

15 December 2023

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

By email: [corporations.joint@aph.gov.au](mailto:corporations.joint@aph.gov.au)

Dear Dr Bell,

## **Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry – Response to Questions on Notice**

This response provides further information about Governance Institute and addresses the Committee's questions on notice.

### **1. The role of Governance Institute**

Governance Institute is a voluntary professional membership organisation with more than 8,000 members working in governance and risk management roles in listed and unlisted companies, charities and not-for-profits and the public sector. We influence a broader community of 43,000 individuals who engage with our activities including education, training, advocacy and information about governance and risk. We equip our members and our community with the tools to drive better governance within their organisations. We are a voluntary professional membership organisation we have no regulatory or self-regulatory functions, nor are we required to have these functions.

We are a division of The Chartered Governance Institute (CGI), which in turn has an ancestry dating back over 125 years. CGI was founded in the UK when a group of influential company secretaries joined together to form a society that would promote their professional interests. It is now an international body, with over 30,000 members living and working in over 80 countries.

In 1909, the Australian division of CGI gained independence from its London parent body, and in 1947 all the Australian branches merged under the single name Chartered Institute of Secretaries. In 2013, that organisation became Governance Institute of Australia. Reflecting the key role good governance plays in the performance of every Australian organisation, we expanded our remit to incorporate governance professionals from every part of an organisation — from company secretaries, to chief risk officers, directors, CEOs, and other senior leaders. In recent years with the increasing importance of risk management in organisations many of our members also work in risk management roles.

While we offer a range of educational offerings, we have two postgraduate courses accredited by the Tertiary Education Quality and Standards Agency (TEQSA) as meeting course requirements under

the Australian Qualifications Framework (AQF) at Level 8 (postgraduate certificate and postgraduate diploma levels). Successful completion of these courses leads to an award of either a Graduate Diploma in Applied Corporate Governance and Risk Management or a Graduate Certificate of Applied Corporate Governance and Risk Management.

Subject to application, successful completion of the Graduate Diploma and an appropriate level of experience, an individual can apply for membership of CGI which also entitles an individual to be awarded membership and the Chartered Designation. We are the only Australian provider of chartered governance accreditation, and an Institute of Higher Education as defined in the Higher Education Standards Framework (Threshold Standards) 2021 made under section 58(1) of the Tertiary Education Quality and Standards Agency Act 2011.

Our postgraduate education is also classified under the CGI International Qualify Programme which enables members to become members of CGI. Membership of Governance Institute and/or CGI entitles the member to use post-nominals, ranging from Affiliate to Fellow, signifying both their level of membership and their experience. As noted above it is possible to be a member of both Governance Institute and CGI, and while many of our members are dual members, many are not. In addition to our accredited post-graduation education, we also offer a range non-accredited short courses, certificates and other training offerings to assist members and others to increase their skills and knowledge about governance and risk management.

While our origin is as a membership and training body for company secretaries, who are 'officers' under the Corporations Act with the attendant duties and responsibilities, in recent years our membership has broadened to members working in a variety of governance roles in organisations.<sup>1</sup> Many of our members now describe themselves by the broader term 'governance professional' which reflects the extent to which their roles have grown in recent years. There is no statutory definition of a 'governance professional' as there is no statutory definition of 'accountant'.<sup>2</sup> There is also no Australian legal requirement for a company secretary to have any form of education or training before appointment. This contrasts with other CGI member jurisdictions such as Hong Kong, Malaysia and Singapore. It is also a requirement in India. Our members consider this is a gap in the regulatory regime of Australian companies and that company secretaries of listed companies should be required to complete formal education and training prior to appointment.

**2. How many people with that qualification [the Graduate Diploma of Applied Corporate Governance and Risk or its predecessor qualification] are inside the big four?**

The table below sets out the number of current members employed by the big four accounting firms:

<u>Firm</u>	<u>No of members</u>
KPMG	20
Deloitte	15
EY	11
PwC	9

<sup>1</sup> The definition of 'officer' under Section 9 of the Corporations Act includes a 'company secretary'.

<sup>2</sup> This was noted in several submissions to the Committee. See for example the Submission from the Institute of Public Accountants at page 7.

**3. Have you interrogated that list to determine if any of the people who have been dismissed by PwC are on the list? And what were your findings?**

Our list of current members has been interrogated and no one dismissed by PwC is a member. No Governance Institute members were in the list of PwC staff named in the list of those involved in the leak of tax information.

**a. And did you check the other companies that are part of the big four?**

The list was checked by name rather than employer. So yes.

**4. What about the other consultancy providers like BDO, Boston Consulting Group, Bain, McKinsey?**

The table below sets out the number of current members employed by those firms:

<b><u>Firm</u></b>	<b><u>No of members</u></b>
BDO	4
Boston Consulting Group	-
Bain	-
McKinsey	-

**5. There's also no public place in which you can go to find out if somebody is of good repute. And if somebody has acquired this qualification, that just remains with them for life? Have you removed the qualification from anybody for unethical behaviour? Can you take on notice if that has ever occurred?**

While we have the power to remove an individual's membership, we have confirmed with our regulator TEQSA that we cannot revoke/annul an award (the Graduate Certificate or Graduate Diploma) based on conduct occurring post-graduation that has no connection to the attainment of the award.

Governance Institute does not require members renewing their membership to provide any annual attestation in relation to fitness and propriety or conduct, although this is required by some regulators and self-regulatory bodies such as law societies for renewal of registration or membership. We are a small organisation and do not have the resources to audit an annual attestation system.

As a member of CGI, we follow the CGI Disciplinary process in relation to complaints about members, including those that might be related to ethical conduct, which involves the following activities:

- A complaint is initially sent to the Membership Committee, a Committee of the Governance Institute Board, which appoints an Investigation Sub-committee, comprised of members who have volunteered to participate in the Sub-committee.
- If the Investigation Sub-committee decides there is a basis for the complaint the matter is sent to the Disciplinary Sub-committee.
- The Disciplinary Sub-committee is responsible for deciding what action to take, a fine is one option and as a last resort the individual against whom the complaint is made can be removed as a member of the

organisation. If the Disciplinary Sub-committee considers there has been a breach of the law, it can also refer the matter to an appropriate regulator such as ASIC.

The Disciplinary process also provides for an Appeals Sub-committee which may or may not be convened. In practice there have been very few disciplinary matters over the years and none in the last five years. For the most part the quality of the professional behaviour of governance professionals is good. This does not mean there have not been situations in which ASIC or other regulators have acted against company secretaries for breaches of the law. We would also note that organisations such as Governance Institute are reliant on public information about the activities of members or self-reporting of matters which might impact on their membership.

**6. How often do you clean that [the membership list] up?**

Our membership records are reviewed annually as part of our membership renewal process. If membership is not renewed, the person is removed from our membership list.

**7. CHAIR: Okay. Could you tell me if the former CEO of PwC Mr Luke Sayers or Mr Tom Seymour are members of your Governance Institute?**

Neither Mr Sayers nor Mr Seymour are members of Governance Institute.

**8. Could you find if they ever held membership, and any others who have ever held membership with regard to the big four plus those other ones that I mentioned?**

We have checked our membership records and they have never been Governance Institute members.

**9. This document names Mr Bernsten and Mr Calleja as people who have left the firm for misdemeanours as set out in this report. Have you checked your membership for those names?**

We have checked our membership records and they have never been Governance Institute members.

**10. Question - If there's any way that you could provide us with a fuller submission [on whistleblowing] that addresses any additional matters, that would be most welcome.**

Our members consider that the issues under consideration by the Committee highlight the need for a single comprehensive regime for whistleblower protection and the complexity and gaps in the current legislation, applicable to the private sector and to the need for an independent office of the whistleblower. Governance Institute and its members have been actively engaged in advocating for reform of the laws relating to whistleblower protection for some years:

- We made a submission to Treasury on initial proposals in 2017 and to this Committee during its 2017 Inquiry into Whistleblower Protections.<sup>3</sup>
- We were a supporter of the Griffiths University [Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private sector organisations Project](#).<sup>4</sup>
- We participated in the consultations leading up to the passage of the amendments to the Corporations Act and the Taxation Administration Act in 2019, introducing an expanded corporate whistleblowing scheme and a new tax affairs whistleblowing scheme.

**a. Why does whistleblowing matter?**

---

<sup>3</sup> See Submission [Inquiry into whistleblower protections in the corporate, public and not-for-profit sectors](#), Governance Institute of Australia, 10 February 2017.

<sup>4</sup> [Clean as a whistle a five step guide to better whistleblowing policy and practice in business and government - Whistling while they Work 2](#), August 2019, Griffith University and others.

- Whistleblowing has a critical role to play in identifying and stopping misconduct, but it should be seen as just one, although vitally important, aspect of organisations' overall programs to ensure compliance with regulation and prevent and detect misconduct.
- The Whistling while they work 2 Research Project found surprising similarity between the basic nature and dynamics of whistleblowing between public and private sector respondents to their Survey (page 5). It also found that employee reports, on average were the most important – above and beyond internal audits and routine controls means of bringing wrongdoing to light. This was the same across the public and private sectors. Further, 89 per cent of public and 94 per cent of private sector respondents agreed it was 'in the best interest of the organisation when an employee reports wrongdoing', especially managers'. (page 8)
- If the best source of information about misconduct in an organisation is its employees, they should be encouraged to speak up about any unlawful, unethical or irresponsible behaviour.
- To quote the Report, 'Dealing with employee wrongdoing concerns may be challenging and difficult, but our research confirms its fundamental role, every day, in maintaining integrity and assisting accountability and performance in the institutions on which society depends.' (page 9)

#### **b. The current state of whistleblowing legislation**

- Australian whistleblower protection laws are a complex patchwork: the Commonwealth Public Interest Disclosures Act, the Fair Work (Registered Organisations) Act, the Corporations Act, the Aged Care Act, Taxation Administration legislation as well as State legislation. The area is complex to understand, complex to administer and confusing for anyone contemplating speaking up about unlawful, unethical or irresponsible behaviour.
- A recent report by Your Call indicates that more than half of the participants at a Workshop said their organisations must comply with four or more separate sets of whistleblowing laws.<sup>5</sup> Attendees also noted there were inconsistencies between regimes. The Report quotes one attendee '... when you get a disclosure, it could fall within all three whistleblowing regimes. In reality, we could end up having to do three separate investigations if we were to follow everything to the letter of the law, which just seems kind of ludicrous and... surely that can't be the intended outcome.' Another attendee observed: "Trying to meet the requirements of both [two laws] can be a challenge while trying to maintain the anonymity of the whistleblower and... if we don't maintain it, that's when we'll put people off and in the future people won't come forward as whistleblowers if it's obvious who that person is." (page 4)
- This patchwork of provisions expect an unrealistic level of sophistication on the part of whistleblowers in relation to their ability to analyse and understand which legislation and which regulator covers misconduct. A whistleblower should not need a nuanced knowledge of applicable legal and regulatory frameworks to know to which regulator or law enforcement agency they should make their disclosure to qualify for protection. It is a strong disincentive to making disclosures if employees or other relevant parties feel that they require legal advice before making any such disclosure. More sophisticated whistleblowers are not necessarily in a better position. Even qualified professionals, aware of their responsibilities, able to navigate the legislative maze report difficulty in determining which regime may apply to a particular situation. If this is the experience of qualified

---

<sup>5</sup> [Australia's multiple whistleblowing regimes prove hard to navigate](#), Your Call, Workshop held 22 July 2023

professionals how much more difficult is it for the average employee, a volunteer in a charity or an employee in an aged care facility whose first language is not English?

- The 2019 amendments to the Corporations Act and the amendments to the Tax Whistleblowing provisions were an important first step in improving the Australian regime but our members consider there is a continuing need for a stand-alone, general whistleblower protection regime in its own Act (applicable to the private sector), as recommended by this Committee in 2017, rather than the current approach across multiple pieces of legislation applicable to different sectors.<sup>6</sup>
- While the recent amendments to the Public Interest Disclosure Act are welcomed a more uniform approach to whistleblowing would be preferable. Similarly, the recent consultation on amendments to the Taxation legislation indicate that there are still gaps in coverage.
- Given the complexities involved in whistleblower protections our members consider there is a need for an independent whistleblower protection authority. A stand-alone whistleblower protection authority should be able to enforce whistleblower protection legislation but could also play an important role in giving practical support to whistleblowers, providing guidance and educating organisations about their obligations. It would also reduce the complexity and potential for confusion involved in knowing which pathway a whistleblower should take where there is an issue.
- The 2019 amendments to the Corporations Act and the Taxation Administration Act are due for statutory review in 2024. Our members consider that there is an opportunity both to take stock of the current state of Australian whistleblower legislation and to carry out broader reform. Effective whistleblower protections need a consistent and harmonised regulatory approach.

**11. Question - Could I ask you to look at the recommendations and suggestions on whistleblower predictions [protections] that are made in other written submissions to this inquiry? There are a number of those (12.1, 15, 18, 25, 30, 34, 37, 53)**

As requested, we have considered the recommendations and suggestions on whistleblower protections made in written submissions to the Inquiry and have the following comments.

- **Submission 12.1 - EY Australia** – This Submission recommends the extension of the legislative whistleblower protection framework to large, registered partnerships in the same way as they apply to corporations and the establishment of a Council of Regulators with appropriate legislative support to enable the sharing of confidential information between regulators. The fact that partnerships are not part of the current whistleblower legislative framework highlights the gaps that currently exist and demonstrates the need for a single whistleblower protection regime, applicable to the private sector. Our members consider that the establishment of a Council of Regulators has merit and would have assisted with the difficulties the Australian Taxation Office and the Tax Practitioner's Board (TPB) faced in the investigation into PwC's misconduct. However, they are of the opinion that a preferable approach would be to establish an independent whistleblower protection authority to undertake the whistleblower protection role and implement a new stand-alone scheme.
- **Submission 15 - Institute of Public Accountants** – This Submission advocates further consideration of providing rewards/bounties to whistleblowers is needed, noting that the Committee has previously recommended reform to provide for the payment of rewards to

---

<sup>6</sup> See Report [Whistleblower protections](#), September 2017, Parliamentary Joint Committee on Corporations and Financial Services, Recommendation 3.1.

whistleblowers whose disclosures led to the imposition of a penalty on a body. Historically our policy position is that we do not support bounty or reward schemes providing financial rewards to corporate whistleblowers.<sup>7</sup> We will consider this matter further when the 2019 whistleblower reforms are reviewed in 2024.

- **Submission 18 – CPA Australia** – This Submission recommends consideration of the expansion of information sharing and whistleblower protection for professional accountancy organisations (PAO's), noting that this approach would only be effective to the extent that those providing professional services are members of a PAO. While this would address a current gap in the legislative framework, our members consider that a stand-alone whistleblower protection regime in its own Act is a preferable approach.
- **Submission 25 – KPMG** – This Submission recommends stronger whistleblower protections across the professional services sector and a recommendation by the Committee of a commitment to whistleblower protections under Commonwealth Procurement Rules. Our members support stronger whistleblower protections for the professional services sector in the form of a single whistleblower protection regime applicable to the private sector as well as a single complementary regime for the public sector.
- **Submission 30 – CAANZ** – This Submission expresses support for the road map (Road Map) prepared by the Human Rights Law Centre, Transparency International Australia and Griffith University, *Protecting Australia's Whistleblowers*. It also notes that because auditors are considered individuals for the purposes of the Corporations Act whistleblower protection provisions, situations can arise where junior audit team members receiving protected disclosures may be limited in what they can share with superiors. The Submission recommends this be addressed in the short term by an amendment to the Corporations Act and in the long term by 'broader reforms such as enacting a single law covering all non-government whistleblowers'. Our members have considered and support the Roadmap including support for the necessary broad reforms to enact a single law covering all non-government whistleblowers.
- **Submission 34 – Centre for Governance and Public Policy Griffiths University, Human Rights Law Centre and Transparency International** – This Submission highlights many of the difficulties and anomalies created by the current patchwork of whistleblower protection provisions. It recommends:
  - That Government take a comprehensive, uniform approach to the enhanced regulation and protection of whistleblowing in consulting firms and other entities, consistent with the Committee's recommendations, by establishing a single Whistleblower Protection Act covering all non-government entities and employers and entities under Commonwealth legislation or subject to Commonwealth regulation, in preference to multiple, overlapping regimes and include that in the terms of reference for all reviews including the 2024 review of the whistleblowing provision of the Corporations Act and Taxation Administration Act
  - The extension of the Public Interest Disclosure Act (PIDA) to require Commonwealth contractors and non-government service providers to have their own whistleblowing policies, pathways and protections meeting consistent minimum standards, and the extension of the legislative protections to those internal disclosures, and

---

<sup>7</sup> See Submission to the Parliamentary Joint Committee on Corporations and Financial Services [Treasury Laws Amendment \(Whistleblowers\) Bill 2017 Proposed amendments to the Corporations Act 2001](#), Governance Institute of Australia, 23 February 2018.

- The renewal by the Committee of its 2017 recommendations for an integrated, comprehensive approach to federal whistleblower protection – including in respect of consulting firms – by noting and endorsing all 12 areas of reform set out in the Road Map and the establishment of an authority to enforce protections in and across all sectors (public, private and not-for-profit), and not simply the public sector.

Our members support these Recommendations.

- **Submission 37 – Inspector General of Taxation and Taxation Ombudsman** – This Submission notes their understanding that an area of concern which has emerged in the context of the recent allegations of misconduct is ‘the passage of time between the alleged misconduct and when it was uncovered following investigation by the TPB’. It comments that there is a question about whether anyone ‘could have come forward earlier to ‘blow the whistle’ on the conduct and, if not, what actions could be taken to encourage early disclosure and detection (whistleblowing) in these circumstances in future’. It also refers to other frameworks that encourage whistleblowing and provide (to varying degrees) protections of the whistleblowers including PIDA, the Taxation Administration Act and the Corporations Act. The Submission encourages the Committee ‘to explore and consider whether existing whistleblower regimes are sufficient to protect any potential whistleblowers coming forward and, correspondingly, whether protections against reprisal might have encouraged approaches or disclosures that would have uncovered any misconduct in a more timely manner’. Our members would encourage the Committee to explore these issues as suggested.
- **Submission 53 – Name withheld** - This Submission recommended simplification of PIDA and enhancement of its protections, the express protection of whistleblowing disclosures about auditors and giving whistleblowers standing to bring actions to the regulator. These Recommendations highlight the deficiencies noted by those making submissions to the Committee on whistleblowing namely the need for comprehensive reform of the whistleblower regime for both the private and public sector. As noted above Governance Institute’s policy position has been that it does not support the payment of rewards or bounties to corporate whistleblowers. We will consider this matter further when the 2019 whistleblower reforms are reviewed in 2024.

**12. Question - On page 25 of its submission the Treasury recommended that the committee seek information on firm structure, partnership frameworks in theory and practice, firm governance processes, how firms operationalise their obligations, data on firm performance and why the current regulatory environment is deficient. Could you provide information on those points ...**

Treasury’s Submission notes that the regulatory framework for firms and partnerships is complex, divided between the Commonwealth, the States and Territories and self-regulation and that the applicable regulation will also depend heavily on the structure of the business concerned. Few of our members operate in partnerships. They are more likely to be directors and company secretaries (subject to statutory duties under the Corporations Act and the common law), employed in a governance role in a company or public sector body or working in risk management roles in the private and public sectors. We are therefore not able to provide detailed comments on these matters. However, we would endorse Treasury’s statement that ‘high-quality independent audits support the efficient and effective functioning of capital markets, and support informed decision making by investors’ (p.5). They are also extremely important for unlisted entities required to produce audited financial statements.

The production of audited financial statements and the declarations by the CEO and CFO under section 295A of the Corporations Act are the key means by which boards of directors receive assurance that management has presented a ‘true and fair’ view of a company’s financial performance and position. The



audit underpins the trust and obligation of stewardship between a company's management and its owners or other stakeholders such as financiers, suppliers and customers who need a 'true and fair' view. Our members have not formed a view on some of the suggestions contained in other submissions for improvements in firm governance, for example the Submission from Chartered Accountants Australia and New Zealand, but consider they merit further investigation.<sup>8</sup>

**13. Question - Could you please on notice have a look at that [Dr Bant's Submission] and how that would apply to this inquiry and how that would impact on your practice, in your governance of the 8½ thousand that you oversee, and your influence on the 43,000 that you claim as part of your sector.**

As noted above, Governance Institute is not a regulator, but rather a professional membership organisation. Our activities are directed at assisting our members and others to drive better governance in their organisations. As an independent voice on governance, we are an active participant in the reform process and engage with government, regulators and other stakeholders on behalf of our members on the development of governance and risk management approaches.

We have reviewed Dr Bant's Submission (Submission 6) particularly her discussion of System Intentionality, which she uses as a lens to understand '... group "states of mind" held by organisations or associations of individuals, such as partnerships, including where these groups utilise automated processes to carry out certain group functions' (page 4). Her Submission addresses the complex questions that exist around governance and culture in organisations, particularly where there has been systemic misconduct.

Our 2017 publication *Managing Culture: A good practice guide* (Culture Guide) notes that organisation culture exists at three levels: artefacts and behaviours, values and principles and assumptions as well as being influenced by the character of the individuals that make up its collective.<sup>9</sup> As the Culture Guide notes the 'attainment of coherence and consistency in decision-making is a fundamental aspect of setting culture and one of the principal tasks of those involved in the governance of an organisation'. One method for achieving coherence and consistency of organisational conduct is to build a scaffold of rules. However, as the Guide notes an alternative and complementary approach is to establish an ethical framework that guides rather than directs decision-makers:

*An ethical framework enables the delegation of authority to a distributed network of responsible decision-makers while maintaining organisational integrity. Such a framework should sit at the heart of the governance structures of an organisation, serving as a common and authoritative point of reference for all decision-makers, and giving shape to organisational culture. Once established and formally adopted by an organisation's principal governance body, all aspects of the organisation (current and prospective) should be assessed and, if required, aligned with the tenets of the framework. If misalignment is to be allowed, then the specific exception must be justified and approved.*

*... an ethical framework is different from a code of ethics or a code of conduct, in that codes articulate decisions to be made in specific circumstances. An ethical framework, however, provides guidance on any decision, regardless of its unique circumstances. Typically, a code of ethics or a code of conduct will take the values and principles espoused in an ethical framework and apply them to specific circumstances, but will never cover every possible decision an employee might face.<sup>10</sup>*

---

<sup>8</sup> See Submission 30 at pages 4 – 5.

<sup>9</sup> See [Managing Culture: A good practice guide](#), 2017, the Institute of Internal Auditors Australia, The Ethics Centre, Governance Institute of Australia and Chartered Accountants Australia and New Zealand at page 9.

<sup>10</sup> See *Managing Culture: A good practice guide* at page 11.

The Culture Guide also notes that, 'Until recently, organisational artefacts – including policies, architecture and processes – have been the predominant mechanism by which an organisation's identity has been defined and its people's behaviour influenced and controlled within an organisation. While these artefacts have a significant influence over decision-making, there is evidence emerging that character and culture have a stronger influence than artefacts in affecting the decisions, behaviours and actions of an organisation's people, and in avoiding ethical failure.'<sup>11</sup> Even with the best policies, procedures and oversight mechanisms in place, workplace issues will persist in the absence of demonstrated, visible leadership.

In 2019 the Financial Services Royal Commission Final Report (Royal Commission Final Report) addressed issues similar in nature to those under consideration by the Committee.<sup>12</sup> The Commissioner attributed primary responsibility for misconduct to the entities concerned and to those who managed and controlled these entities, their boards and senior management. He also made key Recommendations around governance, culture and remuneration and acknowledged that while each of the words 'culture, governance and remuneration' can provoke a 'torrent of cliché', there was no other vocabulary to describe what he observed. There is no choice, he said but to grapple with culture, governance and remuneration because they are all related.<sup>13</sup> The Royal Commission Final Report found that many of the financial services organisations it examined had extremely poor culture which had enabled poor conduct to take place, often over an extended period. Misconduct in organisations either at an individual level or at a systemic level is typically a failing of culture. Since the Royal Commission Final Report there has been an intense focus by financial services entities and their regulators, ASIC and APRA, on governance, culture and accountability in the organisations for which they are responsible.

However, both the Culture Guide (page 12) and Dr Bant's Submission make clear real organisational cultural change is difficult and can take time. Dr Bant comments that 'the more widespread and complex the toxic organisational culture(s) the longer, more difficult and expensive it becomes' (Submission 6 page 18). The Culture Guide comments:

*Changing culture is hard. The interlocking nature of the artefacts, behaviours and values makes culture enduring. A single-dimensional approach to change will not suffice; rather, a multifaceted approach is necessary and it will take time to ensure its sustainability.*

*In order to facilitate positive organisational change towards one bound by the ethical framework, the change process itself must be reflective of the ethical framework. If a company values transparency, the change process should be transparent.*

*Change initiatives are often dressed up to be something they are not, ultimately resulting in cynicism among staff towards the whole change process. Trust is hard to win and easy to lose. In any change process, the change can threaten people's sense of certainty, so trust in the process must be nurtured to assure people that important decisions that affect them will be made for the right and appropriate reasons. Winning back trust in a change process after it has been lost can be a costly exercise.<sup>14</sup>*

The other key point about culture is the importance of 'tone from the top'.<sup>15</sup> In essence an organisation's senior leaders, board and executive management, are responsible for modelling the required behaviour. However, it has been noted by regulators that the tone and behaviours manifested by middle management are as important as those exhibited by senior management. Middle-level managers channel the culture as

---

<sup>11</sup> See *Managing Culture: A good practice guide* at page 9.

<sup>12</sup> See [Final Report of the of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), 4 February 2019.

<sup>13</sup> See Final Report pages 334 and 369.

<sup>14</sup> See *Managing Culture: A good practice guide* at page 13.

<sup>15</sup> See *Managing Culture: A good practice guide* at page 15.

set at the top to the business lines – in most organisations the ‘mood in the middle’ is as instructive about an organisation’s culture as the behaviour of those at the top of the organisation.<sup>16</sup>

#### 14. Questions –

- a. **Where do the disincentives exist in terms of structural disincentives, rather than allowing the bad apple issues to continue?**
- b. **What are the things that need to be in place to have an impact on culture?**
- c. **What disciplinary action can or should be taken? Because it doesn't sound like there's been much taken.**
- d. **What is the nature and quantum necessary in terms of fines or exclusions or public listing of malign actors that is necessary going forward?**

The Culture Guide notes that ... ‘Incentives play a powerful role in influencing the values and behaviour of individuals, and hence the culture’ and that individuals will seek to do those things that are rewarded, often to the exclusion of activities that are not rewarded.<sup>17</sup> Incentives’ are not always financial, they can also be more subtle: promotion, managerial approval, acceptance within a particular practice or peer group or maintenance of an employee’s existing position. In the case of individuals disincentives typically involve the potential for some form of tangible or intangible consequences. These can include social consequences such as loss of status or approval or exclusion and more tangible consequence such as loss of a position or access to a financial incentive. For organisations, depending on the circumstances, disincentives can involve fines and penalties as well as reputational damage leading to loss of profits. Ideally the fear of the consequences should be sufficient to deter the conduct in question. Unfortunately, in many cases the benefits of pursuing a course of action, despite a conflict of interest, are often large and the disincentives are insufficient, both at an individual and an organisational level to deter the conduct. We are not aware of any studies of this issue.

This point is made very clear in the Royal Commission’s Final Report which observed that ‘in almost every case, the conduct in issue was driven not only by the relevant entity’s pursuit of profit but also by individuals’ pursuit of gain, whether in the form of remuneration for the individual or profit for the individual’s business... The conduct identified and condemned ... can and should be examined by reference to how the person doing the relevant acts, or failing to do what should have been done, was rewarded for the conduct’.<sup>18</sup>

It is also important to note that culture is not necessarily uniform across an organisation. ‘All organisations will have subcultures, which are intra-organisational groups of people who exhibit a set of shared values and behaviours that are identifiably different from those in other areas of the organisation’.<sup>19</sup> This is not necessarily a problem, provided there is connection and alignment with the culture of the wider organisation. What is key is that there is no disjunction or disconnect between the desired and stated culture and the actual culture, for it is only the actual culture – the enacted values – that ultimately matter. If an organisation says it values speaking up, but the actual culture is one where retaliation overt or covert is the norm and is rewarded tangibly or intangibly, there is no psychological safety and there is a disconnect between the stated desired culture and the actual culture. Similarly, if an organisation espouses integrity as fundamental to its culture but in fact is more focused on profits, the actual culture is at odds with the stated culture. There is therefore little incentive for individuals to act in accordance with the stated culture.

---

<sup>16</sup> See *Managing Culture: A good practice guide* at page 19.

<sup>17</sup> See *Managing Culture: A good practice guide* at page 18.

<sup>18</sup> See [Final Report of the of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry](#), 4 February 2019, pages 1 and 2.

<sup>19</sup> See *Managing Culture: A good practice guide* at page 16.

Unfortunately, disciplinary action by the professional accounting bodies relies on engagement by the potential wrongdoer with their disciplinary systems and the system is for the most part entirely voluntary. Some accounting firms require membership of one of the accounting bodies but not all.

As noted above we are not a regulatory body so have no comment on the nature and quantum necessary in terms of fines or exclusions or public listing. Governance Institute has no power to discipline poor governance in the consulting sector, as noted we only have power to discipline our members.

**15. I have a couple of questions to put on notice, but before I do that can I draw your attention to submission 33, which gives quite a comprehensive set of documents and some significant recommendations. Can I invite you to respond to that in detail in light of the questions and answers that you've had with Senator Pratt.**

While the Committee's request was in relation to Submission 33 as originally lodged with the Committee, given the acknowledgement of the errors in that version, we have reviewed the revised Submission lodged which repeats a number of the 2020 PJC Recommendations on audit. Our members do not have a view on these proposals.

**16. The Australian Shareholders' Association has suggested that the government legislate to make digital financial reporting standard practice in Australia. In its 2020 Interim report on Auditing, this committee recommended that the Australian Government take appropriate action to make digital financial reporting standard practice in Australia. What is your view and what are the benefits of and barriers to making digital financial reporting standard practice in Australia?**

Our members have not specifically considered the issue of legislating to make digital financial reporting (DFR) standard practice in Australia. However, some of our members who work in global organisations confirm they are required to produce digital financial reports in other jurisdictions. We can also see that the imminent move to mandatory climate-related financial disclosure and the resultant increase in the volume of data companies will be required to release publicly may hasten the move to digital financial reporting.

We do note that the Committee commented in its Interim Report on Regulating Auditing in Australia that it had not heard from a wide cross section of entities required to produce financial reports on this topic. On that basis the Committee considered it may be appropriate for the government to undertake a review to identify and resolve any remaining barriers to the use of DFRs range of with a view to making digital financial reporting standard practice in Australia.<sup>20</sup> Our members would support government further investigating DFR.

**17. Please provide your views on the findings and recommendations of the Independent Review of Governance, Culture and Accountability at PwC Australia by Dr Ziggy Switkowski AO, noting in particular the governance issues raised in the report.**

We have considered the Independent Report (Independent Report) prepared by Dr Switkowski. Dr Switkowski has drawn on a number of important sources in making his findings about governance, culture and accountability at PwC Australia. They include the 4<sup>th</sup> edition of the Corporate Governance Principles and Recommendations, the Prudential Inquiry into the Commonwealth Bank of Australia Final Report and the Royal Commission Final Report. We have noted the following aspects of the Independent Report in particular:

- That while the members of the Board of Partners were 'intelligent, capable and well-intentioned' the operation of the Board of Partners did not reflect 'fit for purpose' governance of a complex and

---

<sup>20</sup> See Interim Report [Regulation of Auditing in Australia](#), Parliamentary Joint Committee on Corporations and Financial Services, February 2020 at p. 106.

sizable business (page 15). We would endorse Dr Switkowski's statement. It is critical that the governance of any organisation is 'fit for purpose'. While there is no one size fits all governance approach, the governance structures and processes of any entity must be appropriate for its size, complexity, history and corporate culture.<sup>21</sup> It is clear from the Independent Report that this was not the case at PwC. As Dr Switkowski notes the Board had not sufficiently adapted its structure or the allocation of its time to an increasingly complex oversight role (page 16).

- The absence of the voice of enterprise risk was insufficiently 'voiced' or represented at meetings of the Executive Board and the Board of Partners (page 31).
- There was inadequate management of conflicts of interest at a whole of firm level and that conflict risk awareness was 'not sufficiently embedded within the DNA of the firm to rely on 'risk muscle memory'' (page 32).
- That the overplaying of PwC's key cultural hallmarks of a high-performance, results focused culture support by strong collegiality and care within teams' lead to the emergence of 'shadow sides' of the culture (page 46).
- An operating model that over-emphasised the autonomy of business units which reinforced sub-cultures, leading to silos, competitive behaviour and short-termism (page 48).
- Challenges in consistently identifying ethical business conduct issues and an inconsistency in the appetite to investigate conduct which impeded effective accountability and consequence management (page 58).

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this letter.

Yours sincerely,

Megan Motto

CEO

---

<sup>21</sup> See the discussion in [Corporate Governance Principles and Recommendations](#), 4<sup>th</sup> edition, 2029, ASX Corporate Governance Council at page 4.