



Australian Government
The Treasury



Regulation of accounting, auditing and consulting firms in Australia

Consultation paper

May 2024



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Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au



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Consultation Process

The purpose of this consultation

The purpose of this consultation paper is to seek stakeholder feedback and views on issues for Government consideration in relation to the regulation of accounting, auditing and consulting firms in Australia.

Request for feedback and comments

Interested stakeholders are invited to make submissions on the issues raised in this consultation paper.

Email	ccau@treasury.gov.au
Mail	Director, Corporate Conduct and Analysis Unit, Market Conduct and Digital Division The Treasury Langton Crescent PARKES ACT 2600
Enquiries	Enquiries can be initially directed to Deepti Paton
Phone	02 6263 2765

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

Confidentiality

Submissions may be shared with other Commonwealth agencies for the purposes of the consultation process. All information (including name and address details) contained in submissions may be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose.

If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment.

Please note that legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission. For further information, please refer to Treasury's [Submission Guidelines](#).

Glossary

Term	Definition / Meaning
AAC	Authorised audit company
AASB	Australian Accounting Standards Board
ADI	Authorised deposit-taking institution
AFSL	Australian financial services licence
AGM	Annual general meeting
APESB	Accounting Professional and Ethical Standards Board
APRA	Australian Prudential Regulation Authority
ARITA	Australian Restructuring Insolvency and Turnaround Association
ASA	Australian Auditing Standard
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the financial market operated by ASX Limited
ASX Corporate Governance Council	An independent body convened by ASX to develop and issue principles-based recommendations on corporate governance practices for ASX-listed entities
ASX Listing Rules	The listing rules of ASX
ATO	Australian Taxation Office
AUASB	Auditing and Assurance Standards Board
CA ANZ	Chartered Accountants Australia and New Zealand
CADB	Companies Auditors Disciplinary Board
CG Recommendations	ASX Corporate Governance Council's <i>Corporate Governance Principles and Recommendations 4th Edition</i> (February 2019)
CGS	Corporate governance statement
CMA	Competition and Markets Authority (UK)
CMA 2019 Study	CMA's <i>Statutory Audit Services Market Study</i> (April 2019)
CPAA	CPA Australia Ltd
FRC	Financial Reporting Council
IESBA	International Ethics Standards Board for Accountants
IPA	Institute of Public Accountants
Lead auditor	The RCA primarily responsible to the AAC or audit partnership for the audit's conduct
PAB	An Australian professional accounting body (one of CA ANZ, CPAA and IPA)
PCAOB	Public Company Accounting Oversight Board (United States)
PI	Professional indemnity
PIE	Public interest entity
PJC	Parliamentary Joint Committee on Corporations and Financial Services
PJC Inquiry	PJC inquiry into ethics and professional accountability: structural challenges in the audit, assurance and consultancy industry
PJC 2019 Inquiry	PJC inquiry into regulation of auditing in Australia

Term	Definition / Meaning
Professional Standards Councils	The eight councils (one in each state and territory) that administer the professional standards legislation in each state and territory
Professional standards schemes	Schemes that limit civil liability of professionals and members of occupational groups under state and territory professional standards legislation
QMS	Quality Management Standards
RCA	Registered company auditor
Reporting Entity	An entity required to prepare financial reports under Chapter 2M.3 of the Corporations Act
SEC	Securities and Exchange Commission (United States)
TPB	Tax Practitioners Board
Transparency Reporting Auditors	Individual auditors, AACs or audit partnerships satisfying the threshold in s 332A of the Corporations Act
UK FRC	Financial Reporting Council (UK)
FTSE 350	An index of 350 large and mid-cap stocks traded on London Stock Exchange
Legislation	
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Corporations Act	<i>Corporations Act 2001</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
PID Act	<i>Public Interest Disclosure Act 2013</i>
Professional standards legislation	The legislation for professional standards schemes in each state and territory listed at Professional standards legislation
TAA	<i>Tax Administration Act 1953</i>
TASA	<i>Tax Agent Services Act 2009</i>
Standards	
APES 110	Accounting Professional and Ethical Standard, APES 110 <i>Code of Ethics for Professional Accountants (including Independence Standards)</i>
ASA 102	Auditing Standard ASA 102 <i>Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements</i>
ASQM 1	Auditing Standard ASQM 1 <i>Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements</i>

Introduction

On 6 August 2023, the Government announced a package of reforms to address tax adviser misconduct, rebuild confidence in the systems and structures that keep Australia's tax system strong, and improve the functioning of capital markets.¹

Recent events have called into question whether the regulatory framework for accounting, auditing and consulting firms² appropriately balances policy objectives (such as supporting a competitive market) while fostering appropriate conduct in the provision of key services (such as audit, insolvency and tax).

This consultation paper explores the regulation of accounting, auditing and consulting firms in Australia, and is part of a suite of consultations focussed on strengthening regulatory frameworks in this area. Future consultation will canvass potential policy options.

Firms in this sector are multi-disciplinary, with some services being significant to the proper functioning of the economy

The service offerings of accounting firms have expanded over time, through individual growth and mergers with other firms. This has produced a number of large multi-disciplinary and multinational firms that operate in Australia today. The larger firms provide services across many disciplines including accounting, audit, law and consulting (including transactions, tax, financial, insolvency and risk advisory) to a broad range of clients in both the public and private sectors.

The most closely regulated services offered by these firms are auditing, tax and insolvency. These services are regulated at the Commonwealth level and are considered particularly important to the functioning of Australian markets and the economy:

- Confidence in the audit profession and quality of **audit services** underpins the effectiveness of the financial reporting framework in Australia, and fosters confidence in the integrity of capital markets.
- The regulation of **tax practitioners** is intended to ensure that tax practitioner services provided to the public are of an appropriate ethical and professional standard, given that voluntary tax compliance is critical to supporting Australian Government revenues and expenditure.
- Corporate and personal **insolvency** laws establish fair, orderly, transparent and predictable processes for dealing with the financial affairs of companies and individuals that are close to being, or become, insolvent, while facilitating access to finance, promoting investor confidence, and supporting a strong and well-functioning financial system.

¹ See the Government's announcement at <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/government-taking-decisive-action-response-pwc-tax-leaks>.

² References to the term 'firm' in this consultation paper include businesses that are structured as partnerships, companies (corporations), trusts, or sole traders.

Some services warrant regulation

Treasury set out a framework for evaluating the need for regulatory intervention in its submission to the current Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) inquiry into ethics and professional accountability: structural challenges in the audit, assurance and consultancy industry (**PJC Inquiry**).³ The framework highlighted that:

- a general case for regulation arises when markets fail to achieve desirable outcomes;
- a risk-based approach to regulation accounts for the consequences and likelihood of market failure, and allows consideration of whether regulation is warranted; and
- care should be taken to target regulatory interventions to minimise cost and maximise effectiveness. Regulation can be targeted by applying measures at the point of greatest potential to affect the decisions of the regulated population and achieve desired outcomes.

Responsibility for regulation is shared

Treasury's submission to the PJC Inquiry identified that the legislative framework regulating accounting, auditing and consulting firms is shared between the Commonwealth and states and territories:

- When the Commonwealth, states or territories wish to amend, introduce, or repeal legislation that alters the affect, scope, or operation of the *Corporations Act 2001* (**Corporations Act**), they are required to notify, and if necessary, consult and seek approval from the Legislative and Governance Forum on Corporations.
- Partnerships are primarily regulated by the states and territories (with the Commonwealth having some limited regulatory powers). State and territory laws enshrine requirements regarding partnership formation, operation and winding-up, and prescribe mechanisms to determine the ownership of assets and liabilities. There is also a substantial body of common law and equitable principles regarding the fiduciary duties of partners.
- Regulation of legal services is the responsibility of the states and territories. This regulation is established via a set of broadly uniform rules in each jurisdiction.


Practitioners in accounting, auditing and consulting firms have high levels of membership in professional bodies, which educate and advocate for the interests of their members.

A number of issues warrant consideration

This consultation paper explores the following issues:

- the adequacy of prescribed governance requirements for large partnerships;
- the adequacy of current professional standards, regulations and laws (including those relating to independence and the management of conflicts of interest);

³ Department of the Treasury, Submission 50 to PJC Inquiry, pp 22-25

- 
- whether the transparency requirements for accounting, auditing and consulting firms are sufficient to:
 - give capital markets confidence that independent audit services are delivered in accordance with prescribed laws and standards; and
 - enable stakeholders⁴ to obtain the information they need to inform their engagement with the firm(s).
 - the adequacy of regulatory enforcement capabilities and standard setting;
 - the protection of whistleblowers; and
 - competition / resilience in the audit sector.

These issues have come to light through submissions and evidence provided to current and recent inquiries, reviews, research and other sources.

⁴ Reflecting the broad range of services provided by accounting, auditing and consulting firms, these firms have many stakeholders, including clients, employees, suppliers/creditors, regulators and industry bodies.

Key issues

Governance

Governance refers to ‘the system by which an organisation is controlled and operates, and the mechanisms by which it, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance’.⁵ The governance of an organisation is reflected in the processes and incentives in place to achieve accountability, transparency, responsibility and stewardship. Good governance facilitates the identification and rectification of regulatory breaches, and positive culture committed to regulatory compliance.

Entities that are governed well are more likely to prosper and survive in the long run. As such, firms face natural incentives to put in place mechanisms that support good governance. In circumstances where the market fails to foster these incentives, governments have intervened by imposing disclosure or accountability requirements to protect the public interest.⁶

This section outlines current regulatory mechanisms that are designed to foster good governance in companies and partnerships and seeks feedback on potential issues.

Governance mechanisms for companies are prescribed in the Corporations Act

Where a business is incorporated as a company, it will fall under the purview of the Corporations Act. A key role of the Corporations Act is to manage the ‘principal-agent’ or ‘attendant agency’ problem (i.e. the difference in interests between the company’s managers and owners) by creating various obligations such as statutory directors’ duties (i.e. obligations to act in the interests of the company), and reporting requirements.

Generally, directors are obligated to act ‘in the best interests of the company’, and have broad discretion in determining what to take into account when making decisions. Directors may consider the interests of (for example) existing or future shareholders, creditors, employees, customers, contractors and/or the community, depending on the circumstances. Businesses (including companies) must also comply with laws imposed for a variety of other policy objectives, such as those on conditions of employment, consumer protection and environmental protections. Directors may be in breach of their duties if their decisions put the company in breach of these laws.

The Corporations Act clarifies that management is accountable to the board of directors, who are accountable to shareholders in respect of the company’s operations and to the company in respect of the fulfilment of their directors’ duties. These requirements are enforceable by ASIC, as well as by directors and members through civil litigation.

⁵ Governance Institute of Australia, [What is governance?](#), Governance Institute of Australia website, n.d., accessed 26 February 2024.

⁶ Examples of governance related interventions include the Financial Accountability Regime (**FAR**) which provides a responsibility and accountability framework for entities in the banking, insurance and superannuation industries and their directors and senior executives, and requirements for ASX-listed entities to produce annual corporate governance statements (**CGS**) disclosing the extent to which they have followed the ASX Corporate Governance Council’s corporate governance recommendations (**CG Recommendations**).

In smaller proprietary companies there is scope for high levels of overlap between the persons who are managing the company, overseeing management (directors) and shareholders. As such, there are fewer regulations relating to governance.

There are more prescribed accountability mechanisms for large proprietary companies and public companies, in recognition of the potential for these companies to be more broadly held and the resultant need for more protections and disclosure.⁷

Governance mechanisms for partnerships are driven largely by fiduciary duties

The control and management of partnerships is shared among the partners, who are also its owners. This means that in a traditional partnership structure, the interests of ownership and management are aligned. The accountability mechanisms for a partnership (including through fiduciary duties) rests on partners having an incentive to hold each other to account, as partners are jointly exposed to all the liabilities, assets and risks of the partnership’s operations.

Fiduciary duties, whether expressed in the partnership agreement or adopted from common law, equity or legislation, determine the responsibilities and rights of partners to each other. The partnership framework allows partners to seek compensation from other partners for breaches of contract where there is a failure by one or more partners to properly exercise fiduciary duties.

Partners can cap their liability for duties breaches through professional standards regimes⁸ that are enabled by state and territory professional standards legislation or through asset protection mechanisms such as the use of trust and/or corporate structures by individual partners.

Partnerships in Australia are generally limited to having no more than 20 members,⁹ however, there are exceptions (see Table 1).

Table 1: Partnership limits specified in Reg 2A.1.01 of the Corporations Regulations

Kind of partnership or association	Maximum number of partners
(a) Actuaries, medical practitioners, patent attorneys, sharebrokers, stockbrokers or trade mark attorneys	50
(b) A partnership, the primary purposes of which is collaborative scientific research (including at least one university and one private sector participant)	
Architects, pharmaceutical chemists or veterinary surgeons	100
Legal practitioners	400
Accountants	1,000

Based on information provided to Treasury by state and territory governments, the formation, operation or winding up of general partnerships is not subject to any active oversight and there is no regulator empowered to intervene in the governance of a general partnership on behalf of either one

⁷ Large proprietary companies and public companies are required to prepare and lodge audited annual financial statements with ASIC: Corporations Act, ss 292(1), 301, 319

⁸ The Australian professional standards regime enables the creation of schemes to limit the civil liability of professionals and members of occupational groups under state and territory professional standards legislation.

⁹ Corporations Act, s 115

or more partners or any other stakeholder of the partnership.¹⁰ State and territory governments advised the regulatory framework for partnerships is not differentiated on the basis of economic or systemic significance. As there is no divergence of interests between ‘owners’ and ‘managers’ (as compared to a company), there are no corresponding requirements prescribing accountability for enterprise-level decision making or disclosure in respect of the operations of the enterprise. Nor is any regulator empowered to intervene in the operations of a partnership – regardless of economic or systemic significance.

As it is difficult for partners to make collective decisions in the context of very large partnerships, in practice, such partnerships put in place governance mechanisms via the partnership deed, such as a ‘Board of Partners’, to represent the interests of the broader partnership and hold the elected ‘management’ of the partnership to account.¹¹

In these cases, there may be a high level of overlap between the owners, the executive and members of the board, all of whom could be partners with varying degrees of management or oversight responsibility. To the extent that such a partnership has appointed independent directors to its board, directors’ influence may be limited if they are in the minority.

Potential issues for consideration

Potential issues relating to governance within accounting partnerships are outlined below, drawing on submissions to the PJC Inquiry and other sources, including international research.

Potential issue #1: Economically significant partnerships determine their own internal governance practices, which may not adequately protect the interests of stakeholders

The largest accounting, auditing and consulting firms play a significant role in Australia’s economy, providing essential services and facilitating efficient capital markets.

The partner group has the scope to set their own internal oversight and accountability mechanisms, and these mechanisms can vary by firm. These accountability mechanisms impose obligations between partners. There are no prescribed accountability mechanisms to a broader range of stakeholders, disclosure requirements or scope for regulatory intervention. Accountability for enterprise-level decision making rests with each and all of the partners.

It is not clear whether internally set accountability mechanisms are sufficiently robust to adequately safeguard the interests of both partners and non-partner stakeholders, such as audit clients and shareholders of these clients.¹²

Importantly, the incentives driving the behaviour at the firm-level (e.g. profit optimisation and maintaining client relationships) in this sector can deviate from the incentives of individuals within the firm, recognising that regulation aimed at fostering high standards of conduct in this sector is largely

¹⁰ Limited partnerships and incorporated limited partnerships, where they exist, are required to register and report in each state and territory. Non-compliance with reporting requirements may result in penalties.

¹¹ An example is the Deloitte structure. See Deloitte, Submission 40 to PJC Inquiry, p 27

¹² In contrast, the UK has corporate governance and reporting obligations for firms that audit one or more FTSE 350 clients or 20 or more public interest entity (PIE) clients. These audit firms are expected to apply the [Audit Firm Governance Code 2022](#) and provide disclosure on a ‘comply or explain’ basis in their annual transparency reports. The UK’s Financial Reporting Council (UK FRC) sets and monitors reporting against this code.

targeted toward the behaviour of practitioners (e.g. auditor conduct and independence) and not the firm (the following section refers).

The divergence of these incentives relates to several potential issues canvassed in this paper. In respect to governance, these differences in incentives create tensions that would need to be negotiated at the organisational level through internal governance mechanisms. In the context of large partnerships, the capacity of regulated practitioners to meet their own obligations may be diminished in the absence of strong internal controls set by the firm at the organisational level.

It is not clear whether corporate accountability mechanisms such as directors' duties, reporting obligations or independent directors would function effectively in a partnership context. As the bodies of 'owners' and 'management' overlap in a partnership, there is little scope for a meaningful separation of powers to impose effective checks and balances.

Potential issue #2: The limit for accounting partnerships may be too high

The current partnership limit of 1,000 for accountants may be too high in the absence of mandated governance requirements (see potential issue #1) or transparency requirements (see potential issues #8 and #9).

The capacity to identify and properly assess risks may be impaired in large partnerships, due to the difficulties associated with jointly managing an enterprise with a substantial number of partners, each with similar legal status within the organisation. In the absence of a prescribed governance mechanism, it may not be clear who (if anyone) is tasked with and accountable for enterprise-level decision making.

The risks and consequences of governance failures in the context of large or systemically important partnerships that provide audit services may be significant for non-owner stakeholders, including audit clients.

Professional standards regimes may be exacerbating the potential for inadequate accountability mechanisms by capping liability for services. In larger partnerships, the capped liabilities are spread across a wider base of partners and assets, which may limit the effectiveness of 'joint and several liability' as an accountability mechanism.

The regulation specifying a higher number of partners for particular kinds of partnerships does not include the definitions of terms used, such as 'accountant' and 'legal practitioner'.¹³ As a consequence, some large 'accounting' partnerships may comprise partners that have affiliate membership status of Chartered Accountants Australia and New Zealand (**CA ANZ**), even though they may not be considered 'accountants' in a traditional sense (such as partners that provide consulting services).¹⁴

The partner limit raises questions as to whether it is possible and appropriate to put structuring arrangements in place (for example, inserting additional partnerships, trusts or companies within a broader partnership group) to enable a partnership to accommodate over 1,000 partners. Any such structuring arrangements might raise additional governance concerns or difficulties.

Additionally, the growth of multi-disciplinary firms also raises concerns around the adequacy of penalties in the event of a breach.

¹³ Corporations Regulations, regulation 2A.1.01

¹⁴ To be a chartered accounting firm, CA ANZ specifies that all principals, partners or directors need to be a Chartered Accountant or an affiliate member of CA ANZ.



Questions

1. Are there adequate incentives to have appropriate governance practices in partnership structures?
2. How should governance mechanisms operate in large accounting partnerships? Does this reflect how governance is managed in practice?
3. Are there any key issues that are not captured above in relation to the governance mechanisms of large partnerships? Are there additional examples of benefits for non-stakeholders of good governance?
4. Are the current partnership limits fit for purpose for accounting firms? If not, what factors should guide decisions on an appropriate partnership limit and how should the limit be applied?

Professional standards, regulations and laws

Practitioners delivering accounting, auditing and consulting services are subject to professional standards, regulations and laws. These requirements are often applied to individual practitioners (rather than firms) and comprise of a mix of self-regulation and government regulation.

Auditing standards largely apply to individual practitioners ¹⁵

Corporate auditing laws are designed to ensure auditors adhere to requirements that promote the quality of audit services.¹⁶ Audit quality refers to matters contributing to the likelihood that the auditor will:

- achieve the fundamental objective of obtaining reasonable assurance that a financial report as a whole is free of material misstatement, and
- ensure any material deficiencies detected are addressed or communicated through the audit report.¹⁷

These laws reflect the role of auditors in supporting the quality of financial reporting, which is important to the pricing of risk and valuing assets. This ensures that investors are making informed investment decisions, in turn enabling the most productive use of capital, and fostering confidence and integrity in capital markets.

Australia's regulations for corporate audit are primarily applied at the individual practitioner level.¹⁸ Individual audit practitioners must satisfy the requirements for registration as a registered company auditor (**RCA**). Companies can register as an authorised audit company (**AAC**) if they meet the relevant company management, ownership and control criteria.

A Reporting Entity can appoint an individual auditor, company (AAC) or a partnership as its auditor.¹⁹ For a partnership to be appointed, at least one partner must be an RCA.²⁰

ASIC recently made the following observations regarding corporate audits performed by audit partnerships:

- the lead auditor (also known as an engagement partner) signing an auditor's report for a partnership is required to be an RCA and, on this basis, all audit partners that sign auditor's reports must be RCAs; and

¹⁵ In this consultation paper, **audit** or **corporate audit** means the audit of entities that are required to prepare financial reports under Part 2M.3 of the Corporations Act (**Reporting Entities**).

¹⁶ Corporations Act, ss 301, 307-311

¹⁷ ASIC, Submission 16 to the PJC on Corporations and Financial Services inquiry into regulation of auditing in Australia (**PJC 2019 Inquiry**), p 1

¹⁸ In contrast, a number of international jurisdictions primarily apply regulations at the partnership or company level (including US and UK).

¹⁹ Corporations Act, s 324AA

²⁰ Corporations Act, s 324BB. Upon appointment, all RCAs who are partners are treated as auditors of the Reporting Entity: s 324AB

- audit staff are generally not RCAs and not regulated by ASIC, but might be members of a professional accounting body (**PAB**) depending on the partnership's internal policies.²¹

Regulations include standards for ethics and the management of conflicts of interest. The key regulations that apply to individual auditors, AACs and partnerships providing audit services are summarised in **Appendix A** together with a summary of the relevant criminal offences.

Ethical standards originate from self-regulation

Ethical standards are set in APES 110 by the Accounting Professional and Ethical Standards Board (**APESB**), a non-government body whose members are the three PABs – CPA Australia (**CPAA**), CA ANZ and the Institute of Public Accountants (**IPA**).²² Ethical standards, including conflicts of interest and independence requirements, apply to all members of PABs (including affiliate members of CA ANZ).²³ The standards include five fundamental principles:

- integrity
- objectivity
- professional competence and due care
- confidentiality
- professional behaviour.

PAB members must adhere to APES 110, and the PABs have established mechanisms for managing compliance. Non-compliance with APES 110 may result in disciplinary actions by the PABs.

The APES 110 standard is referred to in the AUASB's Australian Auditing Standard *ASA 102 Compliance with Ethical Requirements when Performing Audits, Reviews and Other Assurance Engagements (ASA 102)*.

Management of conflicts of interest is a mix of self-regulation and government regulation

The management of conflicts of interest mitigates auditor misconduct and poor audit quality by ensuring the auditor's independence from both the client and other areas of the auditor's firm.

Audit quality is higher when the auditor has a thorough understanding of the client's business and strong independence from the client. In practice, these two elements can be in conflict.

In Australia, conflicts of interest and threats to independence are currently managed through the following mechanisms in the Corporations Act and APES 110:

- The Corporations Act requires individual auditors, directors of AACs, and partners (if they are RCAs) to take all reasonable steps to ensure audit activity does not continue in conflict of

²¹ ASIC, Response to Question on Notice No. 49, PJC on Corporations and Financial Services Inquiry *Oversight of ASIC, the Takeover Panel and the Corporations Legislation*, received on 30 November 2023.

²² APESB is funded by the PABs. It has seven directors (six from PABs and one independent director who is the chairman) who vote on new and amended ethical standards.

²³ However, not all auditors are required to be members of a PAB (per FRC, *Oversight of Audit Quality in Australia - A Review*, November 2023, p 10).

interest situations, and to notify ASIC if a conflict continues within seven days of the auditor becoming aware of the conflict.²⁴

- Provision of an auditor's independence declaration to the directors of the audit client (provided by an individual auditor or lead auditor under section 307C of the Corporations Act).
- The obligation for directors to make statements regarding the auditor's independence.²⁵
- The requirement for appointment of auditors of public companies by shareholder resolution at an annual general meeting (**AGM**).²⁶ If a vacancy occurs (e.g. due to an auditor resigning), the directors must appoint a new auditor ahead of an ongoing appointment occurring by shareholder resolution at the next AGM.²⁷
- The capacity for audit committees (or boards of directors) to raise concerns with ASIC if any audit quality concerns are not satisfactorily resolved with the auditor, or to seek removal of the auditor at a shareholder meeting.²⁸
- A requirement for auditors to disclose the provision of non-audit services to the client, and for the client to disclose the procurement of non-audit services from the auditor in its financial statements.²⁹
- The requirement that audit firms (AACs and partnerships) have a system of quality management in place addressing independence and ethical requirements, and risk assessment processes.³⁰
- APES 110, which requires that auditors act independently and make an unbiased assessment when providing assurance services to clients. Where safeguards cannot eliminate or reduce independence threats to an acceptable level, the auditor is required to decline or terminate the relevant client engagement. APES 110 also contains specific prohibitions on providing non-audit services where threats to auditor independence cannot be reduced to an acceptable level.³¹ For instance, audit firms must not provide accounting and bookkeeping services (strict prohibition) to audit clients that are 'public interest entities' (**PIEs**) or controlled by PIEs.
- Audit rotation requirements in APES 110 and the Corporations Act. Broadly, the listed company client must rotate those playing significant roles in the audit (such as lead auditors) to new RCAs (who can be from the same audit partnership or AAC) after a number of years (generally 5 out of

²⁴ Corporations Act, ss 324CA-CG

²⁵ Corporations Act, s 300. Also see ASIC Information Sheet 196.

²⁶ Corporations Act, s 327B

²⁷ Corporations Act, s 327C

²⁸ See Corporations Act, s 329 (auditor removal); ASIC Information Sheet 196 (raising concerns with ASIC).

²⁹ Corporations Act, s 300(11B). The client must (a) disclose amounts paid/payable for non-audit services, (b) state whether its directors are satisfied that non-audit services provided are compatible with the general Corporations Act standard of auditor independence, and (c) state the directors' reasons for being satisfied that non-audit services did not compromise the auditor.

³⁰ Auditing Standard ASQM 1 *Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements*

³¹ The prohibitions are more extensive for audit clients that are public interest entities (such as listed companies) and include services such as internal audit services and IT consulting for internal controls, valuations, and litigation support (all based to materiality thresholds).

the last 7 successive years). Tenure limits also apply to 'review auditors' (also known as engagement quality reviewers).³²

While these obligations fall most significantly on individuals, the independence and conflict of interest requirements affect how AACs and partnerships operate, and the types of services they can provide.

The Australian requirements do not incorporate the following independence-related mechanisms adopted or planned by some offshore jurisdictions:

- **US:** audit committees of public companies are required to pre-approve all audit and non-audit services.
- **UK:** mandated operational separation of audit practices from non-audit functions is planned.³³

Tax agents

The *Tax Agent Services Act 2009 (TASA)* establishes the regulatory framework for tax practitioners in Australia. Its objective is to ensure tax agent services are provided to the public with appropriate levels of professional and ethical conduct. The Tax Practitioners Board (**TPB**) plays a key role in regulating tax practitioners under the TASA, including to strengthen ethical conduct and independence. The TPB Code of Professional Conduct outlines the ethical standards to which tax practitioners must adhere, including requirements to act with integrity and avoid conflicts of interest.

The TPB is an independent statutory body comprising of a board appointed by the Assistant Treasurer. The regulatory functions of the TPB are outlined in the TASA. They include administering the Code of Professional Conduct (and sanctions for breaches of the Code), investigating conduct that may breach the TASA, resolving complaints lodged regarding practitioners and unregistered tax preparers, and seeking civil penalty orders from the Federal Court of Australia in response to breaches by registered tax practitioners. The sanctions regime administered by the TPB was the subject of recent Treasury consultation 'Enhancing the Tax Practitioners Board's sanctions regime' which closed for public consultation on 21 January 2024.


Regulation applies to both individuals and firms

Regulatory requirements under the TASA generally apply to registered tax practitioners. Both individuals or firms (partnerships or companies) can be a registered tax practitioner under the TPB registration framework. Where a firm is registered, the firm must have a 'sufficient number' of individuals within the firm who are registered tax practitioners in their own right, to provide other staff in the firm with adequate review and supervisory arrangements.³⁴ Treasury will undertake public consultation on the tax practitioner registration requirements in a separate consultation paper to be released in the first half of 2024.

³² Corporations Act, ss 324DA-DD; APES 110, s 540

³³ It is also designed to enhance audit quality and eliminate any cross-subsidies for audit practices from non-audit divisions. The four largest UK firms (Deloitte, EY, KPMG and PwC) have voluntarily agreed to implement operational separation in advance of the planned legislation and agreed to meet the [FRC's Principles for Operational Separation of Audit Practices](#) (updated February 2021).

³⁴ TPB information sheet TPB(I) 36/2021 Supervisory arrangements under the TASA provides the TPB's guidance regarding supervisory arrangements and the determination of the 'sufficient number' of registered individual tax agents in a partnership or company.



Tax practitioners must comply with the TASA in order to maintain their registration with the TPB and provide tax agent services for a fee or another reward. Ongoing compliance includes maintaining professional indemnity insurance, meeting continuing professional education requirements, notifying the TPB of certain changes in circumstances and complying with the code. By extension, anyone who provides tax or Business Activity Statement (**BAS**) services for a fee or reward without a valid TPB registration is in contravention of the TASA.

TPB registration ensures that practitioners have the qualifications and experience necessary to provide tax practitioner services, meet the 'fit and proper person' requirements of the TASA, and have appropriate professional indemnity insurance cover to protect the public, including consumers.

Regulation of tax practitioners is a mix of self-regulation and government regulation

Ethical and professional standards for tax practitioners are set out in the TPB's Code of Professional Conduct. The code includes principles under five categories:

- honesty and integrity
- independence
- confidentiality
- competence
- other responsibilities.

Compliance with the code is a requirement for a tax practitioner to maintain their TPB registration, and sanctions may apply under the TASA to practitioners who breach the code. Tax practitioners must use their own professional judgement to maintain compliance with the code.

Under changes introduced in *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*, tax practitioners will be required to report to the TPB where they have reasonable grounds to believe that another registered tax practitioner has perpetrated a significant breach of the Code of Professional Conduct. This obligation will commence from 1 July 2024.

In addition to standards under the code, tax practitioners may be a member of a PAB which may have its own code of conduct or equivalent. Tax practitioners may choose to become a member of a PAB for a variety of reasons, including TPB registration,³⁵ however tax practitioners are not required to be a member of a PAB. Tax practitioners who are a member of a PAB may be subject to ongoing requirements to maintain membership including continuous professional development and education requirements, and may be subject to disciplinary processes for failure to meet ongoing requirements. As described earlier in this paper, professional associations may also operate a professional standards scheme which limits the civil liability of their members.

³⁵ Registration pathway 102 for BAS agents (TASR, s 102 to Schedule 2) and 206 for tax agents (TASR, s 206 to Schedule 2) provide a pathway to TPB registration for voting members of recognised professional associations.

Management of conflicts of interest is also a mix of self-regulation and government regulation

Whilst management of conflicts of interest is a requirement under the code,³⁶ it is up to tax practitioners' professional judgement as to how such conflicts are managed.

Proposed changes to the code contained in exposure draft *Tax Agent Services (Code of Professional Conduct) Determination 2023* propose to include explicit requirements in the code for tax practitioners to identify, avoid and disclose material conflicts of interest to Australian government agencies in relation to any activities undertaken for that government entity. The proposed changes to the code also include a requirement for tax practitioners to maintain adequate internal controls and quality management systems, including for the management of conflicts of interest.

Insolvency

In Australia, corporate insolvency laws provide a framework for the fair and orderly distribution of assets among creditors of insolvent companies and individuals. The laws aim to balance the interests of creditors, shareholders, and other stakeholders, while promoting transparency and confidence in the integrity of the insolvency systems. The laws relating to insolvency practitioners are primarily applied at the individual practitioner level.

ASIC can take administrative disciplinary or court action against registered liquidators for breaches of the Corporations Act.

Insolvency practitioners that are members of the PABs are required to comply with ethical standards under APES 330 *Insolvency Services*. Professional bodies in the insolvency industry include the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) and the Association of Independent Insolvency Practitioners (**AIIP**). ARITA's code of professional practice outlines the ethical and professional standards for members, including provisions related to independence. For instance, ARITA can take disciplinary actions against members who breach its code, and may also refer matters to ASIC or the Australian Financial Security Authority (**AFSA**) (i.e. the Inspector-General in Bankruptcy) if it identifies unethical behaviour.

Consulting and other services

Consulting services that have lower or no systemic impact on the functioning of the economy face fewer regulations.

There is no single standard definition of 'consulting' and their services can be categorised as 'general business activities'. There are a number of overarching regulatory frameworks that pertain to all firms in Australia – for example, competition and consumer laws, employment laws, applicable state or territory laws,³⁷ and relevant general law.

Aside from the general laws applying to all businesses, the incentive that drives firms in this sector to perform to a satisfactory level is the firm-client relationship, which is managed by the respective parties – often through a contractual arrangement. That is, a failure to perform satisfactorily goes against the contract and is a matter for the parties to resolve.

³⁶ TASA, s 30-10(5)

³⁷ These include partnership laws in the state or territory in which a partnership is formed.

In some circumstances, however, the provision of certain consulting services can be subject to specific regulation. For instance, independent expert reports prepared for Corporations Act purposes may constitute financial product advice, and therefore trigger the need to hold an Australian financial services licence (AFSL) and comply with the requisite conflict management obligations.³⁸ Several professional services firms have incorporated companies in order to obtain AFSLs and provide such reports.

Consultants who are legal practitioners are regulated in accordance with the relevant state and territory level laws (including the Legal Profession Uniform Law which has been adopted in NSW, Victoria and WA).

Potential issues for consideration

Potential issues relating to professional standards, regulations and laws within accounting partnerships are outlined below, drawing on submissions to the PJC Inquiry and other sources including international research.

Potential issue #3: Auditor/client independence requirements largely rely on individual or lead auditors forming their own view regarding their independence, creating scope for conflicts to go unreported and/or unnoticed

Audit firms generally have compliance management systems in place for auditor independence, including the tracking of firm-wide client engagements. Lead auditors depend on these systems to form an accurate and complete view regarding their independence from an audit client given the difficulty of these assessments in large multi-disciplinary operations. Notwithstanding their reliance on these systems, maintaining independence is primarily the obligation of individual and lead auditors who bear sole legal responsibility for the independence declaration.³⁹ Conflict management requirements under the Corporations Act cannot be enforced against other partners⁴⁰ with limited exceptions.⁴¹

³⁸ Corporations Act, ss 911A, 912A(1)(aa)

³⁹ For instance, Ernst & Young (EY) has stated that ‘primary responsibility for managing conflicts of interest with non-audit clients sits with our engagement partners. They use the requirements of APES 110, alongside our policies and procedures, to identify and manage transactional, relational, advocacy and personal conflicts of interest, as well as conflicts arising from clients who are in competition with one another’ (see EY, Submission 29 to 2019 PJC Inquiry, p 7).

⁴⁰ ASIC has stated that ‘though a partnership can be appointed to act as an auditor ... that appointment is taken to apply only to members of the firm who are, at the date of appointment, RCAs; it does not extend to the partnership more generally. Further, while ASIC regulates Audit Firm compliance with the auditing standards ... ASIC is only able to take action against an individual who is an RCA of an Audit Firm ...’ (see ASIC, Submission 1.1 to the Senate Economics Reference Committee Inquiry into ASIC Investigation and Enforcement, p 2).

⁴¹ If other RCA partners of an audit firm are aware of conflict situations that remain unaddressed, they have Corporations Act obligations. If other RCA partners are not aware, but would have been aware if the audit firm had in place a proper quality control system, the other RCA partners have committed an offence (unless the other RCA partners had reasonable grounds to believe the partnership’s quality control system provided reasonable assurance of compliance). If these other partners are members of a PAB, they would have separate obligations under the relevant codes or rules of the PAB.

Potential issue #4: The existing approach of primarily regulating lead auditors rather than firms permits the firms to determine the extent to which independence of audit services is prioritised

As noted in potential issue #3, the legislated requirements around the management of conflicts of interest have stronger application to lead auditors than to the firm, which has led to concerns regarding the risks associated with the adequacy of:

- firm-level processes for the identification and management of conflicts of interest in multi-disciplinary firms; and
- systems to facilitate provision of appropriate levels of information and support to lead auditors to form an accurate and complete view of their independence from the audit client.⁴²

It is not clear whether individual firms face sufficient incentives and market discipline to achieve the necessary degree of independence for audit services, in light of the potential consequences for the broader market if firms fall short.⁴³

Potential issue #5: Client/audit relationship tenure is not limited which may compromise auditor objectivity and independence

APES 110 and the Corporations Act both contain rotation requirements for key auditors. The lead auditor for a listed company client must rotate to another RCA (who can be from the same audit partnership or AAC) after 5 years. Tenure limits also apply to 'review auditors' (also known as engagement quality reviewers).

The auditor rotation requirements do not preclude the same firm from conducting the audits of the client on an ongoing basis, noting the average tenure of audit firms for the top 200 ASX-listed entities was 13.2 years in 2022 (and ranged from one year to 58 years).⁴⁴ Some submissions to the PJC inquiry

⁴² As further background, instances of independence compliance issues are noted in:

- The 2023 transparency reports of EY (on p 51) and KPMG (on p 67) with most involving a partner holding a financial interest in an audit client where the lead audit partner was located in the same office;
- ASIC's Audit inspection report for the 2020 financial year (REP 677) including where an auditor was the client's largest trade debtor, and an audit client's non-audit services fees were over nine times the audit fees (see p 17);
- ASIC's response to a PJC question advising of concerns raised by some potential audit client whistleblowers about the auditor/client relationship (see ASIC, Response to Question on Notice No. 4, PJC on Corporations and Financial Services Inquiry Oversight of ASIC, received 27 March 2020); and
- Section 4.2.5 of the *Review of Governance, Culture and Accountability at PwC Australia* by Dr Ziggy Switkowski AO (dated August 2023) titled 'Conflicts of interest are not adequately managed at a whole of firm level, creating the risk that decisions are made without complete information' (see pp 32-33).

⁴³ See Dr Barbara Voss, Submission 41 to PJC Inquiry, pp 1-2 in relation to auditor independence; see AUASB, Submission 58 to PJC Inquiry, pp 7-8 on audit firms.

⁴⁴ S Hossain and G Monroe, *Audit Market Structure, Concentration, and Competition in Australia 2019-2022*, pp 28-29. This study was financially supported by CPA and CA ANZ. Across all 2,132 ASX-listed companies, the average audit firm tenure was 7.4 years in 2022 reflecting shorter tenures for medium and small companies (including 5.9 years for the smallest 500 companies). Note: The top 200 and smallest 500 companies are based on total assets.

into regulation of auditing in Australia (**PJC 2019 Inquiry**) suggested the lack of auditor firm rotation requirements may be compromising auditor objectivity and independence.⁴⁵

Several other jurisdictions (such as the UK and European Union (**EU**)) have implemented auditor firm rotation requirements or a cap on audit tenure, and firms generally have audit tenures ranging from 10 years to no more than 20 years.⁴⁶ There is a need to consider how audit rotation impacts audit fees and the extent to which audit rotation is beneficial.⁴⁷

Potential issue #6: Joint governance and sharing of profits between audit partners and non-audit partners may create conflicts of interest which pose risks to auditor independence

Under a model of profit-sharing between audit and non-audit partners, auditors may be incentivised to prioritise client management satisfaction over audit quality. The consequences of gaining or losing specific clients are shared with the broader firm, which means profit sharing may create incentives for auditors to avoid contentious issues or adopt a less stringent approach in their audit procedures.

This potential mismatch between firm-level incentives and the objectives of audit regulation can erode trust in the audit process, hinder the market's ability to make informed decisions and compromise confidence in the fundamental role of auditors in providing an independent and unbiased assessment of financial data.⁴⁸

On the other hand, audit firms have noted that the operation of audit alongside other functions facilitates the availability of audit-adjacent services to clients (such as tax and some types of consulting), improves audit quality and allows for the attraction and retention of staff.⁴⁹

APESB, Deloitte and Ernst & Young (**EY**) have made submissions to the PJC inquiry that the proportion of revenue generated from providing non-audit services to audit clients has been low (on a relative basis) in recent years.⁵⁰ The following table sets out the revenue composition for Deloitte, EY, Klynveld Peat Marwick Goerdeler (**KPMG**), and PricewaterhouseCoopers (**PwC**) in the 2023 financial year. The table also indicates other assurance and non-audit services revenue from audit clients accounted for 6 per cent of these firms' aggregate revenue.

⁴⁵ FRC, Submission 24 to PJC 2019 Inquiry, p 6; Professor Michael Bradbury and Associate Professor Bryan Howieson, Submission 13 to PJC 2019 Inquiry, p 5

⁴⁶ For instance, the UK has a maximum audit firm tenure of 10 years for PIEs. This can only be extended through mandatory tender (to a maximum of 20 years).

⁴⁷ These matters have been considered in studies such as S Corbella, C Florio, G Gotti and S Mastrolia, *Mandatory Auditor Rotation, Audit Fees and Audit Quality* (April 2012); J Blouin, B Grein and B Rountree, 'An Analysis of Forced Auditor Change: The Case of Former Arthur Andersen Clients', *The Accounting Review*, Vol. 82, No. 3, May 2007, pp 621-50]; M Azizkhani, S Hossain, J Jiang and W Yap, 'Mandatory partner rotation, audit timeliness and audit pricing', *Managerial Auditing Journal*, Vol. 36 No. 1, 2021 pp. 105-131 (this study was financially supported by the Accounting and Finance Association of Australia and New Zealand).

⁴⁸ Society of Corporate Law Academics, Submission 24 to PJC Inquiry, p 5; UK Competition and Markets Authority (**CMA**) *Statutory Audit Services Market Study* (April 2019) (**CMA 2019 Study**), p 117.

⁴⁹ For instance, KPMG (Submission 25 to PJC Inquiry, p 9) and BDO (Submission 38 to PJC Inquiry, pp 1-2).

⁵⁰ APESB, Submission 20 to PJC Inquiry, p 6; EY, Submission 12.1 to PJC Inquiry, p 2; Deloitte, Submission 40 to PJC Inquiry, p 5

Table 2: Revenue composition for Deloitte, EY, KPMG and PwC (FY 2023)

	Audits of financial statements (% of total revenue)	Other assurance services and non-audit services for audit clients (% of total revenue)	Non-audit services for non-audit clients (% of total revenue)
Deloitte	11%	4%	85%
EY	17%	4%	79%
KPMG	16%	8%	76%
PwC	16%	6%	78%
Combined*	15%	6%	79%

* Calculated based on the dollar value of the combined revenue streams of the four firms.

Note: The revenue composition figures for FY2022 were similar.

Source: Calculated from (unaudited) revenue disclosures in the FY2023 transparency reports for Deloitte, EY, KPMG and PwC.

Potential issue #7: Lack of oversight or enforcement of ethical standards for non-audit partners may undermine auditor compliance efforts

Concerns have been raised regarding the absence of legislatively enforceable ethical standards for partners of multi-disciplinary and consulting firms that are not working in the regulated industries, including audit, insolvency, financial services and tax.⁵¹

Where these partners are members of PABs, they must comply with ethical standards (i.e. APES 110) that were developed in a self-regulatory environment, with adherence managed by the relevant PAB.

The ethical standard APES 110 is based on the International Code of Ethics for Professional Associations issued by the International Ethics Standards Board for Accountants (IESBA). The Public Interest Oversight Board (PIOB), which perform an oversight role of the IESBA, has flagged risks of undue influence in the standard-setting process by practitioners from the largest accounting firms and noted there will be changes to the membership of IESBA in 2025 to address these risks.⁵²

As previously noted by Treasury, self-regulation is likely to be more successful when the interests of practitioners align with incentives for the broader industry in relation to setting and upholding standards, and where competitive pressures ensure consumers, suppliers and employees can hold the self-regulated entity, individual or both to the desired standard of conduct.⁵³ A question arises as to whether these conditions hold true for this sector.

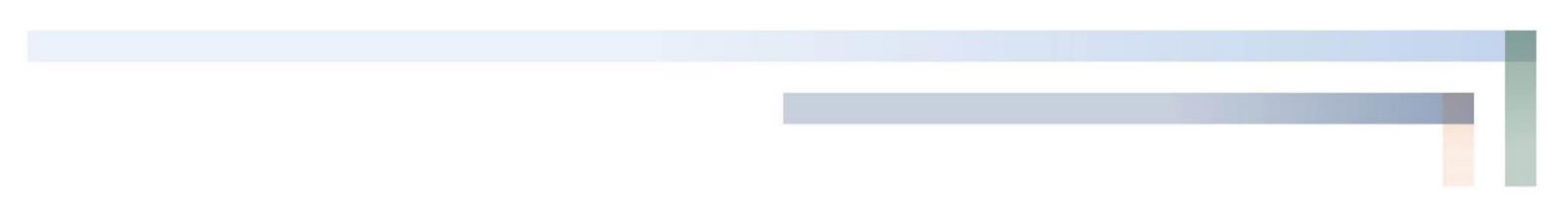
Questions

- Are conflicts of interest managed appropriately by auditing and accounting practitioners? If not, what could be done to improve the management of conflicts of interest?

⁵¹ The FRC recently noted that ‘not all accountants are required to be registered with a government agency or a regulator, and there is no requirement to be a member of a PAB’ (see *Oversight of Audit Quality*, p 10). Also see AUASB, Submission 58 to PJC Inquiry, p 12

⁵² Public Interest Oversight Board, Submission 35 to PJC Inquiry, p 3

⁵³ Department of the Treasury, Submission 50 to PJC Inquiry, p 24

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6. How effective are existing policies and regulations in separating the provision of audit and non-audit services in multi-disciplinary firms, particularly in the context of managing conflicts of interest to maintain auditor independence and objectivity? If they are not effective, how could they be improved?
 7. How effective is the existing self-regulatory framework in ensuring the integrity and quality of services provided by professionals in the audit and accounting industries? If it is not effective, how could it be improved?
 8. Are there any key issues that are not captured above in relation to the adequacy of standards, regulations and laws?

Transparency, public information and reporting

In some circumstances, governments mandate requirements to disclose specific types of information to regulators, shareholders, broader stakeholders and/or the public to help market participants make informed decisions. This often occurs where a market is at risk of undersupplying quality information. For instance:

- In primary markets, investors need information to make informed, productive investment decisions. Transparency supports efficient allocation of resources and decreases investment risks.
- In secondary markets, existing and prospective shareholders need information to monitor investment value and ensure managers (who are acting on behalf of shareholders) are working in the company's interests. In this context, transparency supports confidence in Australian companies and improves the functioning of secondary markets.
- Other stakeholders, including employees, customers and suppliers need information when making important counterparty decisions such as assessing credit risk, determining capacity to fulfil obligations, and accepting terms of employment.

This section outlines the extensive transparency requirements for companies and the comparatively limited transparency requirements for partnerships. Information is also provided on transparency requirements that relate to the specific professions and services in this sector.

Transparency requirements for companies focus primarily on investors. Transparency requirements applying to corporations are designed to protect current and potential investors and often relate to the financial health of the company. These requirements address the potential for an information gap to exist between a company's management and its members and other stakeholders, including prospective investors. This type of information asymmetry can foster lower quality investment decisions and unnecessary investment risks, lowering overall economic growth prospects.

Transparency provisions applying to companies include:

- Requirements in the Corporations Act on public and large proprietary companies to provide annual financial reports to ASIC (including financial statements, an auditor's report and a directors' report including a review of operations).
- Public companies being required to hold an AGM⁵⁴ and put applicable resolutions to shareholders (including remuneration report adoption⁵⁵ and an annual election of directors for ASX-listed entities⁵⁶).
- 'Disclosing entities' (which includes listed companies) being required to comply with continuous disclosure requirements regarding material developments (such as material acquisitions or divestments).⁵⁷

⁵⁴ Corporations Act, s 250N

⁵⁵ This is an advisory (non-binding) resolution only: Corporations Act, s 250R(2)

⁵⁶ ASX Listing Rule 14.5

⁵⁷ Corporations Act, s 674

- Shareholders being able to request financial information in certain circumstances.⁵⁸
- ASX-listed companies being required to lodge annual Corporate Governance Statements (CGS) detailing the extent to which they have adopted the CG Recommendations. Stakeholders use this reported information to assess the company (including board and management performance) and to inform decision-making.

All reports and documents lodged with ASIC or on the ASX market announcements platform are publicly available to existing shareholders, other stakeholders and the general public (upon payment of an ASIC fee in some circumstances).

The mandatory transparency requirements applying to publicly listed companies, such as annual reports, can have broader benefits beyond improving investor confidence. For example, academics may use the information to facilitate research, and disclosure facilitates a higher level of scrutiny in relation to business conduct and integrity, for example by journalists. Many government regulators also leverage corporate reporting information as part of targeting their enforcement activities.

Some companies also use public documents (e.g. annual reports) to voluntarily disclose additional information such as environmental, social and governance (ESG) performance. For example, companies may seek to demonstrate their values and commitment to a social cause that aligns with their customers' interests. Companies may also seek to be transparent to manage regulatory risks (such as potential government intervention).

There are natural limits on the extent to which transparency is in the interests of a business. For example, businesses face incentives to limit public availability of information on commercially sensitive matters, or issues that may negatively affect their brand.

The disclosure burden on companies is generally greater as the breadth of company ownership increases, with the most substantial requirements imposed on listed companies. For instance, the ASX Listing Rules require lodgement of an annual CGS (for all entities) and quarterly activities and cashflow reports (for specified entities).⁵⁹

Transparency requirements for companies are also graduated depending on size. For instance, large proprietary companies are required to lodge annual financial reports with ASIC, irrespective of the number of shareholders, to facilitate informed decision making by other stakeholders such as employees and suppliers.

Transparency requirements for general partnerships are limited

In partnerships, ownership and management of the firm is generally one and the same. An interest in a partnership is generally not a liquid asset and the maximum number of partners is limited to legislated maximums. As such, the pool of current and potential investors that would require information about a partnership's operation and performance to make informed decisions is substantially smaller than for many public companies.

⁵⁸ For instance, financial and directors' reports for small proprietary companies (only available for shareholders holding at least five per cent of issued securities: Corporations Act s 293), or the company's books (only available if the shareholder makes a successful court application: Corporations Act s 247A).

⁵⁹ ASX Listing Rule 4.10.3 (CGS) and ASX Listing Rules 1.3.2(b), 4.7B and 4.7C (quarterly reporting), and 5.1-5.5 (quarterly reporting for mining, oil & gas, and exploration entities)

Currently, partnerships (including large partnerships) are governed under relevant state and territory partnership legislation as well as general law. The respective state and territory frameworks do not impose material reporting requirements on general partnerships.

Transparency requirements for auditors are set by government regulation

The Corporations Act requires certain auditors to publish annual transparency reports. This obligation applies to individual auditors, audit partnerships, and AACs that have conducted audits of any combination of 10 or more listed companies, registered schemes, authorised deposit-taking institutions (ADIs), registrable superannuation entities or certain insurers regulated by Australian Prudential Regulation Authority (APRA) in the previous reporting year (Transparency Reporting Auditors).⁶⁰ The objective of this transparency reporting is to:

- improve audit quality by enhancing audit firm transparency, as larger audit firms are usually structured as partnerships, and minimal information about their ownership, governance, business structure and activities is otherwise publicly available;
- ensure factual information about firms performing significant audits is available to existing and potential clients; and
- align Australia’s requirements with international best practice.⁶¹

Transparency reports require disclosure of the specific information set out below. They are not required to be audited.

Table 3: Transparency reports – mandatory information disclosure

For all Transparency Reporting Auditors:	Additional information requirements for audit partnerships and AACs:
<ul style="list-style-type: none"> • If part of a network: A description of the network and its legal and structural arrangements 	<ul style="list-style-type: none"> • Legal structure, ownership and governance structure descriptions
<ul style="list-style-type: none"> • Total revenue and revenue relating to (a) financial statements audits, and (b) other services provided by the auditor for the financial year 	<ul style="list-style-type: none"> • Principles used to determine partner/director remuneration
<ul style="list-style-type: none"> • Internal quality control system description 	<ul style="list-style-type: none"> • Internal quality control system effectiveness statement by administrative or management body or board
<ul style="list-style-type: none"> • Independence practices description 	<ul style="list-style-type: none"> • Date of most recent internal review of independence compliance
<ul style="list-style-type: none"> • Names of bodies authorised to review the auditor (e.g. ASIC or a PAB) and the most recent review date(s) 	<ul style="list-style-type: none"> • CPD policy requirements statement
<ul style="list-style-type: none"> • Names of listed companies, registered schemes, ADIs, registrable superannuation entities and insurers it audited during the year 	

Source: Corporations Act, s 332B(1); Corporations Regulations, reg 2M.4A and Pt 3 of Sch 7A

⁶⁰ Corporations Act, s 332A

⁶¹ Explanatory Memorandum, Corporations Legislation Amendment (Audit Enhancement) Act 2012

Transparency Reporting Auditors can volunteer further information in transparency reports.⁶² In practice, these reports typically only include mandatory high-level financial information, rather than detailed profit and loss statements or balance sheets. Accordingly, they are different from financial reports in that they do not provide users with a detailed understanding of profits, expenses, remuneration, or distributions to partners.

Australia's transparency reporting requirements are akin to those in the EU, UK and South Korea. Auditing firms in the US are required to provide annual reports to the US Public Company Accounting Oversight Board (PCAOB) that include information on revenue, clients and policy control policies (although certain disclosures may not be made publicly available if the information is considered confidential).

All RCAs and AACs are listed on a public register maintained by ASIC. They are also required to submit annual statements to ASIC.

Transparency requirements for tax practitioners / firms

Tax practitioners are registered under the TASA on a public register. Under the Government's proposed legislation⁶³, the register will also identify the firm that the registered practitioner represents where they perform a supervisory role and improve searchability to identify misconduct.

Potential issues for consideration

Potential issues relating to transparency, public information and reporting within accounting, auditing and consulting firms are outlined below, drawing on submissions to the PJC Inquiry and other sources, including international research.

Transparency has significant benefits, and regulations that foster transparency involve lower economic costs than other types of regulation, such as prohibitions or service standards. Such requirements nonetheless impose costs on enterprises, may create barriers to entry and may serve to entrench dominant market players.

Potential issue #8: Information required to be disclosed in auditor transparency reports may not sufficiently inform stakeholders as to whether regulatory requirements are being met

The transparency reports that are required by law to be produced by Transparency Reporting Auditors are intended to encourage an increased focus on audit quality and provide information to audit committees and boards to inform auditor selection.

A question arises as to whether the information required to be disclosed is adequate to support confidence in the systems and processes underpinning the delivery of audit services.

For example, there are no requirements to disclose matters such as enforcement or disciplinary actions taken by ASIC, CADB or the PABs, findings from audit quality inspections by ASIC, or outcomes of other relevant actions (such as client or client shareholder litigation). Any disclosure of such matters is made on a voluntary basis.

⁶² In Information Sheet 184, ASIC advises that further information can be voluntarily disclosed such as actions to improve and maintain audit quality, internal indicators of audit quality, findings from ASIC inspections and external reviews, and network policy setting and monitoring information (for network members).

⁶³ Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023

Potential issue #9: Stakeholders may not have sufficient information to facilitate informed engagement with audit firms

The disclosure requirements for partnerships of all sizes are the same, despite larger partnerships having a similar range of non-owner stakeholders as large proprietary companies. The FRC recently observed that large audit partnerships should publicly report additional financial and corporate governance information to further inform their stakeholders,⁶⁴ notwithstanding the limited current and future investor population of partnerships (also note the discussion on the partnership limit under 'Governance').

Questions arise as to the types of additional information that would be appropriate for large partnerships to report, who the users or beneficiaries of this information would be, and whether mandated disclosure would result in net benefits when weighed against increased regulatory (including audit) costs, and higher barriers to entry into the industry.

Questions

9. Recognising that companies are subject to reporting requirements that focus on protecting investors, should firms providing audit services to these companies be subject to enhanced transparency reporting beyond what is already mandated? If so, what additional information should be included in transparency reports? Should the information be verified?
10. Should audit firms be required to disclose any further specific information or key performance indicators to enhance confidence in the implementation of audit regulation? What costs would be involved?

⁶⁴ FRC, *Oversight of Audit Quality*, p 8. In addition, the APESB recently suggested that large professional service firms should be required to produce audited general purpose financial reports, including remuneration disclosures (see Submission 20 to PJC Inquiry, p 3).

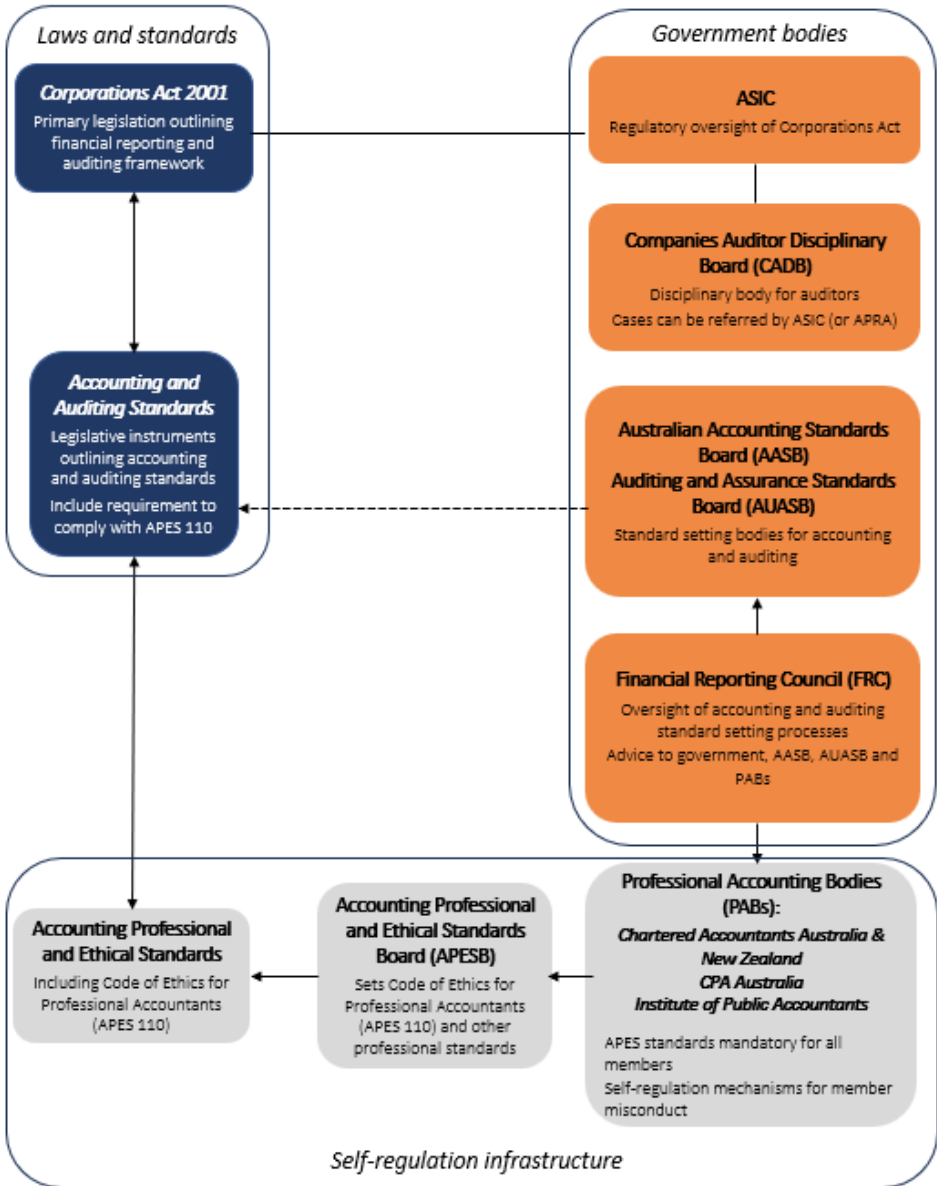
Enforcement and standard setting

ASIC and the TPB are the key regulators with enforcement powers relevant to the services provided by audit, accounting and consulting firms, including audit, insolvency, taxation and financial services.

ASIC

ASIC is Australia’s corporate conduct, markets, financial services and consumer credit conduct regulator. Its powers cover a broad range of areas, including corporations, financial markets, financial reporting and audit, and financial services organisations and professionals dealing and advising in investments, superannuation, insurance, deposit taking and credit. ASIC is empowered to take a range of criminal, civil and administrative actions to address misconduct within its jurisdiction.

Figure 1: Australian regulatory framework overview– Financial reporting and auditing



ASIC is complemented by a number of other bodies, including the AUASB, AASB, APESB, FRC, CADB, Financial Services and Credit Panel (**FSCP**), state and territory regulatory regimes and professional bodies with self-regulatory mechanisms.

TPB

Tax agent service providers (tax practitioners) must be registered with the TPB, unless they are required to be registered as financial advisers with ASIC. The TPB's enforcement powers allow it to:

- refuse registration, or terminate registration if eligibility requirements are not met;
- impose written cautions, orders, suspensions or termination if a tax practitioner breaches the code of conduct; and
- apply to the Federal Court for imposition of a pecuniary penalty if a civil penalty provision is breached.

The TPB's enforcement powers were considered as part of the Independent Review of the TPB in 2019 and a number of reforms resulted, including enhancements to the regulatory framework that were recently implemented (via *Treasury Laws Amendment (2023 Measures No. 1) Act 2023*).⁶⁵

On 6 August 2023, the Government announced a package of reforms to address tax adviser misconduct, including:

- Planned improvements to TPB enforcement powers, such as enhanced investigations and greater transparency of tax practitioner misconduct on the TPB's public register. This was introduced to Parliament on 16 November 2023 in the Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023 (Cth).
- Reviews of the sanction regime that the TPB administers, and the secrecy provisions that restrict information sharing by government bodies such as the ATO and TPB.
- Enhanced TPB (and ATO) information sharing with the professional bodies to ensure they have the relevant information to undertake disciplinary actions.

Professional Accounting Bodies

The PABs have by-laws that are contracts between them and their members. The by-laws set out entitlements, requirements, rights and obligations of members and obligations and powers of the professional associations, including in relation to misconduct by members.

Each of the PABs review member conduct through internal reviews and can also investigate members if complaints are raised.

The by-laws set out offences, and identify how the PABs may sanction members if offences are identified.

CA ANZ offences, for example, include where a member has committed acts or omissions amounting to misconduct or there is a failure to observe a proper standard of professional care, skill competence

⁶⁵ The reforms change tax practitioner registration period from triannual to annual, enable the Minister to supplement the TPB's code of professional conduct, and require tax practitioners to refrain from employing or using a disqualified entity without TPB approval.

or diligence, or a member is found guilty of a serious criminal offence before a court of law, or has not complied with requirements set by APESB, including APES 110. Sanction powers include issuing cautions, requiring professional development or fines.⁶⁶

Other bodies – financial reporting and auditing

The functions of other bodies within the financial reporting and auditing framework are set out below.

Table 4: Financial reporting and auditing – standard setting, oversight, enforcement, professional membership bodies

Body	Type	Overview / Role
AASB	Government body (ASIC Act, ss 226-7)	<ul style="list-style-type: none"> • Sets standards for accounting and financial reporting • Uses International Financial Reporting Standards (International Accounting Standards Board (IFRS) developed by the International Accounting Standards Board (IASB) with modifications and additional requirements where necessary for the Australian context • Will also make Australian sustainability standards in line with international standards⁶⁷
APESB	Non-government national body / Not-for-profit company limited by guarantee	<ul style="list-style-type: none"> • Sets the code of ethics (APES 110) and professional standards for accounting professionals who are members of the three PABs • AUASB refers to APES 110 as a relevant ethical requirement in ASA 102 • Three members: CA ANZ, CPAA, IPA (i.e. the PABs) • Seven directors: Six from PABs and one independent (who is chairman)
AUASB	Government body (ASIC Act, s 227A-B)	<ul style="list-style-type: none"> • Sets ASAs for conduct of audits under the Corporations Act • Uses International Auditing and Assurance Standards Board (IAASB) International Standards on Auditing and makes any necessary amendments. ASAs are enforceable under the Corporations Act⁶⁸
CADB	Government body (ASIC Act, ss 203-23; Corporations Act, ss 1292-8)	<ul style="list-style-type: none"> • Hears and decides disciplinary applications referred by ASIC or APRA with respect to RCAs • Power to order sanctions against RCAs
FRC	Government body (ASIC Act, s 225)	<ul style="list-style-type: none"> • Oversees the effectiveness of the financial reporting framework including accounting and auditing standards setting processes • Provides strategic policy advice and reports regarding audit quality to the Minister and PABs
Professional accounting bodies (PABs):	Self-regulatory bodies	<ul style="list-style-type: none"> • Provide professional membership services to accountants: <ul style="list-style-type: none"> – Members must satisfy initial eligibility criteria and ongoing obligations (including CPD) • Members must comply with ethical and professional standards set by APESB:

⁶⁶ CA ANZ by-laws identify that maximum fines that can be imposed are \$25,000 for individuals and \$100,000 for firms.

⁶⁷ See [Climate-related financial disclosure: exposure draft legislation](#) released on 12 January 2024

⁶⁸ Per the [2005 Strategic Direction](#) issued to AUASB by the FRC. AUASB has the power to make ASAs for Corporations Act purposes (s 336). These ASAs are legislative instruments under the *Legislation Act 2003*.

Body	Type	Overview / Role
CA ANZ, CPAA, IPA		<ul style="list-style-type: none"> – Self-regulatory mechanisms around compliance (investigate member misconduct complaints and take disciplinary action where necessary⁶⁹) • Conduct annual quality assurance review programs for members⁷⁰ • Operate professional standards schemes (under state and territory professional standards legislation overseen by Professional Services Councils)⁷¹ to facilitate civil liability limitations for PAB members – Mandatory annual reporting to Professional Services Councils on compliance and professional standards improvement programs

On 21 November 2023, the Government announced it would combine the AASB, AUASB and FRC into a single entity. This will help the financial reporting framework to be flexible, consistent and accommodate domestic and international developments.⁷²

Relative to the range of bodies in Australia, the PCAOB in the US is a single body with a broader remit.⁷³ The following table lists PCAOB’s functions together with other relevant US bodies and, by way of comparison, the bodies that perform them in Australia, UK, and NZ.

Table 5: Bodies performing registration, standard setting, oversight and enforcement functions in the auditing sector – international comparisons

	US	Australia	UK	New Zealand**
Auditor registration*	PCAOB	ASIC	UK FRC (for PIEs), professional bodies	FMA, professional bodies
Establishing audit-related standards:				
• Auditing	PCAOB, AICPA†	AUASB	UK FRC	XRB (via NZAUASB)
• Quality control	PCAOB	AUASB, APESB	UK FRC	XRB
• Ethics	PCAOB	APESB	UK FRC	XRB
• Independence	SEC, AICPA, PCAOB	APESB	UK FRC	XRB
Oversight of audit standard setters	SEC	FRC (see Table 4)	Government	XRB
Audit surveillance and enforcement:				

⁶⁹ Each PAB has a complaints and disciplinary process - see [CA ANZ process](#), [CPAA process](#), and [IPA process](#)

⁷⁰ Review outcomes for the 2022 and 2023 financial years are disclosed in the [FRC Annual Report 2022-23](#) (see pp 17-21). The FRC indicated the review programs are ‘designed to be educative to support their members, and to promote continuous improvement’ and ‘are not designed to assess and report on audit quality.’

⁷¹ Each PAB operates a scheme. See [CA ANZ Scheme](#), [CPAA Scheme](#), and [IPA Scheme](#)

⁷² The Hon Stephen Jones MP, Streamlining financial reporting architecture - joint media release, Treasury website, 21 November 2023

⁷³ PCAOB has authority to create auditing standards for audits of publicly traded companies (or to adopt standards developed by other professional bodies), and investigative and disciplinary authority over registered audit firms of listed companies and their associated persons. PCAOB’s operations are overseen by the US Securities and Exchange Commission (SEC) including the approval of its rules, standards, and budget. SEC has concurrent enforcement jurisdiction over registered public accounting firms.

	US	Australia	UK	New Zealand**
• Compliance with legislation	PCAOB, AICPA, SEC	ASIC	UK FRC	FMA
• Inspections, investigations	PCAOB, AICPA, SEC	ASIC	UK FRC, professional bodies†	FMA, professional bodies
• Disciplinary proceedings	PCAOB, AICPA, SEC	CADB, courts	UK FRC	FMA, courts, professional bodies

AICPA means American Institute of Certified Public Accountants, **FMA** means Financial Markets Authority (NZ), **XRFB** means External Reporting Board (NZ), and **NZAUASB** means NZ Auditing and Assurance Standards Board.

* In contrast to Australia (individual and AAC registration), registration of audit partnerships (and companies) is required in the US, UK, NZ and Canada.

** FMA has delegated authority to professional bodies for registration and for some audit inspections (subject to FMA oversight). All registered audit firms will be inspected annually from FY 2024 (vs. previous bi-annual inspections of the four largest audit firms and tri-annual inspections of all other registered firms). XRFB has delegated authority to NZAUASB to issue auditing standards.

† The Auditing Standards Board (ASB) within AICPA sets auditing and independence standards for unlisted entities. AICPA also has compliance and enforcement powers over auditors of unlisted entities.

‡ UK FRC conducts reviews of 12 firms annually, and around another 30 firms every three to six years. It delegates responsibility for inspections of around 7000 auditors of non-PIEs to professional bodies.

Sources: International Forum of Independent Audit Regulators (IFIAR) 2023 member profiles, websites of bodies in Table 5

Potential issues for consideration

Potential issues relating to enforcement and standard setting are outlined below, drawing on submissions to the PJC Inquiry and other sources including international research.

Potential issue #10: A large number of bodies are tasked with setting, overseeing and enforcing auditing-related standards and this may lead to overlaps and gaps (notwithstanding the Government’s announcement to combine the AASB, AUASB and FRC into a single entity)

There are a large number of bodies tasked with setting, overseeing and enforcing auditing-related standards in Australia, giving rise to the potential for overlaps and gaps to emerge.

Of note, APESB suggested that it could be moved under the oversight of the FRC which, with other proposed actions, could assist to ‘improve the ethics and professional accountability of large professional services firms’.⁷⁴

⁷⁴ See APESB, Submission 20 to PJC Inquiry, pp 3-4 for 12 actions including ‘[m]ove APESB under the oversight of the FRC’. BDO Group Holdings Limited (**BDO**) also ‘supports a move to have an ethics standard setter governed under the oversight of the [FRC] ...’ (see BDO, Submission 38 to PJC Inquiry, p 5). The FRC has also suggested that ethical standards could be set by an independent statutory body (see *Oversight of Audit Quality*, p 7).

Potential issue #11: The resources ASIC can apply to audit quality oversight are limited, recognising its need to consider other regulatory priorities

Given its broad remit and the need to allocate funding based on its overall strategy and priorities, it is an ongoing question for ASIC to assess where its funding should be allocated. There are ongoing decisions for ASIC to make on its investment in each of its functions.⁷⁵

ASIC revised its approach to financial reporting and audit surveillance in 2022-23. Audit file selection is now largely based on identified or suspected financial report errors, and there are fewer randomised reviews of audit files with no identified or suspected errors.⁷⁶ The FRC recently made several recommendations regarding ASIC’s audit review program, including that it should review more files on an annual basis.⁷⁷

ASIC currently has fewer resources dedicated to inspecting audit files than overseas regulators that hold similar oversight responsibilities do (see table below).⁷⁸

Table 6: Audit quality inspection resourcing – international comparison

	Regulator /oversight body	Audit quality inspection staff	Inspection coverage – audit firms*	Audit firms inspected	Inspections as a percentage of firm coverage	Inspection coverage - audited entities/files*	Audit files inspected	Inspections as a percentage of file coverage
Australia	ASIC	13**	123	11	9%	1,900	15	1%
US	PCAOB	460	Approx. 1,700	157	9%	n/a	710	n/a
UK	FRC	128	36	18	50%	1,868	113	6%
Canada	CPAB	37	184	32	17%	8,800	132	2%
NZ	FCA	n/a	13	4	31%	1,190	19	2%

Note: Based on the most recent available information released in 2023 (i.e. financial year 2022-3 for ASIC, UK FRC and FMA, and financial year 2022 for PCAOB and the Canadian Public Accountability Board (CPAB)).

* ‘Inspection coverage’ is the number of audit firms and audited entities/files in the inspection program’s scope (and is not typically the total population of audit firms and audited entities). For instance, there were around 2,360 ASX-listed entities and over 27,000 Australian unlisted entities that lodged financial reports in FY 2023. Of these, ASIC’s program covered 1,900 ASX-listed entities and their 123 auditors. Also see Table 5 above regarding UK and NZ program scopes.

** ASIC has advised that these staff carry out various functions (including financial reporting and audit review and surveillance), and that at least five are utilised in other areas (including registrations, policy, auditor breach report reviews).

Sources: [ASIC Annual Inspection Report 2022-3 \(REP 774\)](#) (p 6); [PCAOB 2022 Inspection Observations](#) (p 3); [UK FRC Tier 1 Firms: 2022-3 Audit Quality Inspection and Supervision Report](#) (pp 4, 7) and [UK FRC Tier 2 & 3 Firms: 2022-3 Audit Quality Inspection and Supervision Report](#) (p 8); [CPAB 2022 Annual Inspections Results](#) (pp 2, 4, 15); [FMA NZ Audit Quality](#)

⁷⁵ The oversight regulators in the US and UK are not required to make the same decisions around resource allocation as they have a narrower remit than ASIC.

⁷⁶ ASIC reviewed a total of 15 audit files in 2023, down from 45 files in both 2021 and 2022 (see Annual financial reporting and audit surveillance report 2022-3 (REP 774), pp 3, 6; Audit inspection report for FY 22 (REP 743), pp 5-6; Audit inspection report for FY 21 (REP 709), p 5).

⁷⁷ FRC, *Oversight of Audit Quality*, pp 1, 4, 6

⁷⁸ Also see APESB, Submission 20 to PJC Inquiry for a comparison of inspections for 2019-2022 in Australia, UK and US (p 14). It also noted that ‘significantly more entities and audit firms operate in overseas jurisdictions. However, in overseas jurisdictions, the number of reviews is increasing.’

[Monitoring Report 2023](#) (p 4); International Forum of Independent Audit Regulators (IFIAR) 2023 member profiles; FRC, *Oversight of Audit Quality*, p 35 (for inspection staff numbers)

In addition, CADB, which operates independently of ASIC, commented to the effect that its capacity to serve the Australian public interest would be improved with a possible expansion of entities that can make applications to it (currently only ASIC and APRA).⁷⁹

Potential issue #12: Shared responsibility for formulation and application of system-wide standards (for quality management and ethics) may present risks to audit quality

The AUASB and APESB are both involved in formulating quality management and/or ethical standards. These standards apply at the level of the individual audit, as well as across the whole firm. However, the Corporations Act requires auditors to comply with AUASB standards to the extent they apply to the performance of a specific audit of financial statements.⁸⁰

This differentiated approach to formulation and enforcement of standards based on whether the application is in the context of a specific audit may result in overlaps, gaps and risks (due to potential for perceived lack of independence, see also potential issue #7).

There is a question as to whether the existing regulatory framework is facilitating a cohesive and comprehensive approach to enforcing QMS and ethical standards that covers both individual audits and broader firm-level practices. A comprehensive approach might require (for example), the consistent application of standards at the level of the RCA and the enterprise (regardless of legal form).

Potential issue #13: Self-regulation via professional bodies may not be fully effective

As noted above, the PABs enforce their own codes of conduct and ethical standards that apply to members (including most RCAs). The PABs require all members to comply with APES 110 which imposes ethical requirements.⁸¹

Certain tensions in relation to the PABs' self-regulation have recently been flagged, for example:

- APESB: Its PJC Inquiry submission acknowledged certain challenges and barriers, including restrictions on information sharing and the ability to compel members to provide information, that may make it harder for PABs to impose efficient self-regulation and have effective monitoring procedures.⁸²
- FRC: It suggested that PABs may be conflicted in that the majority of their revenue comes from their members, and a significant function of the PABs is to further the interests of their members.⁸³ Restrictions on the PABs' ability to share information when they identify breaches were also identified.⁸⁴

⁷⁹ CADB, Submission 51 to PJC Inquiry, pp 2-3

⁸⁰ FRC, *Oversight of Audit Quality*, pp 4, 24

⁸¹ This also applies to affiliate members of CA ANZ.

⁸² APESB, Submission 20 to PJC Inquiry, p 13

⁸³ FRC, *Oversight of Audit Quality*, p 5

⁸⁴ FRC, *Oversight of Audit Quality*, p 10. The Government recently introduced legislation to allow regulators to more readily share information with PABs in certain circumstances.

It is possible that government regulators are allocating resources taking into account quasi self-regulation mechanisms that may not be as effective as a driver of conduct as previously thought.

The Government has announced changes to secrecy laws to allow the ATO and TPB to share information with professional bodies in recognition of the importance that professional bodies are made aware of problematic behaviour in order to be able to impose disciplinary measures. Questions remain as to whether further barriers exist that reduce the likelihood that partners, directors or other staff report misconduct to professional bodies, such as whether there are privacy concerns or fears of reprisal.

Potential issue #14: Information gathered by regulators is provided in a format less conducive to analysis

A problem with the current manual, paper-based approach to regulatory reporting, compared to digital financial reporting, is that it limits transparency, comparability and accessibility of financial reports. This restricts the ability of investors, other auditors and regulators to examine historical datasets that could highlight areas of poor audit quality.⁸⁵ Digital financial reports overcome these issues as they are made in a particular format (XBRL) that can be used to tag report content. Tags can be consumed by computer to analyse the information, allowing electronic analysis on a quicker and more consistent basis.

Of note, there has been no take-up of digital financial reporting in Australia despite the potential benefits for users, companies and regulators. In contrast, a number of jurisdictions have already mandated some form of digital financial reporting, including the US, EU, UK, Japan, South Korea, India, and China.⁸⁶

Questions

11. Does the preceding section capture the regulatory overlaps/gaps that should be addressed in audit, tax and insolvency? How could gaps or overlaps be addressed?
12. Are the powers and resources dedicated to regulatory oversight sufficient?
13. Are there any factors limiting the capacity of professional bodies to effectively carry out their self-regulation function?
14. Are the sanctions imposed for rule violations proportionate and effective in deterring future misconduct?
15. What are the costs and benefits of digital financial reporting?

⁸⁵ ASIC, Submission 16 to PJC 2019 Inquiry, p 13

⁸⁶ Presentation by Ann Tarca, an International Accounting Standards Board member, to the AASB (1 June 2023), AASB website, p 3

Protection of whistleblowers

Whistleblowing regimes provide legal rights and protections to certain individuals who give a company, organisation or regulator (such as ASIC or the ATO) information about potential misconduct or breaches of the law inside a company or organisation. Regime objectives include uncovering misconduct and deterring wrongdoing by increasing the likelihood that staff and management who misbehave will be reported.

Whistleblowing protections in the private sector are limited in scope

Commonwealth whistleblowing laws that apply to the private sector include protections under the Corporations Act (Part 9.4AAA) and *Tax Administration Act 1953 (TAA)*.

Entities subject to these regulations include companies, superannuation entities or trustees, incorporated associations, and body corporates which are trading or financial corporations. The relevant disclosure must be made to an eligible recipient, relevant regulator (such as ASIC or APRA), legal practitioner, or as an emergency or public interest disclosure.⁸⁷

The Corporations Act regime requires public companies, large proprietary companies and proprietary companies that are trustees of registrable superannuation entities to have a whistleblower policy and to make it available to their officers and employees.⁸⁸

The most recent whistleblowing reforms were made to the Corporations Act and TAA almost 5 years ago. These Acts require the Minister to cause a review of these amendments to be undertaken as soon as practicable from 1 July 2024. The Government is currently planning for this review. Submissions received in response to this consultation paper may inform issues to be considered as part of that review.

Whistleblowing in the public service

The *Public Interest Disclosure Act 2013 (PID Act)* covers conduct across the Commonwealth public sector (including by contracted Commonwealth service providers in connection with their contracts) and its primary focus is exposing wrongdoing in the public sector around breaches of law, maladministration and wastage. The PID Act may apply to contractors (or subcontractors) that are accounting, auditing and consulting firm staff.

The Government recently passed the *Public Interest Disclosure Amendment (Review) Act 2023*, which amended the PID Act to include stronger protections for disclosers and witnesses, renewed focus on integrity-related wrongdoing, and enhanced oversight (including by the Commonwealth Ombudsman). The Attorney-General's Department also recently conducted public consultation on a second stage of public sector whistleblowing reform that will consider improvements to PID Act accessibility and effectiveness, and additional supports for whistleblowers.⁸⁹

⁸⁷ Corporations Act, ss 1317AA, 1317AAC and 1317AAD. An eligible recipient includes an officer or senior manager, internal or external auditor (including an audit team member), and a person authorised by the entity to receive disclosures (s 1317AAC).

⁸⁸ Corporations Act, s1317AI

⁸⁹ See Attorney-General's Department, 'Public sector whistleblowing stage 2 reforms' consultation, accessed 4 March 2024.

States and territories have their own public interest disclosures legislation designed to encourage 'public officials' to report serious wrongdoing and to protect them when they do so.

Whistleblowing laws may not apply to employees in a partnership

While a number of accounting, auditing and consulting firms operating as partnerships have voluntarily developed whistleblowing policies and procedures, protections for partners, employees and suppliers of partnerships are not supported by Commonwealth legislation.⁹⁰ A partnership is not a 'regulated entity' for the purposes of the whistleblower laws in the Corporations Act.

State and territory government officers have advised Treasury that there are currently no state and territory based legislative whistleblower protections specifically available to partnerships.

Potential issue for consideration

A potential issue relating to the protection of whistleblowers is outlined below, drawing on submissions to the PJC Inquiry and other sources including international research.

Potential issue #15: Employees and partners of partnerships that witness wrongdoing may not come forward in the absence of protections, blunting information flows that support regulation

It is unclear whether employees of the largest accounting, auditing and consulting firms in Australia are employees of a partnership or of associated companies, and if the latter, whether the whistleblowing provisions that exist in the Corporations Act are effective.⁹¹

Any imposition of whistleblowing laws on partnerships would be a matter for state and territory governments, and would require consideration of their likely effectiveness and costs on smaller partnerships and the economy more generally.

Questions

16. What mechanisms are in place for whistleblowers to report corruption, rule-breaking, or other unethical conduct in your organisation or industry? Do these mechanisms provide sufficient protection?
17. Is there sufficient protection for employees and partners in accounting, auditing and consulting partnerships who want to report misconduct? If not, what gaps exist that may need to be addressed and how should they be addressed?

⁹⁰ There are regulatory arrangements for specific professions at the state and territory level (e.g. the legal profession), which establish complaints processes and protections for complainants.

⁹¹ See Centre for Governance and Public Policy of Griffith University, Human Rights Law Centre, and Transparency International Australia, Joint Submission 34 to PJC Inquiry p 8, for a discussion on protections for Australian private and not-for-profit sector employees.

Competition / resilience of the audit sector

Some PJC Inquiry submissions identified that regulation of large accounting firms is of greater importance than would otherwise be the case due to the importance of audit to the functioning of capital markets in Australia, and the dominance of the key players in auditing the largest listed companies.⁹²

There are six major firms that provide audit services in Australia – BDO, Deloitte, EY, Grant Thornton, KPMG, and PwC. In 2022, Deloitte, EY, KPMG and PwC audited 37.9 per cent of all ASX-listed companies and 96.5 per cent of the top 200 ASX-listed companies (by assets).⁹³ Using audit fees as a measure, they accounted for 83.1 per cent (or \$596m) of fees paid by all ASX-listed companies and 99.2 per cent paid by the top 200 in 2022.⁹⁴ Over the 2019-22 period, these four firms audited on average 40.1 per cent of all ASX-listed companies, and 95.5 per cent of the top 200 ASX-listed companies.⁹⁵

Table 7: Audit market share – Deloitte, EY, KPMG, and PwC (2012-22)

	Market share of ASX-listed companies*	Market share of total audit fees paid by ASX-listed companies	Market share of top 200 ASX-listed companies**
2022	37.9%	83.1%	96.5%
2019-22 (average)	40.1%	84.8%	95.5%
2019-22 (range)	37.9% - 42.5%	83.1% - 86.2%	94.5% - 96.5%
2012-18 (average)	39.9%	87.4%	91.1%
2012-18 (range)	37.7% - 41.1%	86.5% - 88.3%	90.0% - 92.0%

* Based on 2,132 listed companies for 2022, 2,075 on average for 2019-22, and 1,765 on average for 2012-18.

** Top 200 based on total assets for 2019-22 and market capitalisation for 2012-18.

Note: ASIC calculated that these four firms audited around 33% of ASX-listed entities (based on 1,900 entities) representing 95% of market capitalisation at 31 December 2022 (see ASIC, Submission 49 to PJC Inquiry, pp 3-4). Outside the four major firms, there were around 60 firms auditing one or more ASX-listed entities in 2021 (see ASIC, Response to Question on Notice No. 6.1 (Document No. 295), PJC on ASIC Oversight, received on 4 February 2022, p 4).

Sources: S Hossain and G Monroe, *Audit Market Structure and Competition in Australia 2019-2022*, pp 12, 15, 18-19; AUASB Research Report No 4: *The Provision of Non-Audit Services by Audit Firms in Australia: 2012-2018* by Professor Elizabeth Carson (December 2019), pp 2-5

Adequate competition in the audit sector supports quality of services provided, puts downward pressure on prices, and improves diversity of choice for consumers and market resilience.

⁹² Professor Allan Fels AO, Submission 52 to PJC Inquiry, pp 1-2; Professors Ian Gow and Stuart Kells, Submission 16 to PJC Inquiry, pp 2-3

⁹³ Hossain and Monroe, *Audit Market Structure and Competition in Australia 2019-2022*, CPA/CAANZ, pp 5, 7. This study was financially supported by CA ANZ and CPAA, and extended the study by Professor Carson covering 2012-18. Also see Hossain and Monroe, Submission 4 to PJC Inquiry, p 2.

⁹⁴ Hossain and Monroe, *Audit Market Structure and Competition in Australia 2019-2022*, CPA/CAANZ, pp 10-11.

⁹⁵ Hossain and Monroe, *Audit Market Structure and Competition in Australia 2019-2022*, CPA/CAANZ, pp 12, 15. Their submission to the PJC Inquiry noted that ‘the market is highly segmented with differing levels of concentration and competition across the client segments investigated. The largest and most complex clients are mainly audited by the Big 4 audit firms, whilst smaller clients are audited by a range of other auditors. This is consistent with what occurs globally ...’ (p 4).

Direct regulatory measures that aim to increase audit sector competition (together with audit quality and independence) have been implemented in several countries through:

- Joint audits or ‘managed shared’ audits:⁹⁶ France has a mandatory joint audit regime for listed companies and the UK plans to implement ‘managed shared’ audits for the FTSE 350.⁹⁷
- Audit tenure limitations via mandatory firm rotation: Notable mandatory firm rotation jurisdictions are the UK, EU countries, South Africa (since 1 July 2023), Japan, South Korea, and the People's Republic of China.⁹⁸ Several of these jurisdictions have ten year maximum tenures (with extensions of up to 20 years subject to mandatory tenders) followed by four year cooling-off periods.

Potential issue for consideration

A potential issue relating to competition is outlined below, drawing on submissions to the PJC Inquiry and other sources including international research.

Potential issue #16: There may be barriers to entry limiting competition, entrenching existing dominant players and reducing the resilience of the audit services market

Some submissions to the PJC Inquiry and international research have suggested that any exit by one of the largest four firms from the market would be likely to increase costs⁹⁹ and lead to a more fragile audit market.¹⁰⁰ By way of example, the collapse of a large American accounting firm (Arthur Andersen) in 2002 led to further consolidation in the market for audits of large businesses. There was limited reallocation of this business to smaller firms, a reduction in choice for public companies, and constraints on the delivery of audit services.¹⁰¹ With a more concentrated market, any further exits from the sector may materially reduce competition. There have been no new large firm entrants into the market in recent years.

Market concentration reduces choice for directors and shareholders, weakens resilience of the audit sector and creates risks to the supply of high-quality audit services in case of adverse events (such as firm collapses).¹⁰²

⁹⁶ Joint audit regimes require two firms (with at least one being a mid-tier/‘challenger’ firm) to be appointed to share responsibility (including planning and division of fieldwork) and produce a single audit report. Under the proposed UK ‘managed shared audit’ model, FTSE 350 companies would appoint a firm to lead the audit (and bear overall liability) and a ‘challenger’ firm to conduct a meaningful proportion (to be defined) of the audit (for which it is liable).

⁹⁷ See [joint audit in France](#) and [UK introduction of managed shared audit](#).

⁹⁸ The CMA 2019 Study notes that the introduction of mandatory audit firm rotation in the UK significantly increased audit firm switching for FTSE 350 companies over 2013-18. However, it was almost entirely between the four largest firms (Deloitte, EY, KPMG and PwC). Also see potential issue #5 above.

⁹⁹ Hossain and Monroe, Submission 4 to the PJC Inquiry, refers to prior research on significant audit fee premium increases following audit firm mergers (at p 4).

¹⁰⁰ Professor Alan Fels AO, Submission 52 to the PJC Inquiry notes that ‘[a]ny further reduction in the numbers will undermine competitive tenders for audits’ (p 4).

¹⁰¹ Professor Elizabeth Carson, AUASB Research Report 3, *Audit Market Structure and Competition in Australia (2012- 2018)*, p 22

¹⁰² CMA 2019 Study, pp 6, 96-97

The CMA 2019 Study into the audit market in the UK, which has the same concentrated cohort of firms as Australia,¹⁰³ identified a number of barriers and threats to resilience and competition in that market:

- Reputation and expertise: Analysis shows that the current market is segmented with differing levels of concentration across client demographics. Large and complex (e.g. multi-jurisdictional or financial services) clients are mainly audited by the four largest audit firms because of reputation and expertise, while smaller clients are audited by firms with fewer technical resources. The inability of mid-tier audit firms to match the experience, reputation and expertise of the four major audit firms may restrict them in acting as a competitive constraint on those already operating within the market.
- Large multi-disciplinary firms have an advantage (due to economies of scale) in providing ongoing investment in retaining and attracting specialised talent in order to support audit quality.

Questions

18. Is there sufficient competition to provide clients with choice in selecting accounting and audit services in the Australian market? If not, what factors prevent or impede such competition?
19. What are the barriers to entry into the market for auditing top 200 ASX-listed companies for 'mid-tier' firms?
20. What prevents top 200 ASX-listed companies switching to a 'mid-tier' firm as their company auditor?
21. Do the top 200 ASX-listed companies have any policies or practices that have the effect of excluding 'mid-tier' firms as company auditors?
22. Are there specific barriers to entry or challenges to competition in the accounting and audit sectors?
23. How does competition influence firms' compliance with regulatory requirements and industry standards?
24. Noting the competition issues raised in the audit sector, including the dominance of the largest accounting firms in the ASX 200 market, are there similar competition issues in other services provided by the accounting firms, including tax and consulting services?

¹⁰³ The six key firms in the UK are also BDO, Deloitte, EY, Grant Thornton, KPMG and PwC. Similar to Australia, the four major firms dominate large-listed company audits. In 2022, they audited 90% of FTSE 350 companies and accounted for 98% of their audit fees (see UK FRC, *Audit market and competition developments – A snapshot*, December 2023, pp 2, 7).

Summary of consultation questions

Governance

1. Are there adequate incentives to have appropriate governance practices in partnership structures?
2. How should governance mechanisms operate in large accounting partnerships? Does this reflect how governance is managed in practice?
3. Are there any key issues that are not captured above in relation to the governance mechanisms of large partnerships? Are there additional examples of benefits for non-stakeholders of good governance?
4. Are the current partnership limits fit for purpose for accounting firms? If not, what factors should guide decisions on an appropriate partnership limit and how should the limit be applied?

Professional standards, regulations and laws

5. Are conflicts of interest managed appropriately by auditing and accounting practitioners? If not, what could be done to improve the management of conflicts of interest?
6. How effective are existing policies and regulations in separating the provision of audit and non-audit services in multi-disciplinary firms, particularly in the context of managing conflicts of interest to maintain auditor independence and objectivity? If they are not effective, how could they be improved?
7. How effective is the existing self-regulatory framework in ensuring the integrity and quality of services provided by professionals in the audit and accounting industries? If it is not effective, how could it be improved?
8. Are there any key issues that are not captured above in relation to the adequacy of standards, regulations and laws?

Transparency, public information and reporting

9. Recognising that companies are subject to reporting requirements that focus on protecting investors, should firms providing audit services to these companies be subject to enhanced transparency reporting beyond what is already mandated? If so, what additional information should be included in transparency reports? Should the information be verified?
10. Should audit firms be required to disclose any further specific information or key performance indicators to enhance confidence in the implementation of audit regulation? What costs would be involved?

Enforcement and standard setting

11. Does the preceding section capture the regulatory overlaps/gaps that should be addressed in audit, tax and insolvency? How could gaps or overlaps be addressed?
12. Are the powers and resources dedicated to regulatory oversight sufficient?
13. Are there any factors limiting the capacity of professional bodies to effectively carry out their self-regulation function?
14. Are the sanctions imposed for rule violations proportionate and effective in deterring future misconduct?
15. What are the costs and benefits of digital financial reporting?

Protection of whistleblowers

16. What mechanisms are in place for whistleblowers to report corruption, rule-breaking, or other unethical conduct in your organisation or industry? Do these mechanisms provide sufficient protection?
17. Is there sufficient protection for employees and partners in accounting, auditing and consulting partnerships who want to report misconduct? If not, what gaps exist that may need to be addressed and how should they be addressed?

Competition / resilience of the audit sector

18. Is there sufficient competition to provide clients with choice in selecting accounting and audit services in the Australian market? If not, what factors prevent or impede such competition?
19. What are the barriers to entry into the market for auditing top 200 ASX-listed companies for 'mid-tier' firms?
20. What prevents top 200 ASX-listed companies switching to a 'mid-tier' firm as their company auditor?
21. Do the top 200 ASX-listed companies have any policies or practices that have the effect of excluding 'mid-tier' firms as company auditors?
22. Are there specific barriers to entry or challenges to competition in the accounting and audit sectors?
23. How does competition influence firms' compliance with regulatory requirements and industry standards?
24. Noting the competition issues raised in the audit sector, including the dominance of the largest accounting firms in the ASX 200 market, are there similar competition issues in other services provided by the accounting firms, including tax and consulting services?

Appendix A

Table 8A: Key Corporations Act provisions – auditor registration and enforcement/disciplinary actions

	Registered company auditor (RCA)*	Authorised audit company (AAC)	Audit partnership**
Initial registration	<ul style="list-style-type: none"> Requisite qualifications and experience (or requisite qualifications and demonstrated audit competencies) Satisfy ‘fit and proper person’ requirements Hold appropriate professional indemnity (PI) insurance Provide capability report (s 1280 and ASIC RG 180) 	<ul style="list-style-type: none"> Each director must be an RCA and satisfy ‘fit and proper person’ requirements Ownership: Shareholders must be individuals Control: Majority ownership by RCAs Hold appropriate PI insurance (s 1299B and ASIC RG 180) 	<ul style="list-style-type: none"> Not applicable
Ongoing registration	<ul style="list-style-type: none"> 120 hours of continuing professional development (CPD) activities over each triennium (3 years) Maintain quality assurance and complaint handling procedures, and PI insurance (See s 1289A and ASIC RG 180) Lodge annual statements (s 1287A) 	<ul style="list-style-type: none"> Maintain PI insurance, complaint management procedures, and ‘run-off’ cover Notify ASIC if initial registration requirements no longer met or PI insurance not maintained (See s 1299D, s 1299F and ASIC RG 180) Lodge annual statements (s 1299G) 	<ul style="list-style-type: none"> Not applicable
Enforcement / Disciplinary actions	<ul style="list-style-type: none"> Non-compliance with ongoing registration and audit conduct requirements may be subject to disciplinary processes via an ASIC referral to CADB† including registration conditions, suspension or cancellation of RCA registration (s 1292) ASIC can apply to the court to impose fines (see Table 9), agree to enforceable undertakings (ASIC Act, s 93AA), or commence civil proceedings for failure to comply with relevant provisions (s 1315) 	<ul style="list-style-type: none"> ASIC can cancel or suspend AAC registration (s 1299I-K), apply to the court to impose fines (see Table 9), agree to enforceable undertakings (ASIC Act, s 93AA), or commence civil proceedings for failure to comply with relevant provisions (s 1315) 	<ul style="list-style-type: none"> ASIC can apply to the court to impose fines (in limited circumstances – see Table 9), agree to enforceable undertakings (ASIC Act, s 93AA), or commence civil proceedings for failure to comply with relevant provisions (s 1315)

* The registration provisions use the term ‘registered company auditor’ (a person registered as an auditor under Part 9.2). However, other auditor-related provisions (see Table 8B) refer to ‘individual auditors’ (an individual appointed as auditor of a Reporting Entity). Individual auditors are required to be RCAs (s 324BA).

** Audit partnerships are referred to as ‘audit firms’ in the Corporations Act whereas the ASAs define ‘firms’ more broadly to include sole practitioners, partnerships, companies or other entities.

† CADB can only receive disciplinary applications from ASIC or APRA.

Table 8B: Key Corporations Act provisions - auditors (excluding registration and enforcement/disciplinary actions)

	Individual auditor	Authorised audit company (AAC)	Audit partnership
Appointment as auditor	<ul style="list-style-type: none"> Appointed by the Reporting Entity: s 325 (private cos), s 327A-F (public cos) 	<ul style="list-style-type: none"> Appointed by the Reporting Entity: s 325, s 327A-F 	<ul style="list-style-type: none"> Appointed by Reporting Entity: s 325, s 327A-F, and At least one partner must be an RCA: s 324A
Conduct of audit	<ul style="list-style-type: none"> Form opinion whether the financial report complies with the Corporations Act, including the accounting standards, and presents a true and fair view: s307(a) Provide auditor’s report (s 308) Comply with ASAs issued by the AUASB: s307A(1) Retain audit working papers for seven years: s307B(1) 	<ul style="list-style-type: none"> Form opinion whether the financial report complies with Corporations Act, including accounting standards, and presents a true and fair view: s307(a) Provide auditor’s report (s 308) Lead auditor* must ensure audit complies with ASAs: s 307A(2) Retain audit working papers for seven years: s307B(1) 	<ul style="list-style-type: none"> Form opinion whether financial report complies with Corporations Act, including accounting standards, and presents a true and fair view: s307(a) Provide auditor’s report (s 308) Lead auditor must ensure audit complies with ASAs: s 307A(2) Retain audit working papers for seven years: s307B(3). Partners who are RCAs are liable, subject to defence of non-awareness or reasonable corrective steps
Independence	<ul style="list-style-type: none"> Provide independence declaration to directors of Reporting Entity for each audit: s 307C(1) Satisfy general independence requirements: s 324CA and specific requirements: s 324CE. Subject to defence of non-awareness and reasonable grounds to believe quality control system provided reasonable assurance of compliance Meet rotation requirements (for listed company audits): s 324DA 	<ul style="list-style-type: none"> Lead auditor to provide independence declaration for each audit: s 307C(3) AAC and ACC directors must satisfy general requirements: s 324CA, s324CC, and specific requirements: s 324CG. Subject to defence of non-awareness and reasonable grounds to believe quality control system provided reasonable assurance of compliance Meet rotation requirements (for listed company audits): s 324DD 	<ul style="list-style-type: none"> Lead auditor to provide independence declaration for each audit: s 307C(3) Satisfy general requirements: s 324CB, and specific requirements: s 324CF. Partners who are RCAs are liable, unless reasonable steps taken once aware Subject to defence of non-awareness and reasonable grounds to believe quality control system provided reasonable assurance of compliance Meet rotation requirements (for listed company audits): s 324DC
Transparency reports	<ul style="list-style-type: none"> Produce annual transparency reports containing specified information about the individual auditor (if threshold is satisfied):** s332A 	<ul style="list-style-type: none"> Produce annual transparency reports containing specified information about the AAC (if threshold is satisfied):** s332A 	<ul style="list-style-type: none"> Produce annual transparency reports containing specified information about the partnership (if threshold is satisfied):** s332A

* The **lead auditor** is the RCA primarily responsible to the AAC or audit partnership for the audit’s conduct (s 324AF).

** The transparency reporting threshold is audits of 10 or more specified significant entities (listed companies, registered schemes, ADIs, registrable superannuation entities or certain APRA-regulated insurers).

The following table summarises the relevant criminal offences.

Table 9: Criminal offences under the Corporations Act - Auditors

Provision	Summary	Who does offence apply to? / Maximum penalty	Is liability limited to the individual auditor (i.e. sole trader)?	What liability does an AAC have?	What liability applies to other partners in a partnership?
s307A(1)	Individual auditor or AAC to conduct audit per ASAs	Individual auditor or AAC that conducts the audit Maximum penalty: Fault based offence: Two years imprisonment or \$75,120 or both Strict liability offence: \$15,650	Yes, where auditor is not an AAC	Fault based offence: \$751,200 Strict liability offence: \$156,500	Not applicable
s307A(2)	AAC or audit partnership to conduct audit per ASAs	Lead auditor Maximum penalty: Fault based offence: Two years imprisonment or \$75,120 or both Strict liability offence: \$15,650	Not applicable	Fault based offence: \$751,200 Strict liability offence: \$156,500	Nothing in Corporations Act imposes liability on other partners
s307B(1)	Individual auditor or AAC to retain working papers	Individual auditor or AAC Maximum penalty: \$15,650	Yes, where auditor is not an AAC	\$156,500	Not applicable
s307B(3)	Audit partnership to retain working papers	Partners who are RCAs - subject to a defence if not aware of circumstances or takes reasonable steps to correct Maximum penalty: \$15,650	Only applicable to audit partnerships	Not applicable	Partners who are RCAs, subject to a defence if not aware of circumstances or takes reasonable steps to correct Maximum penalty: \$15,650
s307C(1)	Independence declaration by individual auditor	Individual auditor Maximum penalty: \$6,260	Yes	Not applicable	Not applicable
s307C(3)	Independence declaration for audits by AAC or audit partnership	Lead auditor Maximum penalty: \$6,260	Only applicable to AAC or audit partnership	\$62,600	Nothing in Corporations Act imposes liability on other partners
s308	Auditor's report requirements	Individual auditor, AAC or audit partnership Maximum penalty: \$15,650	Yes, where auditor is not an AAC or audit partnership	\$156,500	Nothing in Corporations Act imposes liability on other partners

Provision	Summary	Who does offence apply to? / Maximum penalty	Is liability limited to the individual auditor (i.e. sole trader)?	What liability does an AAC have?	What liability applies to other partners in a partnership?
s311(1)	Report to ASIC by individual auditor re Corporations Act contraventions	Individual auditor Maximum penalty: One year imprisonment or \$37,560 or both	Yes where auditor is not an AAC or audit partnership	Not applicable	Not applicable
s311(2)	Report to ASIC by AAC re Corporations Act contraventions	AAC Maximum penalty: One year imprisonment (this penalty enables corporate fine calculation using s 1311C formula)	Not applicable	\$37,560	Not applicable
s311(3)	Report to ASIC by lead auditor re Corporations Act contraventions	Lead auditor Maximum penalty: One year imprisonment or \$37,560 or both	Not applicable	Not applicable	Nothing in Corporations Act imposes liability on other partners

Source: ASIC, Response to Question on Notice No. 17 (Document No. 78), PJC 2019 Inquiry, received 5 February 2020

Note: Maximum penalty values calculated by reference to ss 1311-1311C and Schedule 3, and updated to reflect the penalty unit value as of 1 July 2023 (\$313 vs. \$210 in FY 2018-20)