1990–1997: NSW ALONE CAPS PROFESSIONAL LIABILITY

Initially considered by the joint Federal-state Ministerial Council on Companies & Securities, the NSW Government took carriage of the issue, releasing a detailed discussion paper in 1989.⁴⁸ The first *Occupational Liability Bill 1990* (NSW) the following year, but the proposal lapsed without debate in that parliamentary term.⁴⁹ The issue was reprised via the *Professional Standards Bill 1994* (NSW),⁵⁰ debated, and passed in the last days of the Greiner-Fahey Government. That Act specified four objectives:

to limit the civil liability of professionals ... improve ... standards ... protect ... consumers ... [and form] the Professional Standards Council to supervise ... schemes ... and ... standards.⁵¹

The *Professional Standards Acts* intended statutory protection for established professions and occupations performing defined services with defined standards of practice explained in the Second Reading as:

company auditors and liquidators are appointed and operate pursuant to the Corporations Law, the standard of care required is not imposed by the Corporations Law, but is determined by common law principles, which bring audit and like activities within the ambit of the Professional Standards Bill.”⁵²

Here the Second Reading explains by application to a specific discipline-based pool of professionals (public accountants), when performing defined and accepted services (audit and liquidation), which have accepted technical and ethical standards capable of enforcement. The PSC defines a “professional” as one who meets criteria including “specific” educational qualification, “expert knowledge” of that discipline and commensurate standards of practice. Notably, the PSC understands that a profession ought to be recognised as such by the community, adding that:

simply deriving an income from a particular task may make you an “expert” or “good at your job” but ... a profession [is] an occupational group with specific higher education, expert knowledge and a professional integrity framework that underpins community trust, respect and recognition.⁵³

The PSC’s clear implication is that its statutory schemes ought only to apply to professions and vocations distinguished by discipline-specific qualification, clear professional standards, and a mechanism to enforce those standards. The second reading speech suggests a two-limb test justifying a statutory liability scheme saying:

for many professionals insurance is now unavailable or unaffordable ... which has significant consequences for the client, third parties and the community generally.⁵⁴

Here the second reading justifies introduction of a scheme where, first, there is a problem of availability or cost of PI insurance, and second, the absence of that profession or its service must cause “significant consequences” to the “community generally”, and not only to direct clients or stakeholders. In recognition of the commercial and personal advantage of a known limit on damages, the second reading emphasised the legislation’s presumption of an explicit quid pro quo exchanging limited liability in return for better enforcement of professional and ethical standards by professional associations:

⁴⁷ Companies and Securities Law Review Committee, n 40, [2]. G Laing and SH Smith, “A Retrospective of Professional Liability of Auditors in Australia” (2018) 16(1) *Journal of New Business Ideas and Trends* 44.

⁴⁸ NSW Attorney General’s Department, n 45.

⁴⁹ *Occupational Liability Bill 1990* (NSW).

⁵⁰ *Professional Standards Bill 1994* (NSW).

⁵¹ *Professional Standards Act 1994* (NSW) s 3(a)–(d).

⁵² New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2936 (John Hannaford, Attorney-General).

⁵³ Professional Standards Councils, n 30, 5.

⁵⁴ New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2934 (John Hannaford, Attorney-General).

[The Act and a professional association's scheme] provides greater protection to users of services provided by members of such associations by requiring members to hold appropriate insurance ... and be subject to a complaints and disciplinary structure.⁵⁵

Noting that the main driver for the legislation was large damages awards for audit failures including Cambridge, Duke Group, and others of the time, the Second Reading emphasises the PSC's "meta regulation" function ensuring a professional association effectively enforces standards of practice, saying:

In addition to ... considering application[s] for schemes, the Professional Standards Council will have a general function to monitor and to report on the operation of this legislation and a charter to promote good ethical behaviour.⁵⁶

The clear intention is that the PSC has a *de facto* *regulation* role when approving and monitoring a scheme.⁵⁷ Schemes are only to be approved or renewed when a professional association convinces the PSC that its professional standards and disciplinary mechanisms each have the effect of improving that profession's standards, in the interest of direct consumers and, the "community generally".

1997–2006: MOMENTUM GENERATED FOR NATIONAL LIABILITY CAPPING

The first and second accounting schemes applied under NSW law, tightly restricting coverage to qualified accountants and only then while performing defined audit and financial accounting, or receivership and liquidation services. In these first two schemes CA ANZ⁵⁸ argued:

at the forefront of ... risk management strategies ... are the entry requirements set for membership.⁵⁹

The "stringent" entry requirement set for membership was:

a recognised degree from an accredited tertiary institution and have completed the ... post-graduate educational requirements set by [CA ANZ].⁶⁰

Political momentum of the early 1990s professional indemnity insurance "crisis" had by this time fallen away; Western Australia alone had legislated its own *Professional Standards Act 1997* (WA), but it remained inoperative; the other states chose not to interfere with the law of negligence. But national focus and political momentum were soon to be forcibly returned to the state of insurance markets in Australia and across the globe.

On 15 March 2001 the directors of HIH Insurance, then one of Australia's largest general insurers, placed the company in provisional liquidation in the face of undisclosed liabilities estimated between \$3.6 and \$5.8 billion dollars.⁶¹ HIH Insurance had grown quickly across the 1990s and was at the time of its collapse one of Australia's largest general insurers and largest publicly traded companies. Consequently, its collapse left homeowners, home builders, businesses and professionals alike suddenly uninsured. HIH Insurance held a dominant 35% share of professional indemnity policies,⁶² but the most disruption and greatest losses were distributed across the community, described by the Senate Economics Committee in 2002 as:

⁵⁵ New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2934 (John Hannaford, Attorney-General).

⁵⁶ New South Wales, *Parliamentary Debates*, Legislative Council, 14 September 1994, 2936 (John Hannaford, Attorney-General).

⁵⁷ Tom Baker and Rick Swedloff, "Regulation by Liability Insurance: From Auto to Lawyers Professional Liability" (2012) 60 *UCLA Law Review* 1412.

⁵⁸ Note: The first two schemes provided a joint scheme with CPAA, but administered individually by each association.

⁵⁹ Professional Standards Council, *Professional Standards Council Accounting Scheme 1997-2001* (1997) 4. Professional Standards Council, *Professional Standards Council Accounting Scheme 2001-2006* (2001) 4.

⁶⁰ Professional Standards Council, n 59, 4. Professional Standards Council, n 59, 4.

⁶¹ HIH Royal Commission, *The Failure of HIH Insurance* (Report, 2003) Vol 1, xiii.

⁶² Claudio Damiani, Naomi Bourne and Martin Foo, "The HIH Support Scheme" (Australian Treasury, Commonwealth of Australia, 2015) Economic Roundup, Issue 1 <https://treasury.gov.au/sites/default/files/2019-03/Roundup_01-2015_article3_HIH.pdf>.

for many the situation is now undoubtedly a crisis ... community events are cancelled, community groups are disbanding, professionals find themselves unable to practise their professions.⁶³

The “9/11” terrorist attacks in the United States resulted in the largest insurance claims in history, seeing global insurance markets “profoundly affected”,⁶⁴ with global impacts on the price and terms of insurance of all types. The changed insurance landscape atop its own direct losses from the HIH Insurance collapse a year earlier⁶⁵ also saw Australia’s largest medico-legal insurer United Medical Protection (UMP), placed in liquidation in April 2002. Until its collapse UMP insured 90% of doctors in New South Wales and Queensland, and around 60% of all medical practitioners nation-wide.⁶⁶ The collapse of UMP saw some instances of medical practitioners “deferring patient treatment and cancelling operations” considering their now-uninsured professional liability.⁶⁷

Together, the collapse of HIH Insurance and UMP caused large losses and costs that were widely distributed across the community, in turn driving substantial media and political focus.

The chart below (see Figure 1) shows the number of news stories concerned with professional indemnity insurance in each calendar year between 1997 and 2006 from media database “Factiva”.⁶⁸ It suggests the large “spike” of reportage corresponds with the crisis in medical insurance caused by UMP’s failure, with a rapid retreat of interest once medial liability was addressed.

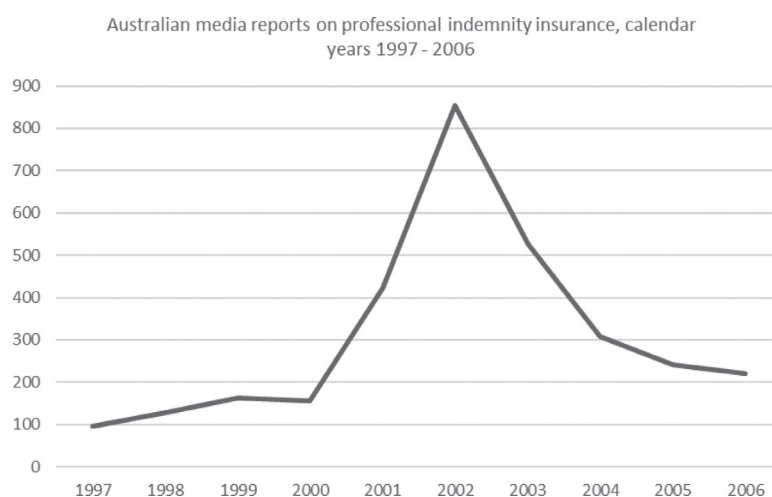


FIGURE 1. Australian Media Reports on Professional Indemnity Insurance, Calendar Years 1997–2006

Source: Graph created by authors from data from Factiva (Dow Jones). See also Factiva (Dow Jones) Search for Articles Containing “Professional Indemnity” and “Insurance”, 1997–2006 (Database Search, 18 August 2025).

⁶³ Australian Senate Economics References Committee, *Review of Public Liability and Professional Indemnity Insurance* (Report, 2002) [1.3].

⁶⁴ Gail Makinen, “The Economic Effects of 9/11: A Retrospective Assessment” (Congressional Research Service Report No RL31617, 27 September 2002) CRS-4.

⁶⁵ Lawyers Weekly, *The Resuscitation of UMP* (6 October 2003) <<https://www.lawyersweekly.com.au/news/2455-the-resuscitation-of-ump>>.

⁶⁶ Clare Zinn, “Australian Government Forced to Bail Out Medical Malpractice Insurer” (2002) 324(7341) *British Medical Journal* 808.

⁶⁷ Chris Field, *Medical Indemnity Agreement (Financial Assistance-Binding Commonwealth Obligations) Bill 2002* (Bills Digest No 24, 2002–03, Parliamentary Library, 27 August 2002) <<https://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/digest/miaacob2002708/miaacob2002708.htm>>.

⁶⁸ Source: Factiva (Dow Jones) Search for Articles Containing “Professional Indemnity” and “Insurance”, 1997–2006 (Database Search, 18 August 2025).

The collapse of HIH Insurance did not result of management misconduct alone, while continuing to present “clean” audit opinions to shareholders, policyholders and lenders HIH Insurance had been instead trading insolvent for at least several years.⁶⁹ Of this the Royal Commissioner Justice Owen found:

Corporate regulation ... was replete with mechanisms designed to detect danger signs ... despite these mechanisms, the corporate officers, auditors and regulators ... failed to see, remedy or report what should have been obvious.

And some of those ... ignored or, worse, concealed the ... steadily deteriorating financial position.⁷⁰

While audit misconduct played a substantial role causing Australia's insurance market problems in the early 2000s, the widespread effects enabled CA ANZ and presumably its now Big 4 members to renew claims of a systemic insurance “crisis”, and to lobby for the NSW legislation to be given national effect.

A submission to a 2002 Senate Economics Committee inquiry into public and professional liability insurance cited CA ANZ data that demonstrated insurance costs had increased by “100-200 per cent and more”.⁷¹ That Senate inquiry report recommended nationally concurrent *Professional Standards Acts* to provide statutory liability to approved professions, across all Australian jurisdictions. For its part, the Commonwealth legislated its *Treasury Legislation Amendment Professional Standards Bill 2003* (Cth) whose Explanatory Memorandum cited in example for the Bill that:

[CA ANZ⁷²] reported ... over half [of Chartered Accountants] are considering ... or have ceased offering services, particularly audit, because of rising insurance costs.⁷³

The evidence cited of CA ANZ was from a sentiment survey of its members but is directly contradicted by successive reports of the Australian Competition and Consumer Commission (ACCC). A 2002 report of the ACCC found the PI insurance “crisis” was partially a correction of under-pricing of risks and partially a result of global events, notably the 9/11 terrorist attacks in the United States.⁷⁴ Another ACCC report of July 2003 surveyed the largest PI insurers in the Australian market of which:

most expect [PI insurance] ... increases to be between 11 and 20 per cent.⁷⁵

The ACCC's 2005 report provided a decade-long analysis of the annual percentage variation of Australian professional indemnity insurance costs, shown in the table below.⁷⁶ This suggests by the time the *Treasury Legislation Amendment (Professional Standards) Act 2004* (Cth) passed the Parliament, any true “crisis” in professional indemnity insurance (if it had existed at all) had abated (see Figure 2), with average insurance costs for professionals reducing.

⁶⁹ HIH Royal Commission, n 61, Vol 1, [7.1.3, 141].

⁷⁰ HIH Royal Commission, n 61, Vol 1, xiii.

⁷¹ Australian Council for Professions, “Submission to the Senate Economics Committee Inquiry into Professional and Public Liability” (Submission, 2002) 9.

⁷² At this time, the Institute of Chartered Accountants of Australia (ICAA).

⁷³ Explanatory Memorandum, *Treasury Legislation Amendment (Professional Standards) Bill 2003* (Cth) 3.

⁷⁴ Australian Competition and Consumer Commission, *Second Insurance Industry Market Pricing Review* (ACCC Publishing Unit, 2002) <<https://www.accc.gov.au/system/files/Insurance%20industry%20market%20pricing%20review%20-%20September%202002.pdf>>.

⁷⁵ Australian Competition and Consumer Commission, *Public Liability and Professional Indemnity Insurance Monitoring Report* (ACCC Publishing Unit, 2003) 92 <<https://www.accc.gov.au/system/files/Public%20liability%20insurance%20first%20monitoring%20report%20July2003.pdf>>.

⁷⁶ Australian Competition and Consumer Commission, *Public Liability and Professional Indemnity Insurance: Fifth Monitoring Report* (Report, 2005) 30 <<https://www.accc.gov.au/system/files/Public%20liability%20insurance%20fifth%20monitoring%20report%20July%202005.pdf>>.

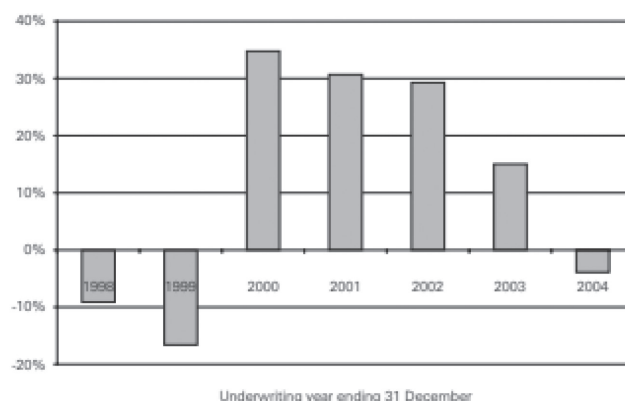


FIGURE 2. Annual Professional Indemnity Insurance Cost Changes (%) 1998–2004

Source: Australian Competition and Consumer Commission, *Public Liability and Professional Indemnity Insurance: Fifth Monitoring Report* (Report, 2005) 30 <<https://www.accc.gov.au/system/files/Public%20liability%20insurance%20fifth%20monitoring%20report%20July%202005.pdf>>.

Actuarial firm Cumpston Sarjeant found “no evidence” of a bona fide crisis. Indeed, Cumpston Sarjeant found the crisis in professional indemnity insurance had been materially misstated by APRA with the chart below (see Figure 3) shows the magnitude of misreporting that saw PI claims in the year 2000 more than five times overstated, via a data handling error.⁷⁷

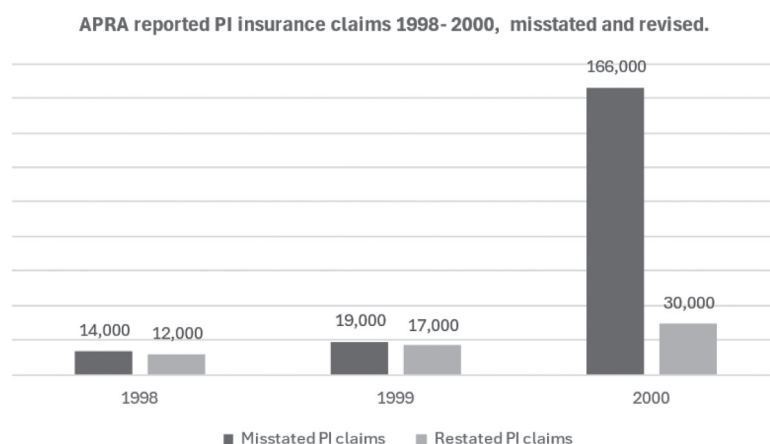


FIGURE 3. APRA Reported PI Insurance Claims 1998-2000, Misstated and Revised

Source: Senate Economics References Committee, *Public Liability Insurance: Final Report* (Submission No 132i, Parliament of Australia, 2004) 4 [4.1].

Of this Cumpston Sarjeant observed that the damage of APRA’s materially wrong data had be wrought:

APRA revised its statistical system in December 1997, and it appears as if the subsequent claim number statistics are deeply flawed. Unfortunately, some of these claim numbers have been widely used to argue for sweeping changes.⁷⁸

The evidence of a bona fide PI insurance crisis affecting accountants is questionable, but the effectiveness of political and bureaucratic lobbying by the accounting associations and presumably their ‘Big 4’

⁷⁷ Senate Economics References Committee, *Public Liability Insurance: Final Report* (Submission No 132i, Parliament of Australia, 2004) 4 [4.1].

⁷⁸ Senate Economics References Committee, n 77, 5 [4.1].

members, is clear. In less than five years every Australian Government had legislated to give nation-wide effect to the *Professional Standards Acts* and the underlying statutory limits on professional liability. These remarkably hasty changes were described as:

unprecedented in the history of Australian insurance law and, taking into account the complexity of Australia's multiple jurisdictions, perhaps a first for the common law world.⁷⁹

2007: NATIONAL ACCOUNTING LIABILITY SCHEME RADICALLY EXPANDED TO NON-ACCOUNTANTS PROVIDING "ANY" TYPE OF SERVICE

The first two accounting schemes restricted to qualified accountants and applied only when performing accounting tasks and for claims within authority of the NSW legislation. In contrast, the 2007–2012 accounting scheme would have national effect, limiting liability of covered professionals in "tort, contract or otherwise",⁸⁰ in every Australian jurisdiction. The PSC approved two significant changes in the 2007–2012 scheme.

The first change to the 2007–2012 scheme directed those professionals covered by the scheme be CA ANZ:

members with a current Certificate of Public Practice *and affiliate members*.⁸¹

The inclusion of "affiliate members" introduced a second pathway for statutory protection under the accounting scheme. The first pathway requires an accounting degree from an approved university, completion of professional qualification required of a "Chartered Accountant", three years of supervised practice as a "provisional" member all ahead of admission as a "full" member. Once a "full" member, the first pathway imposes the discipline of annual recertification for public practice, including requirements of CPD and disclosure of any change of an individual professional's standing as a "fit and proper" person.⁸²

The second pathway for statutory protection introduced from 2007 saw "affiliate members" with equal statutory protection under the accounting scheme. Whereas the prior two schemes covered qualified accountants meeting "stringent educational and experience pre-requisites", which served "at the forefront of ... risk management strategies"⁸³ the 2007 scheme expanded protection to an affiliate member defined by CA ANZ as:

any ... partner of a Chartered Accounting firm without a CA designation.⁸⁴

CA ANZ requires an affiliate member to have:

5 years full-time ... experience ... [and] be a graduate of [a] university.⁸⁵

But CA ANZ regulations provide ultimate discretion to waive even those (most basic) membership tests:

If an applicant is unable to meet the requirements ... the Board may approve an application on ... the applicant's professional standing in their area of practice.⁸⁶

⁷⁹ Damiani, Bourne and Foo, n 62, 12.

⁸⁰ *Professional Standards Act 1994* (NSW) s 4.

⁸¹ Professional Standards Council, *Professional Standards Council Accounting Scheme 2007-2012* (Professional Standards Council, 2007) s 2.2 (emphasis added).

⁸² Chartered Accountants Australia and New Zealand, *Admission and Readmissions (CR1)* <<https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/australian-regulations>>.

⁸³ Professional Standards Council, n 59, 4.

⁸⁴ Chartered Accountants Australia and New Zealand, *Affiliate Membership* <<https://www.charteredaccountantsanz.com/become-a-member/memberships/affiliate-membership>> (emphasis added).

⁸⁵ Chartered Accountants Australia and New Zealand, n 82, 1.23(a), (b).

⁸⁶ Chartered Accountants Australia and New Zealand, n 82, 1.23(f).

CA ANZ is explicit of the connection between affiliate membership and a person's employment, advising:

if you leave ... you no longer have Affiliate membership ... [it] is linked to your employment, not to you individually.⁸⁷

The second important change to the 2007-2012 accounting scheme saw s 4.1 define three categories of services each with explicit statutory protection. "Category 1" services are:

services required by Australian law to be provided only by a registered company auditor ... [or] services ... in his or her capacity as auditor ... [or] services ... used in determining... audit procedures ... or ... will be incorporated into the financial report of an entity ... [or] ... be filed with a regulator".⁸⁸

In other words, "Category 1" protects qualified accountants with practicing certificates when providing audit or financial accounting services. The 2007 – 2012 scheme continued to define "Category 2" services as:

services to which Chapter 5 or Chapter 5A of the *Corporations Act* applies [or] services provided pursuant to s.233(2) of the *Corporations Act* ... [or the] *Bankruptcy Act 1966* applies [or] services arising out of any court appointed liquidation or receivership.⁸⁹

In other words, "Category 2" protects qualified accountants with practicing certificates when acting as receivers or liquidators. But lastly, the 2007–2012 scheme introduced a new "category 3" of services protected in law, which it defines simply by catchall as:

any services ... which are not Category 1 or Category 2 services.⁹⁰

The PSC's approval of these changes undermines its own the intention that its statutory schemes apply to particular professions, distinguished from "simply deriving an income from a particular task", by "specific higher education, expert knowledge and a professional integrity framework".⁹¹ The changes to the 2007–2012 scheme saw the CA ANZ scheme move from tightly defined application to qualified accountants performing accounting tasks, to now cover "any service" provided by "any partner" of a Big 4 firm.

2007–2030: THE PROTECTED "MULTIDISCIPLINARY PROFESSIONAL SERVICES FIRM"

From 2007, Australia's Big 4 firms have actively embraced the extra services covered by the CA ANZ schemes expansion. CA ANZ testified to the Senate that of its 138,000 members, only 2,764 are "affiliate members" of which three quarters are consultants employed as partners in Big 4 firms.⁹² While "affiliates" are a small portion of CA ANZ's total membership, they are fundamental to Big 4 firms, comprising up to half the partnership headcount and driving most firm income. The chart below (see Figure 4) shows our initial 2024 estimate of the Big 4 income by service type.⁹³

⁸⁷ Chartered Accountants Australia and New Zealand, n 84.

⁸⁸ Professional Standards Council, n 81, s 4.1.

⁸⁹ Professional Standards Council, n 81, s 4.1.

⁹⁰ Professional Standards Council, n 81, s 4.1.

⁹¹ Professional Standards Councils, "The Path to a New Regulatory Model" in DD Sanders (ed), *21 Years of Regulatory Innovation Through Professional Standards* (Professional Standards Council, 2015) 5.

⁹² Senate Finance and Public References Committee, Parliament of Australia, n 34, 2 (Vanessa Chapman).

⁹³ Calculated using data from: Deloitte Australia, *Annual Report: "Making an Impact"* (2024) <https://www.deloitte.com/au/en/about/story/facts-and-figures/annual-report-fy24-impact-insight-integrity.html>; EY Australia, *Value Realized 2024* <https://www.ey.com/en_au/value-realized-annual-report>; PwC Australia, *Transparency Report 2024* <<https://www.pwc.com.au/about-us/firmwide-transparency-report.html>>; KPMG Australia, *Our Impact Plan 2024* <<https://kpmg.com/au/en/home/media/press-releases/2024/08/kpmg-reports-resilient-results-for-fy24.html>>.

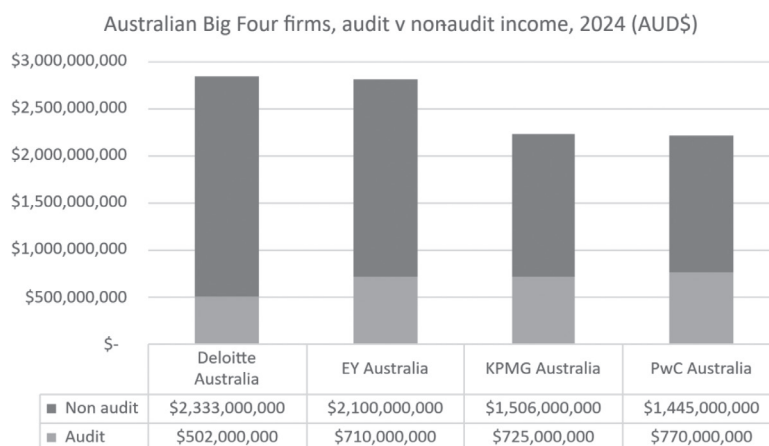


FIGURE 4. Australian Big Four Firms, Audit v Non-audit Income by Firm, 2024

Source: Graphic created by the authors using data from the “Big 4” firms – Deloitte, EY, KPMG and PwC. See also Calculated using data from: Deloitte Australia, *Annual Report: “Making an Impact”* (2024) <<https://www.deloitte.com/au/en/about/story/facts-and-figures/annual-report-fy24-impact-insight-integrity.html>>; EY Australia, *Value Realized 2024* <https://www.ey.com/en_au/value-realized-annual-report>; PwC Australia, *Transparency Report 2024* <<https://www.pwc.com.au/about-us/firmwide-transparency-report.html>>; KPMG Australia, *Our Impact Plan 2024* <<https://kpmg.com/au/en/home/media/press-releases/2024/08/kpmg-reports-resilient-results-for-fy24.html>>.

For 2024 it appears that some 60% of Big 4 income was earned from consulting, but that appears something of a low-water mark. Describing the Big 4 to a Senate inquiry the CEO of the *Australian Professional and Ethical Standards Board*⁹⁴ testified the average contribution of consulting as being substantially higher:

On average, 80 per cent of the Big 4 firms’ revenue in Australia comes from consulting clients, as opposed to audit clients ... last year ... Deloitte’s consulting was 85 per cent of its revenue; EY was 79 per cent; and KPMG was 76 per cent.⁹⁵

CA ANZ views a “Big” firm accounting as all-encompassing:

public accountancy ... is defined by the CA ANZ Board as any service or activity undertaken by a Chartered Accountant ... requiring accountancy or related skills, including ... accounting, assurance, taxation, financial management, management consulting, insolvency, valuation, financial advice and corporate advisory services.⁹⁶

In her evidence the CEO of CA ANZ argued there is no boundary between “accountants” and “consultants” such that:

the partners of the big six⁹⁷ ... don’t get the benefit of the scheme ... unless every partner is a member of ours...we are able to prosecute ... affiliates ... so there is a further layer of protection in multidisciplinary firms in relation to those partners.⁹⁸

⁹⁴ For future focus, the APESB is “..equally funded by CPA Australia, CA ANZ and the IPA” and “sets the code of ethics and professional standards”. Accounting Professional & Ethical Standards Board, *Home* <<https://apesb.org.au/>>.

⁹⁵ Mr Channa Wijesinghe, CEO, *Accounting Professional and Ethical Standards Board, Committee Hansard*, 23 February 2024, 21.

⁹⁶ Chartered Accountants Australia and New Zealand, *Public Consultation Document: Scheme Renewal* (Professional Standards Council, 2025) <https://hdp-au-prod-app-nsw-haveyoursay-files.s3.ap-southeast-2.amazonaws.com/6517/3372/0587/Chartered_Accountants_Australia_and_New_Zealand_-_Public_consultation_document.pdf>.

⁹⁷ Here, the “Big Six” refers to the Big 4 and the next two largest audit-consulting firms.

⁹⁸ Senate Finance and Public Administration References Committee, Parliament of Australia, Canberra, 23 February 2024, 4 (Ainslie Van Onselen).

Here, the CA ANZ CEO argues that the extension of statutory protection to Big 4 consultants providing consulting services is in the public interest, because it embeds accountability to CA ANZ's own "fundamental" ethics.⁹⁹

THE CA ANZ SCHEME AND INCENTIVES OF PARTNERSHIP

The 2007 expansion of the CA ANZ statutory scheme favours the private interests of Big 4 (and similar audit-consulting firms), who cannot deliver wide ranging "multidisciplinary" services, without employing individuals from the required non-accounting disciplines. But substantive questions of how the public interest is served by protecting "any service" provided by "any partner" to seek profit for a Big 4 firm.

Australian Big 4 firms are formed as "general partnerships" subject to Partnership Law, meaning they avoid the protective duties of Corporations Law. Section 10 (1) of the *Partnership Act 1892* (NSW) directs:

[if] any wrongful act or omission of any partner in a firm ... [causes] loss or injury ... to any person ... the firm is liable ... to the same extent as the partner so acting or omitting to act.¹⁰⁰

Section 12(1) directs:

Every partner ... is liable jointly ... [and] severally for everything for which the firm ... becomes liable.¹⁰¹

Partnership Law imposes fewer controls and rests on the presumption of unlimited personal liability of partners who have joint management control and monitor the conduct of the firm and all of partners. The professional liability environment in large "Chartered Accounting" partnerships is practically quite different, and can be summarised as follows:

Big 4 Partners' is an "accounting partnership" under reg 2A.1.01 of the *Corporations Regulations 2001* (Cth), allowing it 1,000 partners, whereas an ordinary partnership is capped at 20 or fewer partners by s 115 of the *Corporations Act*. Of its 1,000 partners, 500 are Chartered Accountants with practicing certificates, the other 500 are consultants with a wide range of qualifications and experience. "Big 4 Partners" is not a legal entity and is of itself not a member of CA ANZ. Instead, the partnership pays individual membership dues on behalf of all 1,000 partners. In return, all 1,000 partners are admitted to the statutory protection of the CA ANZ scheme, with Chartered Accountants styled "*members*" and the consultants styled as "*affiliates*".¹⁰²

Provided "Big 4 Partners" complies with the CA ANZ scheme and the *Professional Standards Acts*, from the changes in 2007 its absolute liability is capped for three types of services. For negligent "category 1" audit and financial accounting services "Big 4 Partners" has absolute liability capped at \$75 million; for "category 2" receivership and liquidation services it has absolute liability capped at \$20 million dollars; and for "any" other service provided by "Big 4 Partners" it also has its absolute liability capped at \$20 million dollars.¹⁰³ Within these absolute caps, lower liability limits apply, determined as a factor of the fees paid for the defective service via formulae detailed in the CA ANZ scheme. CA ANZ provides guidance to "chartered accounting partnerships" on consideration of all the costs for which they might be liable and advice on how to comprehensively insure against them.¹⁰⁴

⁹⁹ Accounting Professional and Ethical Standards Board, *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)* (June 2024).

¹⁰⁰ *Partnership Act 1892* (NSW) s 10(1).

¹⁰¹ *Partnership Act 1892* (NSW) s 12(1).

¹⁰² Professional Standards Councils, *CA ANZ Accounting Scheme* (2025–2030) 21–26 <https://gazette.nsw.gov.au/gazette/2025/3/2025-3_121-gazette.pdf>.

¹⁰³ Professional Standards Councils, n 102.

¹⁰⁴ Chartered Accountants Australia and New Zealand, *Professional Indemnity Insurance* <<https://www.charteredaccountantsanz.com/member-services/member-obligations/certificate-of-public-practice-reviews-and-compliance/insurance-and-liability/professional-indemnity-insurance>>. Where insurance is manifestly inadequate, which might only come obvious after the event, it is likely that the firm will be seen as not having abided by its responsibilities under the scheme, and will lose the benefit of the cap.

If we assume that “Big 4 Partners” provides a consulting service earning \$8 million dollars in fees and through negligence causes damages of \$100 million dollars, under the scheme this large fee sees the highest damages cap of \$20 million dollars. Assuming “Big 4 Partners” has sophisticated insurance including for its legal defence costs and complies with CA ANZ’s guidance, \$19 million dollars would be paid by the insurer and \$1 million would be paid by the firm’s partners.¹⁰⁵ The client’s shareholders are left to absorb an \$80 million dollar cost from the firm’s professional negligence. Meanwhile “Big 4 Partners” incur a \$1 million dollar deductible, a cost of \$1,000 per partner for an engagement that earned \$8,000 per partner in fee income.

Thus, far from being surprised by accelerating instances of audit and consulting misconduct, policymakers should perhaps expect that firms and their partners see themselves as largely immune to responsibility, even for very large losses imposed on clients.

The *Professional Standards Acts* direct that a scheme’s liability cap does not apply to damages borne of a professional’s fraud, dishonesty or deceit.¹⁰⁶ In such cases, a fraudulent or deceitful professional has unlimited liability for whatever are the full damages. If the fraudulent or deceitful professional is a partner in a Big 4 partnership, all 1,000 co-partners are “jointly and also severally” liable, and their personal assets would be exposed should damages exceed any insurance.¹⁰⁷ In application, the CA ANZ statutory scheme provides rational incentive for partners to remain actively ignorant of the type and quality of services delivered by their co-partners; with De Mott concluding as much, observing:

Statutory limits on partners’ vicarious liability are ... likely to reduce their incentives to monitor the conduct of fellow partners and non-partner associates.¹⁰⁸

STOIC “WATCHDOG” OR DEPENDENT “LAPDOG”? ENTERPRISE CULTURE AND THE BIG 4

Even without Australia’s unique legal concessions, misconduct by Big 4 firms is a common global problem. Writing in 2008, Sikka observed causal factors enabling Big 4 misconduct, include that:

[with] comparative secrecy, relatively weak liability, accountability, regulatory, moral and ethical pressures, accountancy firms have become key players in the contemporary enterprise culture and have shown a willingness to indulge in questionable practices ... to increase their clients’ [and also] their own profits.¹⁰⁹

In practice the Big 4 partnerships operate with the same Darwinian economic and cultural environment as the corporations they audit. Managers in a Big 4 firms are subject to, and often naturally suited to, “bottom line” profit motivations. From day one, employees of big audit-consulting firms are socialised and inculcated from the top into grasping the “needs of clients” and a culture of doing what’s necessary to expand engagements and resulting fees. It is made clear that personal rewards and progression are at stake, for partners and staff alike.¹¹⁰ Hanlon described the:

emphasis [in accounting firms] is very firmly on being commercial and on performing a service for the customer rather than being on public spirited on behalf of either the public or the state.¹¹¹

Historically, the Big 4 audit firms existed to serve shareholders, lenders and potential investors through transparent, accurate and honest financial reporting. But the commercial imperative to win more work

¹⁰⁵ Chartered Accountants Australia and New Zealand, *Certificates of Public Practice* (CR2, 2024) s 2A.5(e)(ii)(b) <<https://www.charteredaccountantsanz.com/member-services/member-obligations/regulations-and-guidance/australian-regulations>>.

¹⁰⁶ *Professional Standards Act 1994* (NSW) s 5(1).

¹⁰⁷ *Partnership Act 1892* (NSW) ss 10(1), 12(1).

¹⁰⁸ Deborah A DeMott, “‘Our Partners’ Keepers? Agency Dimensions of Partnership Relationships” (1995) 58 *Law and Contemporary Problems* 109, 128 <<https://scholarship.law.duke.edu/lcp/vol58/iss2/6>>.

¹⁰⁹ Sikka, “Enterprise Culture and Accountancy Firms: New Masters of the Universe”, n 20, 270.

¹¹⁰ Grey, n 22, 587.

¹¹¹ G Hanlon, *The Commercialisation of Accountancy: Accumulation and the Transformation of the Service Class* (Macmillan Press, 1994) 150.

and bigger fees leaves Big 4 partners most immediately concerned with the wants of a client firm's managers, rather than its shareholders or any other stakeholder:

the client for auditing services is increasingly viewed as the company managers rather than the shareholders, the public, or the state.¹¹²

Sikka described the same drive:

Stealing a march on a competitor ... to gain financial advantage is considered to be an entrepreneurial skill, especially where competitive pressures link promotion, status, profits, market shares and niches with business profits.¹¹³

The cultural transition from audit firms focused on stewardship, integrity and rigor, to large company-like enterprises driven by commercialism sees senior partners in the Big 4 firms compete with investment bankers to be the "masters of the universe".¹¹⁴ While now producing a small portion of Big 4 firm revenue, the natural strategy since the 1980s has been to use statutory audit services as a "Trojan horse" to usher in the firm's consultants. Sikka describes the advantage of large audit-consulting firms over their competitors:

Compared to their competitors, auditing gives the firms an easy access to senior management and sell a wide variety of consultancy services, including advice on executive compensation, executive recruitment, financial engineering, mergers and acquisitions, tax avoidance, trade union busting, printing T-shirts, badges, laying golf courses and even inspection of toilets.¹¹⁵

The CA ANZ scheme creates equivalence between consulting and the public interest services provided by audit, financial accounting and receivership, but they are naturally incompatible. Audit and statutory accounting services are a public good, serving the public interest by independent corroboration of the financial reports of managers and protect shareholders, equity investors, lenders, regulators, employees and, society at large from financial misstatement. A Chartered Accountant performing audit or financial accounting services is obliged to act as an objective "watchdog",¹¹⁶ guarding against management excess. In contrast, consulting provides private goods, serving private interests of the managers who commission and pay for the firm's work. Being a "watchdog" is incompatible with endless commercial growth and the resulting status and profits for which Big 4 partners and staff are rewarded and promoted. A consultant might be better described as a "lapdog", or "show dog" trained to follow instruction.

Unlike a vigilant watchdog, Australia's Big 4 firms have other responsibilities, involving an endless need for revenue to support a high-cost, thinly capitalised business model. In a surrounding corporate culture saturated with economic incentives and self-interest, it is natural that corporate-like Big 4 firms absorb the prevailing ethos, preferring high paying private or government interests, over the lower paying choices that serve the public good.

By entwining and garbling their audit and consulting roles, Big 4 multidisciplinary firms face obvious moral hazards, clear conflicts of interest and agency problems between a client's interests, the commercial interest of the firm at large, and each partner's incentive to meet or exceed their targets, or else face repercussion. There are repeated examples of the Big 4 firms serving two conflicting ends, in service of two conflicting masters. One widely discussed recent example saw Big 4 firm PwC Australia engaged in the design of new multinational anti-tax avoidance laws for the Australian Government. Unknown to the government, PwC Australia knowingly abused confidential knowledge to generate income from existing and new multinational clients by selling accounting structures to circumvent the new laws. Details of the PwC Australia tax scandal are well documented, the main points of that case are demonstrating that

¹¹² G Hanlon, n 111, 339.

¹¹³ Sikka, "Enterprise Culture and Accountancy Firms: New Masters of the Universe", n 20, 278.

¹¹⁴ C-F Picard, S Durocher and Y Gendron, "From Meticulous Professionals to Superheroes of the Business World" (2014) 27(1) *Accounting, Auditing and Accountability Journal* 73, 118.

¹¹⁵ Sikka, n 20, 277.

¹¹⁶ The "auditor as watchdog" analogy traces to the ruling in *Re Kingston Cotton Mill Co (No 2)* [1896] 2 Ch 279, 288. See Robert Baxt, "The Role of the Auditor" (1970) 44 ALJ 25.

consultancy fees drive firm behaviour, and the integrity standards of the CA ANZ scheme are either ineffective or unenforced.

Perhaps the most conflicted offering of the Janus-faced Big 4 firms are those in which Big 4 Chartered Accountants provide “consulting” advice to corporate managers, on ways to apply accounting rules and standards. Each Big 4 firm markets the same essential services, which EY Australia calls “Financial Accounting Advisory”:

EY's [Financial Accounting Advisory Services] ... addresses the CFO's agenda and provides CFOs ... with insight and services to support compliance.¹¹⁷

KPMG Australia styles this function as “CFO Advisory” and markets a team of 150 Chartered Accountants in Canberra and major state capitals offering:

technical accounting advice under IFRS including ... structuring transactions to achieve commercial and accounting objectives.¹¹⁸

The sale of defensible accounting treatments in the explicit needs of management means that each Big 4 firm is explicitly working against the interests of competing audit firms, who are supposedly ensuring management's reported accounts are “true and fair” and best serving the interests of a company's stakeholders – not its managers. The technical competence of Chartered Accountants is used as the “watchdog” against creative accounting on one hand, while on the other, these same skills are offered to evade audit standards via window dressing and otherwise creatively applying accounting standards. Given that auditors are experts on accounting standards and their subtleties, they are the obvious consultants on how best to avoid undesired consequences of those same standards.

Whether a Big 4 firm advises its own audit clients the same way is a moot point. That would require that it circumvents its own audit, which if done expressly would surely attract disciplinary action, were it revealed. However, when switching from one moment to the next between its dual personalities as consultant and auditor, such back and forth discussions are almost inevitable.

DISCUSSION

Watts and Zimmerman provide detailed explanation of how economic self-interest cultures come to dominate formerly publicly spirited professions, in a paper that won the *American Accounting Association's* best manuscript award.¹¹⁹ The authors proposed that even academic University employed accountants should, if they are rational, direct accounting research toward theories advancing the economic interest of global accounting firms and their clients. Their argument is that such “services” are in endless demand and are the only rational research outputs. In that infamous paper, the role of rational accounting research is to satisfy the “*the market for excuses*” to justify accounting treatments benefiting a particular vested interest:

Partners in accounting firms, bureaucrats in government agencies and corporate managers ... seek out accounting researchers who ... consistently advocate a particular practice which happens to be in [their] self-interest.¹²⁰

The same characterization was put earlier by the Nobel prize winning economic theorist George Stigler, who depicted consultant-economists as “hired guns” with incentives to manipulate theory, to start from the desired conclusion and “write up the page”. Stigler argues:

a theory can usually be made to support diverse policy positions.¹²¹

¹¹⁷ EY, *Financial Accounting Advisory Services* <https://www.ey.com/en_au/services/financial-accounting-advisory-services>.

¹¹⁸ KPMG Australia, *CFO Advisory Fact Sheet* (2020) <<https://assets.kpmg.com/content/dam/kpmg/au/pdf/2020/cfo-advisory-careers-factsheet.pdf>>.

¹¹⁹ RL Watts and JL Zimmerman, “The Demand for and Supply of Accounting Theories: The Market for Excuses” (1979) 54(2) *The Accounting Review* 273, 305.

¹²⁰ Watts and Zimmerman, n 119, 287.

¹²¹ G Stigler, “The Economist and the State” (1965) 55(1/2) *The American Economic Review* 1, 13.

With the advantages of their auditors' "halo" and the statutory cap and PI insurance, Australia's Big 4 firms market consulting services in support of "evidence-based decision making" but are incentivised only to provide "decision-based evidence making", for which they have no practical accountability. The cause and effect of the change of the Big 4 was described by a recent paper as:

diminishing financial return from auditing has precipitated a major reorientation ... of the major international accountancy firms ... to create new markets and adopt evermore risky business strategies.¹²²

Dissatisfied with the comparatively low status and modest fees of statutory auditing, the Big 4 firms naturally lend themselves to general business consulting services, their proximity to company managers and directors, financial markets and financial decision giving an obvious advantage. That their profit-led "major reorientation" into consulting markets has been covered by the CA ANZ scheme puts more expert consultants and consultancy firms, who could offer the same service at the same or better quality, at specific competitive disadvantage.

The PSC states:

the main objective of professional standards schemes is ... consumer protection.¹²³

But there is scant evidence of objective assessment of the net benefit of the accounting liability scheme, or any other professional scheme, despite mounting evidence of costs borne of large firm misconduct. Instead, the PSC offers a consulting report exploring "benefits" identified by the PSC.¹²⁴ Although the PSC has legal obligation to a broad interest group, by counting only "benefits" the consulting report neglects associated costs. In satisfying its statutory requirements, the downsides of any scheme should presumably be considered and openly discussed by the PSC. A report which describes only benefits does not provide the critical evaluation to justify the PSC's approval, or renewal of a scheme.

We have distilled the claimed benefits from the PSC's report, together with our rejoinders:

Benefit: Imposing compulsory professional indemnity (PI) insurance on professionals ensures "considerable resources will be available to meet claims".

Rejoinder: Professional indemnity insurance of whatever amount can be compelled with or without statutory liability caps.

Benefit: Universal PI insurance within a profession brings greater risk sharing within the profession and hence potentially lower insurance cost.

Rejoinder: The insurance industry is formed on economically optimal cross-subsidies.¹²⁵ It is equally possible that PI insurance profits are maximised by charging smaller "suburban" accounting firms a higher premium per dollar of expected loss. A small margin added to thousands of small firms' is easily marketable, thus allowing a much-reduced premium to the big firms who drive large claims. The cap and insurance arrangements invite moral hazard and agency problems by removing practical risk of partnership or personal bankruptcy.

Benefit: The schemes limit civil liability mitigating the risk of large claims and minimizing defence costs.

Rejoinder: These are benefits provided directly to the large firms, not the consumer who's right to recover their full loss is removed in law. Consumers do not benefit per se from a limit on damages and there is no analysis to show how consumers have benefitted in terms of lower service costs of the Big 4 firms.

Benefit: The legislation (i) "promotes development of risk management strategies to improve the profession and reduce the risk that consumers will suffer loss in the future", and (ii) requires monitoring and reporting of risk claims.

¹²² Chris Shore and S Wright, "How the Big 4 Got Big: Audit Culture and the Metamorphosis of International Accountancy Firms" (2018) 38(3) *Critique of Anthropology* 303, 304–305.

¹²³ Professional Standards Council, *Consumer Information* <<https://www.psc.gov.au/consumer-information>>.

¹²⁴ Taylor Fry, "The Benefits of Professional Standards Schemes: Limitation of Liability and Consumer Protection Measures" (Report, 31 March 2022) <https://psc.gov.au/sites/default/files/2022-04/The%20benefits%20of%20professional%20standards%20schemes%E2%80%933limitation%20of%20liability%20and%20consumer%20protection%20measures_3.pdf>.

¹²⁵ See for example Pupp (1981) on cross-subsidies in health insurance.

Rejoinder: These are unsubstantiated claims. No benefits need occur as an incremental effect of the scheme. Firms are motivated to manage their risk and more so when damages are uncapped, when partners' personal assets are at risk.

Benefit: "The professional may also benefit by avoiding the need to take out high PI cover limits ...".

Rejoinder: Clearly large firms benefit significantly, not just in limitation of damages and avoiding large personal PI insurance costs, but more tellingly by the individual partner's personal assets being shielded from claims against that individual's work or the work of others in the same firm.

Our strongest criticism is that there is no discussion in the PSC-commissioned Taylor Fry report of the innate conflict between the different interests of accounting firms and consumers. The message throughout the report is that consumers and practitioners' interests simply coincide, or that what's in the interest of the professional is ipso facto in the interest of their consumers. Lower PI insurance costs and caps on liability payouts are regarded as bringing benefits to consumers, rather than, as an example, distorting the types of work done, the ways it is done and level of care that is applied.

Freedom from personal liability for other partners' mistakes and unethical practices is a great comfort to those in a partnership of up to 1,000 partners and where it is impossible to monitor the types of work and variable standards of such numerous co-partners. The implicit incentive for unobserved, shoddy yet remunerative work goes unmentioned, apart of course from repeated mention of the disciplinary processes of the professional association (here CA ANZ) that in theory, mitigate any agency problem or moral hazard.

Allowing the Big 4 and similar firms of potentially 1,000 partners the limited liability existing under a professional indemnity "scheme" is already a major concession in law, but there is more in their favour. They are not subject to the disclosure and governance requirements of corporations, and they are consultants to government at all levels giving them influence that helps maintain their privileges and lack of transparency.¹²⁶

Traditional auditing standards have been criticized for concentrating on the technical and saying little about the moral and social obligations of auditors:

auditing standards are silent on the social obligations of accountancy firms. Against the background of comparative secrecy, relatively weak liability, accountability, regulatory, moral and ethical pressures, accountancy firms have become key players in the contemporary enterprise culture and have shown a willingness to indulge in questionable practices not only to increase their clients' but also their own profits.¹²⁷

Sikka's comments quoted here are aimed at Big 4 UK audit firms, but the problems raised are compounded in Australia by adding the PSC liability cap to the CA ANZ firms' tool set. The costs and benefits of the cap require a deeper and more balanced review than that promulgated by the PSC in their commissioned report on just benefits. Such review should rest on both legal and economics foundations, summarising the worth of the schemes in terms of their intended and unintended consequences for CA ANZ firms' activities, behaviour, and governance. There is much to question on just a micro-economics basis. Like a regulator, the PSC has a duty to consider how the indemnity schemes they sanction alter the incentives, behaviour and even the constitution of the profession being protected.

With a drive for more business and more profit, the Big 4 firm's modern ethos is defined by measures of income growth, performance rewards and obvious displays of self-interest. There is a sleight of hand where the time-honoured reputation of Chartered Accountants as venerable, "boringly honest" bookkeepers provide a halo effect under which Big 4 firms are free to market themselves as implicitly "guns for hire" or corporate mercenaries. Their clients gain the authority that comes from that cultural image, allowing accounting firms to maintain an aura of objectivity and professionalism while conjuring desired outcomes using "modern" client focused methods, all with the protection of the CA ANZ scheme.

¹²⁶ P Sikka, "Some Questions about the Governance of Auditing Firms" (2004) 1(2) *International Journal of Disclosure and Governance* 186, 200.

¹²⁷ Sikka, "Enterprise Culture and Accountancy Firms: New Masters of the Universe", n 20, 278.

The CA ANZ statutory scheme distorts firm behaviours and alters the consultancy marketplace by advantaging the Big 4 and similar audit-consulting firms with less risk and lower insurance costs than competing consultants, who compete without statutory protection of the scheme. Needing annual income of several billion dollars apiece leaves the Big 4 firms all dependent on “client friendly” consulting income, while purporting to remain firmly rooted in the ethics and traditions of the audit “watchdog”.

Australian accounting standards claim: “a distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest”.¹²⁸ bound to “fundamental” principles of “integrity ... objectivity ... professional competence and due care ... confidentiality and ... professional behaviour”.¹²⁹ Public accountants are intended to be publicly spirited, policing questionable business, uncovering facts, ensuring commercial integrity, adhering to evidence, reporting fully and honestly, and not being subject to breaches of trust fuelled by rewards or professional status.

We argue that the effect of the CA ANZ scheme is a firm-wide limit on professional liability, via its 2007 expansion to cover “any partner” providing “any service” which means it protects “all partners, providing all services” in a Big 4 firm. This sees firm managers and partners heavily incentivised to meet sales and profit targets, for services over which they carry no practical financial liability and face little risk of professional consequence. With these incentives, future exposures of Big 4 poor practice and misconduct should not be greeted with “surprise” by policymakers, regulators or others.

¹²⁸ Accounting Professional & Ethical Standards Board (APESB), “R100.1.A1” (2024).

¹²⁹ Accounting Professional & Ethical Standards Board (APESB), “R111.1-R115.1” (2024).