Law Council
OF AUSTRALIA

Business Law Section

17 August 2026

The Treasury
Langton Crescent
PARKES ACT 2600

By email: DPCDConsultations@treasury.gov.au

Dear Treasury,

Regulation of accounting, auditing and consulting firms in Australia Options Paper (July 2026)

Introduction

1. The Corporations Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to make a submission in response to Treasury's options paper on the Regulation of accounting, auditing and consulting firms in Australia (**Options Paper**).[1]

2. The Committee comprises legal practitioners from across Australia with specialist expertise in corporations and securities law, drawn from private practice, in-house practice and academia. This submission reflects the views of the Committee and does not necessarily represent the views of the firms or organisations by which individual Committee members are employed. Some members of the Committee, or their firms, may act for or advise participants in the audit, assurance and consulting sector; no individual member has been instructed by, or drafted this submission on behalf of, any such client.

3. We acknowledge the importance of an effective system of corporate assurance to a successful capital market. The Committee supports reforms that address demonstrated enforcement, governance and jurisdictional gaps in Australia's audit regulatory framework.

4. The Committee has not structured this submission around the sequence of questions posed in the Options Paper. Instead, it addresses the principal policy issues raised by the proposed reforms before assessing each option against Treasury's analytical framework. That approach reflects the Committee's view that the critical issue is not whether reform is warranted, but what form that reform should take.

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[1] The Australian Government, the Treasury: Regulation of accounting, auditing and consulting firms in Australia Consultation paper, May 2024 (**Options Paper**)

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5. The Committee recognises that a licensing regime represents a new layer of regulatory architecture and that this cost must itself be weighed under the proportionality standard set out in Section 3. The Committee's support for licensing under Option 1A, addressed in Section 7, rests on two considerations. First, it responds to an accountability gap in the current framework: audit partnerships cannot presently be sanctioned as firms for governance, resourcing or remuneration decisions that affect audit quality, with accountability resting solely on the individual lead auditor. Second, it follows the model the 2001 Ramsay Report proposed, addressed in Section 4, of independent oversight of firm conduct in preference to prohibition of particular services or structures. The Committee's support is accordingly qualified, consistent with Section 7, by the requirement that licensing obligations be calibrated to firm size and risk.

6. Throughout this consultation the terms "professional services firm", "consulting firm", "multidisciplinary firm", and "non-audit services" are used extensively. These terms require careful definition in any implementing legislation.

7. Unless these terms are carefully calibrated, the unintended consequence could be to capture partners involved in the consulting practice or legal practice who are not involved in the firm's audit practice. A partner whose practice does not touch audit work could become subject to audit sector fit and proper person requirements despite performing no audit work.[2]

8. Where that partner is a lawyer practising within a legal practice that is not conducted through a separate legal entity, the interaction between legal professional privilege, client confidentiality, the professional conduct rules applicable to legal practitioners and audit firm information controls also warrants specific consideration. The Committee's position on the scope of Option 1C, which addresses the fit and proper person requirement directly, is set out in Section 7.[3] This submission proceeds from a single organising principle: regulatory intervention affecting Australia's assurance framework (a key aspect of Australia's governance model) should be proportionate to demonstrated market failure. Treasury has appropriately identified that both the consequences and the likelihood of market failure should inform regulatory design. In our submission, that framework provides the appropriate basis upon which each option should be assessed.[4]

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2 See also Law Council of Australia, *Lawyer Regulation in Australia: An Overview* (2024), which outlines the existing stringent regime of legal profession laws regulating legal practitioners across all Australian jurisdictions and explains why dual regulation of the legal profession is inefficient and undesirable (p12).

3 See also Law Council of Australia, *Client Legal Privilege and Federal Regulators,* Guidance Note, December 2025, [80]-[106]. This includes a general discussion of the position and relevant obligations of legal practitioners working in multidisciplinary practices, as well as in-house counsel,

4 Treasury (Cth), Submission No 50 to Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry (September 2023) (**Submission 50**) 22 Table 6: Risk-based approach to identifying potential regulatory gaps.

Executive summary

The Committee's position

9. The Committee supports significant reform of Australia's audit regulatory framework. The central question raised by the Options Paper is not whether reform is required. The question is whether the available evidence justifies structural intervention in the market or whether more targeted reforms directed to governance, surveillance and individual accountability would better address the identified risks.

10. In the Committee's view, the available evidence supports the latter course.

11. The Committee's central submission is that regulatory intervention affecting Australia's assurance framework should be proportionate to demonstrated risk. Treasury itself has consistently adopted a risk-based approach requiring consideration of both the likelihood and consequences of market failure. We submit that this framework should continue to guide the assessment of every option in the Options Paper.

Treasury's framework requires three questions

1. **What market failure has been identified?**
2. **What evidence demonstrates that failure?**
3. **Which regulatory intervention is proportionate to that failure?**

Our conclusions

12. The Committee concludes that:

- the available evidence identifies shortcomings in governance, supervision, documentation and individual accountability;
- the evidence does not establish that the multidisciplinary structure of large accounting firms is itself the source of those shortcomings;
- the PwC tax leaks matter, while serious and properly addressed by the Government, concerned tax advisory misconduct rather than audit quality or auditor independence;
- reforms directed to surveillance, licensing, governance and disciplinary powers respond directly to the demonstrated deficiencies; and
- the current evidentiary record does not justify mandatory structural intervention in the audit market.

Our recommendations

13. Accordingly, the Committee:

- supports enhanced audit surveillance, including mandated minimum surveillance levels and greater transparency of ASIC's findings (Option 4);
- supports stronger disciplinary and enforcement mechanisms, including civil penalties, expanded ASIC powers and a strengthened Companies Auditors Disciplinary Board (**CADB**) (Options 5A to 5C);
- supports greater transparency through disclosure of audit tenure (Option 6A);
- gives qualified support to firm licensing, enhanced governance obligations and periodic tendering, subject to implementation that is proportionate to firm size and risk (Options 1A to 1C, 3A and 6B);
- does not support prohibitions on non-audit services, operational separation, structural separation, reduced partnership limits, mandatory incorporation or mandatory audit firm rotation (Options 2A to 2C, 3B, 3C and 6C); and
- supports consideration of targeted reform to address conflicts arising from concurrent government and private advisory work (Option 2D), but submits that any reform should adopt a principles-based model requiring firms to design, disclose and maintain governance arrangements appropriate to their own business model, supported by ASIC oversight and enforcement, rather than prescribing a single organisational structure.

Basis for our conclusions and recommendations

14. The Committee's review of ASIC's recent surveillance reports, the academic literature and the Options Paper's own source material reveals a consistent pattern. Enforcement action has been directed to failures of individual conduct, governance and supervision. It has not established that multidisciplinary firm structure is itself the source of those failures.

15. The Committee therefore supports significant strengthening of Australia's audit regulatory framework. Stronger surveillance, licensing, governance obligations, civil penalties and disciplinary powers are all justified on the available evidence. They provide a proportionate response to demonstrated deficiencies while preserving the scale, capability and international connectivity necessary for the audit of Australia's largest and most complex entities.

16. Structural intervention is different. Such measures should be adopted only where the evidence demonstrates that existing governance, supervisory and accountability mechanisms are incapable of addressing the identified problem. In the Committee's submission, that threshold has not been met.

17. Radical changes to the market without the existence of a clear case for change and a detailed understanding of its consequences risk material unintended effects on the way an important part of modern corporate law operates.

18. The scale at which the largest audit firms operate is not incidental to their function: it is what allows a coordinated, single audit of a multinational or complex corporate group to occur at all, a capacity the UK Competition and Markets Authority's 2019

study[5] found does not currently exist among non-Big Four firms for the largest and most complex engagements. Nor is that scale, or the firms that provide it, a permanent feature of the market.

19. The collapse of Arthur Andersen in 2002 demonstrates how quickly the pool of firms capable of servicing the largest audits can contract. This is a risk the CMA's recommendations explicitly contemplate. Any change to how the audit function operates needs to be calibrated to demonstrated risk, with its consequences for this narrow but critical segment of the market properly understood before it is imposed.

The standard for regulatory intervention

20. The statutory audit occupies a specific and important position in the architecture of Australian corporate governance. The obligation on companies to prepare financial reports and to have those reports independently audited, exists because the parties who rely on them—investors, creditors, regulators and markets—are generally unable to verify the underlying records themselves.

21. The audit is the mechanism by which that gap is bridged: an independent verification that allows capital to be allocated, credit extended and securities traded on the basis of information whose reliability has been tested by someone other than its preparer. This function is not incidental to the operation of the capital market; it is one of the conditions that makes the market possible.

22. It follows that changes to the way the assurance function is regulated carry consequences beyond the firms directly affected and warrant a correspondingly careful, evidence-based approach. That is the standard the Committee applies throughout this submission.

23. The reform process culminating in the Options Paper did not begin as a general review of the audit, assurance and consulting profession. It began as a targeted response to a specific and identified failure.[6]

24. On 6 August 2023, the Government announced a package of reforms directed at, among other things, "large consulting, accounting and auditing businesses," a category it defined by reference to the conduct exposed in the PwC tax leaks matter.[7] That announcement tasked Treasury with examining the governance frameworks applying to those firms, informed by and feeding into, the Parliamentary Joint Committee on Corporations and Financial Services (**PJC**) inquiry that later produced the report this submission also addresses.[8]

25. Treasury's own submission to that inquiry set out, in terms, the standard against which intervention in the assurance function provided by auditors should be evaluated. Submission 50 states that "the general case for regulation arises when markets fail, that is, when they are unable to achieve desired outcomes by

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5 Competition and Markets Authority (UK), Statutory Audit Services Market Study: Final Report (18 April 2019) (**CMA Report**)

6 It is also framed to some extent by reference to the current parliamentary and ASIC enquiry regarding KPMG.

7 Australian Government, Government Response to PwC Tax Leaks Scandal (6 August 2023).

8 Ibid

themselves". Whether intervention is warranted should be assessed "via a risk-based approach … taking into account the consequences and likelihood of a market failure".[9] This is a two-limb test. Articulated by Treasury at the outset of the process, the Options Paper now continues and it is the test we submit should be applied to each of the options under consideration, including those we do not oppose.

26. We do not suggest that this is a simple binary rule: ie, between market outcomes and market structure. Submission 50's own Table 6 treats structural and incentive factors, including whether "partners in a partnership [are] fully exposed to all of the costs and risks associated with their partners' actions" and whether firm remuneration structures are "driving high standards of governance", as legitimate evidence going to the likelihood limb of the test.[10]

27. Structure is not irrelevant to Treasury's framework. It is evidence relevant to one part of a two-part inquiry, to be weighed once a threshold concern about market failure has been identified, not a freestanding justification for intervention in its own right.

28. The question this submission puts to each structural option is not whether firm structure could conceivably bear on independence or governance. The question is whether the evidence advanced for each option satisfies both limbs on the consequences of the asserted failure and the likelihood of its occurrence.

29. Submission 50 also supplies a proportionality standard. Intervention should apply "at the point where it has the greatest potential to achieve its desired outcomes … in an efficient way," with potential benefits weighed against costs to the community including "higher prices, lower quality services and slower economic growth".[11]

30. For intervention at the level of firm structure, Treasury's own taxonomy requires either an "information asymmetry [that] would otherwise prevent informed decisions" or an agency risk "not effectively managed by market mechanisms".[12] These are precise, citable tests, drawn from Treasury's account of when structural intervention of the kind proposed in Options 2B, 2C and 3C is justified.

31. The two-limb test set out above addresses whether intervention is warranted. A further and related question, distinct from that threshold, is how intervention should be designed once it is warranted. The empirical and theoretical literature on regulatory design offers a specific caution: a substantial body of research into the actual behavioural effects of enforcement has found only weak and inconsistent support for the proposition that rule-based deterrence, on its own, reliably changes conduct.[13]

32. Detailed, prescriptive rules risk inviting compliance with their letter in place of the risk assessment and professional judgment they were designed to prompt. A structural mandate of the kind proposed in Options 2B, 2C, 3B and 3C carries an analogous risk: compliance with a prescribed organisational form is not the same thing as, and

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9 Sub 50 (n 2) 22.
10 Ibid 22-23, Table 6.
11 Ibid 23.
12 Ibid 24, Table 7
13 Dorothy Thornton, Neil A Gunningham and Robert A Kagan, 'General Deterrence and Corporate Environmental Behavior' (2005) 27(2) Law & Policy 262;

does not guarantee, the exercise of sound professional judgment or an improvement in the underlying conduct.

33. Regulatory effectiveness depends upon the interaction between rules, enforcement strategies and institutional behaviour, rather than upon increasing the quantity or specificity of rules alone. Structural reforms should therefore be adopted only where there is evidence that they are likely to improve regulatory outcomes.[14]

34. The Committee believes that this suggests a test for evaluating the Options Paper, additional to the two-limb test addressed above: that is, whether a proposed measure is calibrated to support and strengthen the professional judgment and institutional conditions that produce good conduct, or whether it substitutes a fixed rule for that judgment.

35. Scholarship on the design of professional regulation reinforces the same point from a different direction. Ethical conduct within a profession is produced by an interacting system of elements—values, education, organisational culture and avenues for oversight and escalation—rather than by any single element in isolation; reform directed at a specific deficiency should be targeted at that deficiency and judged by whether it demonstrably improves outcomes.[15] Respectfully, the Committee believes that nothing in the reasoning for Options 2B, 2C or 3B addresses the risk that a structural mandate displaces, rather than strengthens, the professional judgment on which audit quality ultimately depends.

36. It is necessary to be precise about the provenance of the two live structural options, because an inaccurate account of that provenance does not withstand analysis against Treasury's framework. The partnership size cap was not imposed on Treasury's process from outside. Treasury itself proposed the cap as a live option in its Issues Paper, in May 2024, nine months after the initial reform package.[16]

37. Mandatory operational separation of audit and non-audit practice does not appear in any Treasury document at any stage. It appears for the first time as a recommendation of the PJC's final report, tabled 7 November 2024.[17] Both options were therefore on the table well before the Options Paper: one proposed by Treasury and one by the PJC. The question this submission raises is not when these options arose. It is whether either has been shown to satisfy the Treasury framework.

38. The PJC's own reasoning for its recommendations on partnership size (Recommendations 2 and 3) and structural separation (Recommendations 8 and 9) does not engage with Treasury's two-limb test at any point.[18]

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[14] Julia Black and Robert Baldwin, 'Really Responsive Risk-Based Regulation' (2010) 32 Law & Policy 181

[15] Hugh Breakey, 'Building Ethics Regimes: Capabilities, Obstacles and Supports for Professional Ethical Decision-Making' (2017) 40(1) *UNSW Law Journal* 322; Hugh Breakey and Charles Sampford, 'National Exams as a Tool for Improving Standards: Can Australian Financial Advisers Take a Leaf from the Professionals' Book?' (2017) 40 UNSW Law Journal 385.

[16] Treasury (Cth), Regulation of Accounting, Auditing and Consulting Firms in Australia (Issues Paper, May 2024) (**Issues Paper**) 14, Question 4.

[17] Parliamentary Joint Committee on Corporations and Financial Services, Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry (Final Report, November 2024) (**PJC Report**) Recommendation 9, [3.113].

[18] PJC Report (n 16) ch 3, [3.50]-[3.61], [3.97]-[3.111]

39. Submission 50 is cited repeatedly throughout the PJC's reasoning, but only for descriptive material concerning partnership structure and partner incentive mechanics.[19] The pages of that same submission setting out the market-failure test itself are not cited anywhere in the PJC's reasoning for these four recommendations.

40. The PJC's reasoning on partnership size does not identify the evidentiary basis by reference to Treasury's stated market-failure framework. The PJC identifies the Treasury-commissioned review into PwC as "the impetus for this inquiry", then in the following paragraph generalises immediately to all four major firms without citing evidence specific to the other three. It states that oversight of several hundred partners by any one partner is "clearly unacceptable", without reference to any finding that this has produced, or is likely to produce, a specific harm.[20]

41. The PJC's reasoning at this stage is qualitative and from first principles: it argues that the shared-liability and joint-profit structure of a partnership was not designed for firms of the scale the largest accounting firms have reached, that mutual oversight becomes impracticable at that scale, and that shared profit incentives can promote a form of "plausible deniability" among partners. It cites no empirical finding for this proposition and proposes no specific figure.[21]

42. The figure of 400 appears for the first time in the recommendation itself, where the sole stated justification for it is alignment with the pre-existing limit applicable to legal practitioners—a limit the PJC had earlier noted, without comment, as a feature of the existing regulatory landscape.[22] That alignment is never independently justified, including against the only alternative figure put in evidence, a limit of 100 partners proposed by two separate submitters, which the PJC does not address or explain its departure from.[23]

43. Structural reasoning of this kind, however framed, is not tested against either limb of Treasury framework and a number set by analogy to an unrelated profession's regulatory limit, rather than by reference to demonstrated risk, does not identify why 400, specifically, is the point at which the asserted risk becomes likely or its consequences unacceptable.

44. The PJC's reasoning on operational separation rests on two further foundations, neither of which engages Treasury's tests. First, the PJC adopts, close to verbatim, the position advanced in a single submission that "it is undeniable that an inherent conflict of interest exists when a firm supplies both audit and non-audit services to the same entity".[24] Second, and doing the greater share of the analytical work for this recommendation, the PJC relies on the fact that operational separation has been implemented in the United Kingdom, describing this as an "encouraging precedent" and recommending the Australian measure substantially on that basis.[25]
A precedent of this kind may properly inform policy design. The scholarship makes

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[19] Ibid, citing Sub 50 (n **Error! Bookmark not defined.**) 13-18
[20] Ibid [3.52]
[21] PJC Report (n 16) [3.60]
[22] PJC Report (n 16), Recommendation 3, [3.61]; see also [3.18], citing Corporations Regulations 2001 (Cth) reg 2A.1.01.
[23] PJC Report (n 16) [3.20], citing Submission 11 (Brent Fisse Lawyers) and Submission 68 (Professor Andy Schmulow)
[24] Ibid [3.104]
[25] Ibid [3.110]-[3.111]

the same point in relation to the accounting profession specifically: the existence of a common professional designation across jurisdictions does not establish that the same regulatory elements are appropriate in each, because professional cultures differ and the elements of an integrity system require calibration to the conditions in which they operate.[26] Standing alone such a precedent, is not evidence that a market failure exists in the Australian audit market, of a kind and magnitude that this specific remedy is proportionate to address.

45. Regulatory intervention should be calibrated to demonstrable improvements in audit quality, rather than to the visibility or apparent stringency of the measure adopted. Contemporary international standard-setting reflects the same orientation. The quality-management standard recently adopted by the Public Company Accounting Oversight Board (**PCAOB**) is expressly integrated, risk-based and scalable to the size and complexity of the firm and directed at accountability, monitoring and continuous improvement of a firm's quality-management system rather than at its ownership or structure. The direction of reform among comparable regulators is towards strengthening the systems by which audit quality is produced and monitored, not towards prescribing the form in which firms must be organised.

46. The PJC was not unaware that its recommendations preceded the evidentiary and analytical work its own report calls for. Recommendation 2 itself calls for a further body to be commissioned to determine "the appropriate regulator and its powers, applicable governance principles, transparent reporting obligations, penalties for breach and a roadmap for implementation" for the regulation of large partnerships generally.[27] Immediately after making that recommendation, the PJC explains why it is nonetheless proceeding directly to a specific figure: "a review is a longer-term piece of work and other options may offer more immediate results for improving governance and accountability".[28] This is a reasoned, express choice by the PJC to act ahead of the foundational work it identifies as necessary, made on efficiency grounds. It is not a finding that the foundational work had already been done, or that its results were already known.

47. The consequence for this consultation is straightforward. Treasury set a standard for when intervention in this sector is warranted. The body that produced the two live structural options did not apply that standard and substituted no alternative standard of its own, in reaching them. The Options Paper accordingly inherits recommendations that have not, at any stage of this multi-year process, been tested against the framework Treasury proposed for exactly this purpose. The burden in this consultation is on the case for structural intervention to supply that missing analysis. It is not open to this consultation to treat Recommendations 3, 8 and 9 as having already discharged it.

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[26] Breakey and Sampford (n 14) n 60.
[27] Ibid Recommendation 2, [3.61]
[28] Ibid [3.55]

48. The preceding analysis concerns the Parliamentary Joint Committee's 2024 reasoning. A further question arises: whether the Options Paper's own reasoning for Options 2C and 3B engages with Treasury's framework any more rigorously. It does not and the position is, in one respect, more difficult to reconcile than the position examined above, because the Options Paper does not apply even its own stated considerations consistently.

49. The Options Paper states, as an overarching consideration relevant to all options in this paper, that regulatory design should involve "focusing on addressing market failure and taking a targeted, risk-based approach to incentivising improved behaviours and deterring misconduct," a formulation consistent with Treasury's original 2023 standard.[29] Separately and specifically as the test for when "more interventionist approaches" of the kind proposed in Options 2C and 3B are warranted, the Options Paper states only that such approaches "may be appropriate where there is evidence of persistent or systemic issues that risk undermining the effectiveness or integrity of market-enabling services".[30] The second formulation omits any reference to market failure and to the assessment of consequences and likelihood that both Treasury's original standard and the Options Paper's own overarching considerations require. We make no submission as to why this occurred. We observe only that the standard actually applied to the two most interventionist options in this paper is not the standard the paper itself says should generally apply.

50. The affirmative case for Option 2C is, in substance, contained in the observation that "in recent years, we have seen behaviour from large accounting, auditing and consulting firms that suggest a different approach is required," a claim which precedes any option-specific analysis and is not tied to findings of audit output failure or an assessment of the systemic prevalence of the conduct referred to.[31]
The option's own stated rationale is that structural separation would "address any real and perceived risk of non-audit services' culture affecting audit quality".[32]
An acknowledgment that a proposed remedy is directed partly at perceived risk is not a finding of market failure; it is close to the opposite, an acknowledgment that the underlying harm, to whatever extent it exists, has not been shown to be real.
Notably, the Options Paper's own cost-benefit table for this option records, as a potential cost, the "potential to reduce audit quality, if it reduces access to non-audit staff and the international network on audits"—Treasury's own document identifying a risk to the very outcome the option is meant to protect.[33]

51. The affirmative case for Option 3B fares no better against either standard. The Options Paper's own reasoning is that the existing partnership limit "may, in part, recognise the risks to the public that large partnership structures can present," that this "may reflect a judgement" about the difficulty of mutual partner oversight at scale and that "arguably, the larger and more diverse a partnership, the greater the risk of governance failures".[34] Every substantive proposition in that passage is hedged and none is supported by evidence that large accounting partnerships have in fact

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[29] Options Paper (n 1) 4–5.
[30] Ibid 5–6.
[31] Ibid 21–22.
[32] Ibid 23.
[33] Ibid 23–24, Table 9.
[34] Ibid 25–26.

produced governance failures attributable to their size. The remaining support for Option 3B is the unexplained differential between the accounting and legal partnership limits and Recommendation 3 of the 2024 PJC Report, addressed above.[35] The Options Paper itself records that the largest firms did not consider a reduction in the partnership limit necessary.[36]

52. A further concession in the Options Paper's own treatment of Option 3B is directly relevant here: its cost-benefit table records that "stakeholder feedback suggests that larger firms can offer the necessary depth of expertise for auditing large and complex entities," and that "careful consideration would need to be given to ensure that a reduced partnership limit would allow firms to maintain capacity to audit large and complex entities".[37] This is the same capacity concern addressed in Section 9 by reference to the United Kingdom's Competition and Markets Authority, expressed here by Treasury in its own words, about its own proposed option, without being carried through into the option's own justification.

53. The consequence is that the failure identified in paragraphs 39 to 48 is not confined to the 2024 PJC Report. It recurs, on the primary text of the document now before Treasury, in the reasoning advanced for the same two options in 2026, against a standard the paper itself states but does not consistently apply.

Genesis of the current framework: the 2001 Ramsay Report

54. The current statutory framework is important because it demonstrates that the question now posed by Option 2A has already been examined comprehensively once before. The current framework for auditor independence in Australia has its origin in a review whose history bears directly on the questions the Options Paper raises. In 2001, the then Minister for Financial Services and Regulation commissioned Professor Ian Ramsay to conduct a comprehensive review of the independence requirements applying to Australian company auditors.[38] The resulting report, Independence of Australian Company Auditors, was released for public comment in October 2001 and became the direct foundation for the CLERP 9 reforms enacted in 2004.[39]

55. The purpose of that review, as stated in its own terms, was to "examine the adequacy of existing Australian legislative and professional requirements about the independence of company auditors, having regard to recent overseas developments" and to "make appropriate recommendations for changes to the Australian requirements".[40] It was, in other words, a design exercise directed at the independence framework itself, informed by comparison with the United States, the European Commission and the International Federation of Accountants.[41] It was not

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35 Ibid 26, 28 fn 82.
36 Ibid 27
37 Ibid 28, Table 12
38 Ian Ramsay, Independence of Australian Company Auditors: Review of Current Australian Requirements and Proposals for Reform (Report to the Minister for Financial Services and Regulation, October 2001) (**Ramsay Report**) 1.
39 Ramsay Report (n 36); *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (Cth)*
40 Ramsay Report (n 36) Part 3, para 3.01
41 Ibid para 3.02

and did not purport to be, an inquiry into audit enforcement adequacy or into the causes of any specific corporate failure.

56. That last point bears directly on how the 2001 Report may properly be used in the present debate. The Report is explicit that the conduct of auditors involved in the corporate collapses of the preceding year and the question whether independence failures contributed to those collapses, were outside its scope and were left instead to ASIC's own inquiries and to the Royal Commission then examining the collapse of HIH Insurance Ltd.[42]

57. The 2001 Report accordingly cannot be read—and should not be treated in this consultation—as a finding on the adequacy of audit enforcement. It is a framework-design document.

58. What the 2001 Report does bear on directly is Option 2A, the prohibition of non-audit services. The Report considered this question and did not recommend prohibition. Its recommendation was structured around four measures short of a ban:

    (i) revised and updated professional ethical rules;

    (ii) mandatory disclosure of the non-audit services provided to an audit client and the fees paid for them;

    (iii) a strengthened role for audit committees; and

    (iv) the establishment of an Auditor Independence Supervisory Board, with among its functions the monitoring of non-audit-service disclosure adequacy.[43]

59. The authors of the framework now regarded by some as requiring structural reinforcement considered the prohibition option directly, on a full comparative review of UK, US and European approaches and chose disclosure and oversight over prohibition.

60. The fourth limb of that 2001 recommendation, the supervisory board, was never established as its own institution. The government's CLERP 9 response agreed with the Report that "an independent supervisory body is an essential instrument" in this area, but assigned that oversight function to the existing Financial Reporting Council rather than constituting a new board along the lines that Ramsay had specified.[44]

61. The function Ramsay identified as essential, independent oversight of non-audit-service disclosure and firm independence more broadly, was not abandoned. It was absorbed into an existing body rather than given a standalone one. The 2001 framework's central non-prohibition recommendation was implemented in substance, through a different vehicle than the one originally proposed.

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[42] Ibid Part 1, 6

[43] Ibid Part 2, 11

[44] Treasury (Cth), CLERP 9: Corporate Disclosure Strengthening the Financial Reporting Framework (Paper, 2002) Part 4

62. As at the date of this submission, legislation combining the Financial Reporting Council with the Australian Accounting Standards Board and the Auditing and Assurance Standards Board into a new body, External Reporting Australia, has passed both Houses of Parliament. On the Options Paper's own account, this reform transfers the FRC's standard-setting functions; its separate function of advice and reporting on audit quality does not appear to transfer under this reform.

63. This is not a new position for industry stakeholders. In its 2002 submission to the Joint Statutory Committee on Public Accounts and Audit inquiry that preceded the CLERP 9 reforms, the Australian Chamber of Commerce and Industry supported partner and staff rotation over mandatory audit firm rotation and opposed an outright prohibition on non-audit services in favour of higher professional standards and strengthened disciplinary mechanisms.[45] The targeted-fix position advanced in this submission accordingly has an unbroken pedigree to the original CLERP 9 debate.

What the evidence actually shows

64. Three sources bear directly on whether the deficiencies identified in the Options Paper are structural failures of multidisciplinary firms or failures of individual conduct and governance: the academic literature analysing ASIC's enforcement record and ASIC's two most recent surveillance reports.

65. Ramsay and Webster's analysis of ASIC's enforcement outcomes against auditors and liquidators between July 2011 and December 2019 identified 71 outcomes against auditors and 58 against liquidators, with no criminal or civil court outcomes against auditors during that period.[46] The overwhelming majority of outcomes against auditors, 55 of 71, were administrative remedies, concentrated in self-managed superannuation fund auditors rather than company auditors.[47] The Companies Auditors Disciplinary Board and its predecessor were used in only 14 of 129 total outcomes across both auditors and liquidators.[48] The dataset does not support conclusions about firm size: its central distinction is between company auditors and SMSF auditors, categories of individual practitioner, not between large and small firms.

66. ASIC Reports 817 and 819 identify shortcomings in individual conduct, supervision and documentation. ASIC's Report 817[49] is the more relevant surveillance report. ASIC's review identified 14 auditors with likely breaches of the prescriptive independence requirements, rotation and prohibited relationships, out of a targeted cohort of 48. All 14 were from a small- to medium-sized firm or practising individually. None practised at one of the six largest firms included in the review.[50]

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45 Australian Chamber of Commerce and Industry, Submission to the Joint Statutory Committee on Public Accounts and Audit, Inquiry into Independent Auditing (2002).

46 Ian Ramsay and Miranda Webster, 'An analysis of ASIC enforcement against auditors and liquidators' (2021) 38 Company and Securities Law Journal 112, Table 1.

47 Ibid

48 Ibid

49 ASIC, Report 817, Building Trust: Auditors' Compliance with Independence and Conflict of Interest Obligations (October 2025) (**REP 817**)

50 Ibid Finding 1.

67. The resulting enforcement actions, three court enforceable undertakings, one infringement notice, one voluntary registration cancellation, were taken exclusively in relation to individual auditors at small or mid-tier firms.[51]

68. By contrast, ASIC identified shortcomings in documentation, consideration of non-audit fee ratios and former partner relationships across firms of all sizes, including large firms.[52]

69. These shortcomings go directly to the audit/non-audit interface that Options 2B and 2C are aimed at. The Committee's position is that they support stronger firm-level governance and disclosure obligations under Option 1A, addressed in Section 7, rather than a change in organisational form.

70. ASIC Report 819 records five enforcement or compliance outcomes. Of five enforcement or compliance outcomes recorded in the period, three concern small firms or sole practitioners.[53] Two concern partners of Grant Thornton, one of the largest non-Big Four firms in the Australian market, including cancellation of a former partner's registration.[54]

71. Taken together, the reports do not suggest that enforcement issues are confined to small firms. They do, however, demonstrate that enforcement action attaches to the conduct of individual auditors regardless of firm size. Neither report records enforcement action against one of the Big Four; the Grant Thornton outcome discussed above shows that pattern does not extend to all large firms.

72. Both reports contain an important methodological limitation. ASIC's own cohort in Report 817 was selected through a risk-based methodology, not a representative sample of the industry, a limitation that the report itself discloses.[55] Report 819's sample was more heavily filtered: files were reviewed only where a prior financial-reporting-level concern already existed, a doubly-selected population from which a general industry-wide deficiency rate cannot properly be inferred.[56] We rely on the pattern disclosed, not on the raw finding rate, which is elevated by design and should not be read as representative. The same limitation applies to the absence of identified breaches at the largest firms: a risk-based cohort selected to surface likely contraventions cannot be read as establishing that no comparable issues exist at those firms, only that none was identified within this particular, non-representative sample.

73. Taken together, the available evidence identifies deficiencies in individual conduct, governance systems and supervisory processes. It does not establish that the organisational structure of multidisciplinary firms is itself the source of those deficiencies. The same decline in surveillance coverage relied on in Section 9 to support stronger, better-resourced surveillance also limits the weight this evidence

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51 Ibid, 'ASIC action'.
52 Ibid, Finding 2.
53 ASIC, Report 819, ASIC's Oversight of Financial Reporting and Audit 2024-25 (2025) (REP 819), 5-6. REP 819 states 15 audit files were reviewed 'at nine audit firms,' though only eight are named in its detailed findings; the Options Paper's own Table 14 records eight firms for the same period, consistent with the named list rather than the total stated in the text.
54 Ibid.
55 REP 817 (n 47) Appendix 1.
56 REP 819 (n 51) Appendix 1.

can bear on the structural question, in either direction; the Committee's recommendations are calibrated accordingly. That distinction underpins the Committee's assessment of the structural options.

74. ASIC's surveillance activity also informs the question of proportionality. The number of audit files ASIC has reviewed has fallen over time. In 2024–25 only 15 audit files were reviewed, against a population of over 3000 registered company auditors in respect of 500 listed audit entities.

75. The Financial Reporting Council has described this level of review as small relative to the audited population.[57] The available evidence has therefore been generated from an increasingly targeted surveillance program whose overall coverage has declined significantly. That is relevant when assessing the proportionality of structural reform.

76. The absence of enforcement action does not itself establish that existing arrangements are optimal. The question is whether it demonstrates a need for structural intervention. In the Committee's view, it does not.

77. The Committee does not suggest that the existing framework is sufficient. The evidence identifies shortcomings in governance, documentation, conflicts management and supervisory oversight. The question raised by the Options Paper is whether those shortcomings justify stronger regulation of individual accountability and governance systems, or mandatory changes to firm structure. The available evidence points to the former.

78. Two recent matters involving Big Four personnel warrant brief mention. The first concerns a former EY graduate charged by the Australian Federal Police with unauthorised access to and distribution of confidential banking data obtained during a consulting secondment. As publicly reported, the alleged conduct was unrelated to any audit engagement and was met with immediate dismissal and criminal investigation.

79. The second concerns ASIC's ongoing investigation into KPMG audit partners. As ASIC's investigation remains ongoing, we confine ourselves to the publicly reported facts.

80. Based on the matters publicly reported, the allegations concern confidentiality and conflicts of interest rather than any identified deficiency in audit quality. The Committee makes no submission as to the eventual findings of the investigation, and this characterisation may need to be revisited depending on its outcome.

81. If substantiated, the allegations reinforce the case for stronger individual accountability and regulatory enforcement rather than mandatory structural separation. As reported, the allegations concern the misuse of confidential information between audit engagements rather than the provision of consulting services. Structural separation of audit and consulting functions would not address conduct of that character.[58]

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[57] FRC, Oversight of Audit Quality in Australia (2023) 21, cited in Options Paper (n 1) 33.

[58] Section 324CA–CG these provisions mandate strict auditor independence requirements in Australia. They ensure that individual auditors, audit firms and audit companies remain objective and free from conflicts of interest when conducting statutory financial audits.

The PwC matter and its implications for audit regulation

82. The PwC tax leaks matter looms over this entire consultation. Its significance, however, depends upon identifying the conduct that gave rise to it. The conduct concerned the misuse of confidential Commonwealth tax policy information, principally involving former partner Peter Collins and other members of PwC's tax advisory practice, to assist multinational clients in structuring around legislation the firm was simultaneously advising government on drafting.[59] No finding has been made that the matter involved a deficient audit opinion or a breach of auditor independence in the conduct of an audit.[60]

83. The Government's response announced on 6 August 2023 confirms that characterisation. The reforms included substantially increased promoter penalties, an extended limitation period for ATO proceedings, enhanced information-sharing powers, strengthened whistleblower protections and reforms to the Tax Practitioners Board regime.[61]

84. Those reforms were directed to tax adviser misconduct, confidentiality obligations, conflicts arising from government engagements and the regulation of tax practitioners. They did not introduce reforms directed specifically to audit quality or auditor independence because those were not the matters that gave rise to the PwC scandal.[62]

85. Accordingly, the PwC matter, while highly relevant to questions of tax adviser conduct, confidentiality management and conflicts arising from government engagements, does not, without more, establish a case for structural intervention in the audit function. To treat it as doing so would conflate misconduct within a tax advisory practice with the distinct regulatory framework governing audit independence and audit quality.

86. None of this diminishes the seriousness of the PwC conduct or the legitimacy of the Government's response. The Committee supports robust regulation of tax adviser misconduct, effective management of conflicts arising from government engagements and strong sanctions where confidential government information is misused (provided that relevant laws are appropriately targeted and calibrated, with sufficient safeguards).[63] The question raised by this consultation is a different one: whether that conduct also demonstrates a deficiency in the regulation of the audit function.

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[59] Australian Government, Government Response to PwC Tax Leaks Scandal (6 August 2023).

[60] The Senate Finance and Public Administration References Committee PwC: A calculated breach of trust June 2023 para 1.1 – 1.37

[61] Ibid

[62] Ibid, under 'Supplementing the TPB Code of Professional Conduct'.

[63] See Law Council of Australia, *Secrecy Provisions Amendment (Repealing Offences) Bill 2026* (Cth), Submission to the Senate Legal and Constitutional Affairs Legislation Committee, 22 May 2026.

Options supported

87. The Committee supports those options, which that strengthen surveillance, transparency, governance and individual accountability. Those measures respond directly to the deficiencies identified in the evidence without requiring structural intervention.

Surveillance

88. We support Option 4. ASIC has already increased annual audit file reviews from 15 to 25 and introduced random selection. The issue is whether the enhanced level of surveillance should become a mandated minimum, calibrated to firm size rather than remaining solely at ASIC's discretion.[64] Given the decline in surveillance activity described in this Submission, and the Financial Reporting Council's assessment that current review levels are small relative to the audited population, we support this option without qualification.

Penalties and discipline

89. We support Options 5A, 5B and 5C together, as a coherent package strengthening the disciplinary framework governing auditor conduct. Option 5A introduces civil penalties for contraventions of auditor requirements, including a significant global entity tier modelled on the tax promoter penalty regime, given legal effect through the Corporations Act's general civil penalty provision.[65]

90. The current maximum criminal penalty for an RCA's failure to conduct an audit in accordance with auditing standards, $87,360,[66] is manifestly disproportionate to the scale of harm a deficient audit of a major reporting entity can cause and civil penalties, assessed on the balance of probabilities, are a more calibrated instrument for regulatory-grade contraventions than the criminal standard currently relied upon exclusively.[67]

91. The principal issue is not whether a significant global entity tier should exist, but whether its proposed calibration is appropriate. We support the mechanism but consider that the calibration of the significant global entity tier should be addressed expressly in any exposure draft legislation rather than adopted by analogy to the tax promoter penalty regime.[68]

92. Option 5B, redirecting objective administrative deregistration matters from CADB to ASIC and strengthening ASIC's remediation and audit deficiency reporting powers, addresses an important timeliness gap in the current framework, in which an audit deficiency report cannot be published for at least six months after a breach is identified.[69]

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64 PJC Report (n 16) Recommendations 11, 12
65 Options Paper (n 1) 43, Table 20, citing Corporations Act s 1317G.
66 *Crimes Act 1914* (Cth) s 4AA(1), (3); ASIC, "Fines and Penalties" (Commonwealth penalty unit currently $364 for offences committed on or after 1 July 2026)
67 Options Paper (n 1) 38-39.
68 Options Paper (n 1) 43, Table 20.
69 Ibid 40.

93. Option 5C, extending CADB's jurisdiction to historical contraventions following voluntary deregistration, granting interim suspension power and introducing a banning order regime, addresses specific and well-evidenced weaknesses in the current disciplinary framework. In 2020–21 alone, 27 of 36 administrative CADB referrals were withdrawn because the individuals concerned voluntarily deregistered once notified, avoiding any formal finding.[70] This directly addresses the individual accountability gap identified earlier.

Transparency

94. We support Option 6A, requiring disclosure of audit firm and lead auditor tenure in annual reports. This is a disclosure measure. It imposes neither a structural requirement nor a mandatory tenure limit, and supports the Committee's preference for transparency over structural intervention.

Licensing and governance

95. We give qualified support to Option 1A, requiring audit firms to hold an ASIC licence subject to ongoing quality management and ethical conditions.

96. Option 1A addresses an important accountability gap: audit partnerships currently cannot be meaningfully sanctioned as firms for decisions, resourcing, remuneration structures or control systems that affect audit quality, with legal accountability resting solely on the individual lead auditor. We support the principle without reservation.

97. Our qualification relates solely to proportionality. Licensing obligations should be calibrated to firm size and risk so as not to impose disproportionate compliance burdens or inadvertently reinforce market concentration.

98. We give qualified support to Options 1B (professional conduct obligations as an ongoing condition of registration), 1C ('fit and proper person' requirements extended to all partners), 3A (new governance requirements for large audit firms) and 6B (mandatory periodic tendering). Our qualification relates partly to Option 6B. The Options Paper identifies market concentration principally in relation to the largest listed entities. Any mandatory tendering requirement should therefore be directed to that part of the market rather than applied universally.

99. Our qualification in relation to Option 1C concerns scope. "All partners" should not extend to a partner whose practice has no connection to audit work, whether a consulting partner or a lawyer practising within a multidisciplinary firm that does not operate its legal practice as a separate entity. Extending audit-sector fit and proper person requirements to such a partner would not advance the accountability objective the option is designed to serve, and would impose obligations calibrated to audit risk on practitioners who carry none. Any implementing provision should confine the requirement to partners who perform audit work or exercise governance responsibility over the firm's audit practice. Subject to these qualifications, these options strengthen governance and accountability without requiring structural separation.

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[70] Ibid, Appendix B, Table 26.

100. Taken together, these options strengthen surveillance, governance, transparency and individual accountability. In the Committee's view, they respond directly to the deficiencies identified in the available evidence and represent a more proportionate regulatory response than mandatory structural separation.

Options opposed

101. The Committee does not support Option 2A, which would prohibit reporting entities from engaging their auditor for non-audit services.[71] Treasury's analysis indicates that non-audit services provided to audit clients comprised approximately 6 per cent of combined Big Four Australian revenue in FY2023.[72] Any prohibition carries costs, including the loss of legitimate knowledge-transfer benefits discussed later in this section.

102. The Committee does not support Option 2B for the reasons developed in Section 3. Those reasons do not minimise the importance of conflicts management. They go instead to the choice of regulatory mechanism.[73]

103. If Treasury nevertheless concludes that further regulatory intervention is warranted, we submit that the objective can be achieved through a more proportionate mechanism. It is the model already adopted for audit quality management generally under Auditing Standard ASQM 1, which does not prescribe a single quality management system for all firms but requires each firm to design a system appropriate to its own circumstances, subject to regulatory assessment of its adequacy.[74] The same principles can be applied to conflicts between audit and non-audit functions without prescribing a single organisational model for firms of markedly different size, structure and international affiliation.

A more proportionate alternative

104. This is not a submission for lighter-touch regulation. Disclosure without accountability is insufficient. We submit that the accuracy and adequacy of each firm's disclosed arrangements should be a condition of its audit licence under Option 1A, which this submission supports and that a firm's failure either to implement or to comply with, accurately disclose, or maintain the arrangements it has represented to ASIC should attract the civil penalties and enhanced ASIC and CADB powers addressed in Options 5A to 5C, which this submission also supports.

105. The proposed model imposes meaningful consequences for firms that fail to implement or comply with their disclosed governance arrangements, without prescribing a single organisational structure.

106. The practical workability of a firm-designed approach is illustrated by the fact that the United Kingdom's largest firms have operated under a materially similar model since 2020: rather than the legislated structural split originally recommended by the

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[71] PJC Report (n 16) Recommendation 8.
[72] Issues Paper (n 15), Table 2, 24.
[73] PJC Report (n 16) Recommendation 9.
[74] Australian Standard on Quality Management 1, *Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements*, para 14.

Competition and Markets Authority, the four largest UK firms voluntarily agreed to implement operational separation in accordance with the UK Financial Reporting Council's Principles for Operational Separation of Audit Practices, a principles-based framework rather than a single prescribed structure.[75]

107. The contingency of regulatory architecture is illustrated not only by the United Kingdom's experience but, more starkly, by that of the PCAOB, established under the Sarbanes-Oxley Act of 2002 and long regarded as the model of a dedicated, firm-level audit regulator, has since 2025 been the subject of legislative proposals to abolish it and transfer its functions to the Securities and Exchange Commission.

108. Those proposals passed the House of Representatives before being held, for the present, on procedural grounds in the Senate.[76] The proposal is politically driven and its outcome remains unresolved. Its significance for this consultation lies in what the objections to it identify as the thing of value: not the Board as an institution, but the funded, specialist inspection capacity it has built over more than two decades, which its own chair has warned could not readily be recreated elsewhere.

109. The lesson is the same one the Committee draws throughout this submission. What produces and sustains audit quality is not the creation of a particular structure—whether a new regulator, a mandated firm form, or a partnership cap—but the sustained funding, staffing and supervisory commitment directed at the audit function itself. Structures can be built and, as both the United Kingdom and United States demonstrate, unbuilt. Capability is harder won and more easily lost.

110. The Committee does not support Option 2C. This is the most far-reaching of the options under consideration and it is notable that, unlike Options 2A and 2B, it is not tied to any recommendation of the 2024 PJC Inquiry.[77]

111. Option 2C appears to reflect Treasury's synthesis of positions advanced by individual submitters, including Professor Graeme Samuel and the CPSU, rather than a recommendation adopted by the Parliamentary Joint Committee itself following its inquiry. Following 12 public hearings and consideration of 83 submissions, the PJC did not recommend structural separation of consulting practices.

112. Accordingly, Option 2C should not be adopted on a lower evidentiary threshold than Options 2A and 2B. Those options addressed the same underlying concern but, for the reasons set out above, do not satisfy Treasury's market-failure framework.

113. Treasury's cost-benefit analysis also recognises that structural separation may relocate rather than eliminate conflicts of interest. An audit-only firm, deprived of non-audit revenue, may become more financially dependent on a smaller number of

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[75] Options Paper (n 1) 24. The paper does not propose a specific reform mechanism for this conflict type; it states that 'Treasury is interested in options to reduce or manage the actual or perceived conflicts for large multidisciplinary firms that both advise government on policy and program design (as part of procured services and/or through industry consultation) and advise non-government clients on navigating those same policies or accessing funding through those programs.'

[76] The relevant provision passed the United States House of Representatives on 22 May 2025 as part of budget reconciliation legislation; the Senate Parliamentarian subsequently ruled that it fell outside the reconciliation process, so that its enactment would require the ordinary 60-vote Senate threshold. The matter remains unresolved.

[77] Options Paper (n 1) 22-23.

major audit clients. That concentration risk creates its own independence risks, yet it is not addressed in the identified benefits of the option.[78]

Partnership size

114. The Committee does not support Option 3B, reducing the accounting partnership limit below its current 1000-partner maximum.

115. Australia already operates a size-based partnership limit regime, under which legal practitioners are limited to 400 partners and accountants to 1000.[79] The question this consultation raises is not whether partnership size should ever be regulated, a question already answered by existing law, but whether the differential between the accounting and legal limits is justified.

116. The Options Paper itself observes that "the justification for the increased maximum number of 'accounting' partners appears to be limited".[80] The distinction reflects the different scale and complexity of large audit practices, which require specialist technical capability, geographic coverage and sector expertise not demanded of legal partnerships to the same extent.

117. Partner numbers are a poor proxy for governance quality. Treasury's analysis accepts that a reduced partnership limit may impose costs without establishing minimum governance standards. Licensing, governance obligations and fit-and-proper requirements address that concern more directly.[81]

Professional standards

118. The Options Paper's treatment of professional standards legislation requires correction. The Options Paper refers to the schemes made under State and Territory professional standards legislation only as mechanisms by which partners "can cap their liability", grouping them with asset protection arrangements such as trust and corporate structures and defines the regime solely as one enabling "schemes to limit the civil liability of professionals".[82] On that basis, the Options Paper suggests that professional standards regimes "may be exacerbating the potential for inadequate accountability mechanisms by capping liability for services" and advances that suggestion in support of reducing the accounting partnership limit.[83]

119. That characterisation is incomplete. Limitation of liability under the legislation is not freely available; it is the consideration for an obligations regime. A scheme may be approved only where the occupational association has satisfied the relevant Professional Standards Council as to its risk management strategies, its insurance standards, its complaints and disciplinary system and its continuing professional education requirements, and the association remains subject to continuing reporting and compliance audit obligations.[84] The legislation is organised around those

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78 Options Paper (n 1) 23–24, Table 9.
79 Ibid 26, Table 10.
80 Ibid 26.
81 Options Paper (n 1) 28, Table 12.
82 Options Paper (n 1) 11 and n 8.
83 Ibid 13, Potential issue #2.
84 See, eg, *Professional Standards Act 1994* (NSW) ss 34–38; *Professional Standards Act 1997* (WA) ss 46–50; *Professional Standards Act 2004* (SA) ss 36–41

obligations, with distinct Parts addressing compulsory insurance, risk management and reporting, and complaints and discipline.[85] Both CPA Australia and Chartered Accountants Australia and New Zealand operate approved schemes which impose risk management, standards compliance, continuing education and mandatory reporting obligations on participating practitioners, and under which the applicable cap is calibrated to the size and nature of the practice.[86]

120. The Committee submits that the professional standards framework is better understood as an existing statutory model for raising professional standards through obligations settled by the profession, assessed by an independent body and monitored on a continuing basis, than as a mechanism that diminishes accountability. So understood, it is directly responsive to the deficiency the Options Paper itself identifies elsewhere: that independence obligations rest on individual and lead auditors and cannot generally be enforced against other partners or against the firm.[87] Scheme obligations operate at the level of the association and the practice rather than the individual engagement partner.

121. The Committee accordingly submits that consideration be given to strengthening the obligations imposed under approved professional standards schemes as they apply to audit services, and to making participation in such a scheme, with audit-specific obligations settled in consultation with ASIC, a condition of the firm licence proposed under Option 1A. That approach would address the accountability gap the Options Paper identifies, would build upon a statutory framework already applying to the accounting profession, and would do so without prescribing a single organisational form for the firms concerned.

122. That understanding is consistent with the scholarship on professional regulation to which the Committee has already referred.[88] Breakey and Sampford caution that "top-down governmental regulation can weaken the public demand for greater self-regulation", diminishing both the impetus for professional bodies to raise standards and their capacity to be recognised for doing so.[89] They qualify that caution expressly. Government and regulators do possess tools that encourage self-regulation, and the authors identify the Professional Standards Councils as one such tool: a mechanism by which professional bodies may be officially recognised and rewarded for maintaining high standards.[90] The Committee submits that this is the correct way to understand the professional standards framework in the present context. It is not a device that diminishes accountability but an instance of government action supporting the development of professional standards. Prescribing organisational structures in its place would forgo that support rather than build upon it.

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85 *Professional Standards Act 2004* (SA) Pts 3–5; *Professional Standards Act 1997* (WA) Pts 4–6.
86 CPA Australia, *Professional Standards Scheme*; Chartered Accountants Australia and New Zealand, *Professional Standards Scheme*.
87 Options Paper (n 1) 21, Potential issue #3, citing ASIC, Submission 1.1 to the Senate Economics References Committee Inquiry into ASIC Investigation and Enforcement, 2.
88 See above n 14 and accompanying text.
89 Breakey and Sampford (n 14) Part V(A)(2).
90 Ibid.

Authorised Audit Company

123. The Committee does not support Option 3C, requiring audit services to be provided only through an Authorised Audit Company. This option maps to Recommendation 19 of the 2024 PJC Inquiry.[91]

124. Notably, the Options Paper's own cost-benefit analysis for this option concedes that mandatory incorporation 'may not be suitable for smaller audit partnerships', a concession that tells against a uniform mandate applied without regard to firm size.[92] The accountability objective is better achieved through Option 1A's firm licensing regime than by mandating incorporation.

Audit and consulting functions

125. The Committee does not support Option 2A through 2C collectively for a further reason grounded in the available evidence. The premise that integration of audit and consulting functions degrades audit quality is not supported by the best available evidence on the actual mechanism at issue, knowledge transfer within a multidisciplinary office.

126. Fedyk, Fedyk, Hodson and Khimich, drawing on employment data covering the large majority of employees at large US public accounting firms, found that a one standard deviation increase in the share of consulting employees in an office is associated with a 2.6 percentage point reduction in the rate of subsequently identified restatements, from a baseline of 14 per cent.[93]

127. The study is observational rather than experimental and does not establish causation. It is, however, consistent with the proposition that integration may produce knowledge-transfer benefits that would be diminished by structural or operational separation.

128. This is not an academic proposition: the Options Paper's own stakeholder consultation records that the largest audit firms themselves advanced the same position, submitting that 'knowledge gained in one role … can assist in the quality delivery of services in another role,' a submission the Options Paper records without contrary finding.[94] Relevantly, the study's own effect is not statistically significant for the category of restatement most analogous to a serious audit failure, material misstatements specifically and this qualification should be understood as attaching to the citation.[95]

129. The study addresses structural separation rather than cross-selling to individual audit clients. It addresses the structural-separation question raised by Options 2B and 2C. On the qualitative evidence in the same study, consulting expertise is drawn on in

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91 PJC Report (n 16) Recommendation 19
92 Options Paper (n 1) 28–29, Table 13.
93 Fedyk, Anastassia and Fedyk, Tatiana and Hodson, James and Khimich, Natalya V., Do consulting services affect audit quality? Evidence from the workforce (February 23, 2024). Available at SSRN: https://ssrn.com/abstract=4318287 or http://dx.doi.org/10.2139/ssrn.4318287
94 Options Paper (n 1) 20–21
95 Ibid, Table 5.

60 to 80 per cent of audit engagements, primarily for the purpose of knowledge sharing.[96]

130. No major overseas financial hub has responded to concerns about large professional partnerships by imposing a novel structural cap or split. The United Kingdom's response to concerns about opacity in its own large partnerships was a disclosure obligation, not a structural one.

131. The Partnerships (Accounts) Regulations 2008 require partnerships whose members are themselves corporate entities, the structure under which the Big Four's UK practices operate, to prepare and publish audited accounts as though they were companies, the mechanism that in fact produces the transparency reports now published by the UK firms.[97] The UK's own earlier experiment with a general partnership size limit, a 20-member cap dating to 1948, was repealed in 2002 as an outdated device with no continuing rationale, in favour of exactly this kind of disclosure-based transparency.[98] The legislative trend has consistently favoured transparency and regulatory oversight over structural intervention.

132. The Committee does not support Option 6C, mandatory audit firm rotation. This option is not supported by any recommendation of the 2024 PJC Inquiry and the Options Paper's own text records that the 2019 PJC Inquiry considered mandatory rotation directly and did not recommend it, citing the same organisational disruption and loss of accumulated client knowledge this submission would rely upon and noting that South Korea, Brazil, Argentina, Singapore, Spain and Canada have all reversed mandatory rotation policies on comparable grounds and that the United States has statutorily prohibited its own regulator from imposing one.[99]

133. The Options Paper does not identify any material change since the 2019 inquiry that would justify a different conclusion. Options 6A and 6B achieve the transparency and competitive objectives sought by Option 6C without the demonstrated costs of mandatory rotation.

Conflicts arising from concurrent government and private advisory work

134. Option 2D, concerning conflicts arising where a large multidisciplinary firm both advises government on the design of a policy or program and advises non-government clients on navigating that same policy or program or regulatory consultation, poses a materially different question from Options 2A to 2C. Unlike those options, Option 2D does not yet propose any specific mechanism; Treasury's framework poses the question of what reform, if any, is warranted, without offering a model to assess.[100]

135. The Committee supports consideration of targeted reform. We submit that the firm-designed, ASIC-disclosed model proposed earlier in this submission is equally applicable here and for the same reasons: the specific conflicts arising from

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[96] Options Paper (n 1) 50.
[97] Partnerships (Accounts) Regulations 2008 (UK).
[98] Companies Act 1948 (UK) s 434; Companies Act 1985 (UK); repealed by Companies Act 2002 (UK) reforms.
[99] Options Paper (n **Error! Bookmark not defined.**) 50.
[100] Options Paper (n 1) 24.

concurrent government and private-client advisory work vary by engagement and client relationship in ways a single prescribed rule is unlikely to capture well, whereas a requirement of full and accurate disclosure to the relevant regulator, of both the arrangements adopted and their operation in practice, allows the regulator to assess adequacy against the facts of each case rather than a generic template.

136. The Committee also considers it important that any response to Option 2D preserves legal professional privilege and continues to encourage full and frank communications between clients and their legal advisers. Large multidisciplinary firms frequently undertake privileged internal investigations, advise on regulatory responses and assist clients in self-reporting matters to regulators. Those public interest functions should not be undermined by governance arrangements that inadvertently discourage the seeking of legal advice or the conduct of rigorous internal investigations.

137. Equally, reforms should reinforce rather than weaken incentives for voluntary cooperation with ASIC and other regulators. Australia's regulatory system benefits when firms identify issues early, investigate them thoroughly and engage constructively with regulators. Governance obligations should therefore distinguish carefully between the disclosure of governance systems and conflict-management arrangements, which may properly be subject to regulatory scrutiny, and privileged legal advice or confidential investigative material, which should remain protected.

138. The Committee submits that regulatory effort is best directed to measures that strengthen quality-management systems, surveillance and accountability, rather than to requirements whose incremental contribution to audit quality is uncertain. A structural mandate imposes a certain and substantial cost in exchange for an uncertain and unquantified benefit. That is the opposite of the calibration Treasury's own framework requires.

Recommended approach

139. In our submission, those objectives are best achieved through a principles-based obligation requiring firms to design, document, maintain and periodically review governance arrangements appropriate to their own business model, supported by ASIC oversight and meaningful enforcement where those arrangements are inadequate or not followed.

140. This recommendation is also consistent with contemporary scholarship, which emphasises that ethical failures commonly arise from deficiencies in organisational capability, oversight, incentives and culture rather than organisational form alone.[101]

Proportionality

141. The preceding sections establish a consistent picture. The standard of regulatory intervention Treasury set in September 2023 has not been applied to the remaining structural options. The enforcement record across ASIC's most recent surveillance reports and the peer-reviewed academic literature on ASIC's enforcement history over the preceding decade shows a pattern of individual accountability failure, not

[101] Breakey (n 14).

firm-structural failure, with no enforcement action against any Big Four firm or partner recorded in either source.

142. The single matter most closely associated in public discussion with this entire reform process, the PwC tax leaks matter, was tax advisory misconduct and the Government's own extensive response to it was directed exclusively at tax advisory and government-engagement conduct, not audit quality.

143. Radical changes to the market without the existence of a clear case for change and a detailed understanding of its consequences risk material unintended effects on the way an important part of modern corporate law operates.

144. The assurance function performed by audit firms underpins a substantial part of the modern market for capital. Any change to how that function operates needs to be calibrated to demonstrated risk and its consequences properly understood before it is imposed.

145. That caution applies with particular force to the scale at which the largest audit firms operate, because that scale is not incidental to their function. It is what allows a single, coordinated audit of a multinational or otherwise complex corporate group to be conducted at all.

146. The United Kingdom's Competition and Markets Authority, in the most detailed comparative examination of audit market structure available, recorded that it was widely accepted among market participants that challenger firms did not currently have the capability to audit the largest, most complex entities, owing to the scale of audit teams and international networks such engagements require, though the CMA also identified that this reflected, in part, a self-reinforcing cycle in which such firms are excluded from the largest audits for want of experience they can only gain by being included.[102] Recognising that capability gap, the CMA recommended staged capacity-building through shared audit arrangements rather than assuming challenger firms could immediately undertake the largest audits independently.

147. Nor is that capacity, or the firms that provide it, a permanent or assured feature of the market. The collapse of Arthur Andersen in 2002 converted what had been five global accounting networks into four, within a matter of months and stands as a direct demonstration that the pool of firms capable of servicing the largest and most complex audits can contract suddenly and without warning.[103]

148. The CMA's final report treats this as a continuing risk rather than a historical curiosity, recommending that the regulator actively monitor the financial health of the Big Four firms and hold in reserve the power to intervene, including to manage the movement of clients, in the event any one of them faced failure.[104] A body focused on increasing competition and reducing reliance on the largest firms nonetheless judged the risk of losing one of them serious enough to warrant a standing, monitored safeguard.

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[102] CMA Report 88-89, 144.

[103] See generally the 2002 collapse of Arthur Andersen LLP, following its conviction (later set aside) for obstruction of justice in connection with the collapse of Enron Corporation, which reduced the "Big Five" global accounting networks to four.

[104] CMA Report 88-89,144.

149. The CMA ultimately favoured operational separation rather than full structural separation. We do not rely on that recommendation. The significance of the report lies elsewhere. It demonstrates, on a much broader evidentiary base than is available in Australia, that concentration and capacity risk are real and that structural intervention must be carefully calibrated to avoid unintended consequences. The Options Paper does not address that question.[105]

150. The proportionate response is therefore to strengthen mechanisms that address individual accountability directly:

- firm-level licensing and quality management obligations (Option 1A);
- mandated, adequately resourced surveillance (Option 4);
- a modernised civil penalty regime;
- a CADB with the jurisdiction and powers to close the specific accountability gaps this submission has identified, including the voluntary deregistration loophole responsible for 27 of 36 administrative referrals being abandoned in a single year (Options 5A to 5C); and
- transparency measures that give the market the information it needs without imposing structural cost (Options 4 and 6A).

151. If finite regulatory resources are directed to compliance activity whose contribution to audit quality is uncertain then fewer resources are available for the supervisory and quality-management work more directly connected to audit quality. That consideration weighs against interventions whose incremental contribution to audit quality is uncertain and in favour of measures whose connection to audit quality is demonstrable.

152. The Parliamentary Joint Committee's own final report reached the same conclusion on regulatory capacity specifically, recommending increased resourcing for ASIC's surveillance function and targeted reforms to CADB's jurisdiction and powers, in Recommendations 11 and 21 respectively.[106]

153. A comparative observation that bears on the choice between strengthening an existing regulator and constituting a new one, though we do not press this point as determinative. The United Kingdom's Financial Reporting Council (the closest structural analogue to what an Australian Auditor Independence Supervisory Board might have become had it been established as originally proposed in 2001) was found by the 2018 Kingman Review to have drifted into institutional passivity over roughly fifteen years, contributing to a documented weak response to major audit failures. Yet, as recently as January 2026, the UK Government abandoned legislation to replace the FRC with a dedicated statutory successor, on the basis that the existing body had, through leadership change, increased resourcing and sustained institutional attention, substantially addressed the underlying concerns without requiring a new institution.

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[105] Ibid 177

[106] PJC Report (n 16) Recommendations 11, 21.

154. Where this submission departs from the PJC's report is not on the question of whether the existing regulatory architecture needs strengthening, on which we and the PJC substantially agree. The point of departure is whether restructuring the market itself has been shown to be necessary. In our submission, it has not.[107] Institutional form is not irrelevant, but sustained funding, statutory power and political attention are the determinative variables, whichever institutional form carries them.

155. The Committee supports significant reform of Australia's audit regulatory framework. The evidence supports stronger surveillance, stronger licensing, stronger penalties and stronger individual accountability. The evidence does not establish the need for structural intervention in the market itself. For those reasons, the Committee supports significant reform but does not support restructuring the market.

Further contact

156. The Committee would be pleased to discuss any aspect of this submission.

157. Please contact Philippa Stone, Chair of the Committee [redacted] if you would like to discuss this submission with representatives of the Committee.

Yours sincerely



Adrian Varrasso
Chair, Business Law Section

[107] A comparative observation that bears on the choice between strengthening an existing regulator and constituting a new one, though we do not press this point as determinative. The United Kingdom's Financial Reporting Council, the closest structural analogue to what an Australian Auditor Independence Supervisory Board might have become had it been established as originally proposed in 2001, was found by the 2018 Kingman Review to have drifted into institutional passivity over roughly fifteen years, contributing to a documented weak response to major audit failures. Yet as recently as January 2026, the UK Government abandoned legislation to replace the FRC with a dedicated statutory successor, on the basis that the existing body had, through leadership change, increased resourcing and sustained institutional attention, substantially addressed the underlying concerns without requiring a new institution. *Sir John Kingman, Independent Review of the Financial Reporting Council (Final Report, December 2018)* UK Government, announcement regarding the Audit, Reporting and Governance Authority (January 2026).