

Neoliberalism on trial in expanding PwC scandal

By Richard Bardon

What began as a corruption scandal over professional services firm PricewaterhouseCoopers' (PwC) misuse of privileged government information, has now snowballed into a long overdue public trial of both the practice of outsourcing essential public services to private consultants, and the neoliberal economic ideology that has driven governments of both major parties to adopt it. The deeper the multiple parliamentary inquiries now under way dig into the operations of the global "big four" (PwC, KPMG, EY and Deloitte), and other similar firms, the more inescapable becomes the conclusion that the government-by-consultant model they pioneered is fundamentally broken by design, tailor-made to enable precisely the kind of corruption PwC has been caught at. Sped by the expert testimony of former insiders, recognition is growing that as with banking, construction, and every other industry where it has been tried, self-regulation in the accounting, auditing and consulting sectors has been an abysmal failure, which only federal government intervention can fix.

The root of the scandal is that beginning in 2013, PwC Australia's then-head of global tax practice Peter Collins illegally shared information with his PwC colleagues that he obtained as an advisor to Treasury during the development of the *Tax Law Amendment (Combating Multinational Tax Avoidance) Act 2015* (a.k.a. the "Multinational Anti-Avoidance Law", MAAL), so they could develop strategies for the firm's clients—principally US tech companies—to sidestep the law the moment it came into effect in January 2016.¹ Collins and PwC then did likewise with information regarding the Diverted Profits Tax in 2017, and various subsequent measures. Federal licensing body the Tax Practitioners Board (TPB) de-registered Collins and censured PwC for professional misconduct over their breaches of confidentiality in December of last year, sparking first one and now four parliamentary inquiries (three federal, one in the New South Wales Legislative Council) into PwC's behaviour and/or the role of external consultants and auditors in the public sector more generally. What these inquiries have exposed, is what the *Australian Alert Service* has long stated ought to have been the real scandal all along—namely that the neoliberal dogma which has pervaded Australian mainstream politics over the past 40 years has seen so many essential functions of government stripped from the Commonwealth Public Service and outsourced to private consultants, that the "big four" in particular have collectively become almost literally a law unto themselves, who have been allowed to write not only the rules in favour of their corporate clients, but even those by which they themselves operate.

That point was driven home, in detail, by expert testimony to the Senate Finance and Public Administration References Committee this month from two of Australia's leading authorities on the subject: former KPMG partner turned whistleblower Brendan Lyon, now a professor at the University of Wollongong Business School; and former Chairman (1995-2003) of the Australian Competition and Consumer Commission (ACCC) Prof. Allan Fels, both of whom exposed the utter failure of self-regulation and called for urgent and far-reaching government intervention to protect the public interest.

1. "Outsourcing of government made PwC scandal inevitable", AAS, 17 May.



Professor Brendan Lyon, former KPMG partner now whistleblower. Photo: Screenshot

'Beyond the law'

A former staffer in the Howard Liberal government and later CEO of infrastructure think tank/lobby group Infrastructure Partnerships Australia, Lyon joined KPMG in 2018 "as part of the firm's strategy to expand its infrastructure [consulting] business", *The Australian* newspaper reported in an interview published 1 July. Two years and several transport infrastructure projects later, "he was asked to conduct a rapid assessment for the NSW Government's Transport for NSW in February 2020", *The Australian* reported. "The brief: a high-level structural model for rail operations, plus reviewing a black box financial structure that the NSW Treasury had created for assessing the value of transport assets. Complicating the assignment, to say the least, was that Treasury had created its models with the help of a separate team within KPMG. ... As Lyon told a subsequent NSW parliamentary hearing, 'they tried to back two horses'." Defying enormous pressure both from within KPMG and from the NSW public service, in November 2020 Lyon filed his final report outlining how members of his own company, apparently with the knowledge of and certainly supported after the fact by its upper management, had connived with the relevant NSW government departments to hide a "\$10 billion-plus misstatement" of the state's budget; and later testified to the same effect to the NSW parliament (under subpoena, thus absolving him of commercial non-disclosure agreements). He was subsequently vindicated by an investigation by the state's Auditor-General, after which he resigned from the firm in 2021.

It is thus with considerable personal authority that Lyon could declare to the federal Senate on 17 July that as a result of their clever political manoeuvring and influence-peddling over decades, the Big Four firms now operate effectively "beyond the law", subject to "absolutely no regulation and almost nothing in terms of financial risk" even when they get caught breaking what few laws do still nominally apply to them.

Key to their immunity from normal standards of accountability, he explained, is their peculiar structure as large limited-liability partnerships. "In theory, the big four consultants are accounting partnerships within a regulated and protected profession", he said. "The big four are meant to be held to ethical and professional standards ... [which] are meant to be enforced by Chartered Accountants Australia and New Zealand [CAANZ] and CPA Australia. In return for meeting those standards, the big four

have special legal protections and can only be sued to a maximum of \$10 million. That is in theory.” They camouflage themselves, however, with a façade of corporate nomenclature designed to imply to the public and credulous politicians their compliance with legal obligations they are not and have never been subject to. “The big four simulate real corporate governance structures”, said Lyon. “They have positions described as ‘board members’, ‘chairmen’, ‘chief executives’, *et cetera*. But they are partnerships, not corporations, and that means that these positions are illusory and not the real governance structures that occur in real corporations. ... In practice, the big four operate as pseudo-corporations but, by structuring themselves as partnerships, they instead pay no Commonwealth company tax; they pay no state payroll tax; they bear no directors’ or officers’ duties at law; as the committee uncovered today, they do not disclose executive remuneration reports; they provide no audited financial statements; and this sees ASIC [corporate regulator the Australian Securities and Investments Commission] without power to regulate or to prosecute. The big four sit in every boardroom and cabinet across Australia but face no oversight and operate beyond the law.”

Regular readers of the *Australian Alert Service* know ASIC as Australia’s worst and weakest regulator, which generally finds every excuse under the sun not to exercise what enforcement powers it does have; but in the case of the big four, other than in the narrow area of financial advice (for which purpose each firm holds a financial services licence), it couldn’t do anything even if it wanted to. “With the big four beyond the [ASIC-enforced] *Corporations Act*”, said Lyon, “enforcement has been left to the professional accounting associations—CA ANZ and CPA Australia. This reliance solely on self-regulation marks Australia as unusual among modern peer economies. Most other countries have moved to independent public regulation because self-regulation of accountants by accountants has failed.” CAANZ now claims to have been quietly conducting its own investigations into both the PwC and 2020 KPMG affairs for some time; the latter, indeed, for more than two years. Whilst he could not say whether this were true or not, Lyon noted, “even if these secret long-term investigations, which have made no inquiries, interviewed no witnesses, held no hearings and imposed no sanctions, are ongoing as CAANZ claims, it simply proves that CAANZ is not a fit and proper regulator of the scheme in its current form.” He reiterated in conclusion that “the integrity of public and corporate reporting is too important to be left to failed self-regulation”, and called for the appointment of a “dedicated federal regulator to enforce professional ethical standards” in the accounting profession, as well as a Royal Commission into its role, structure and regulation.

Break up the big four: Fels

Former ACCC chair Fels was equally scathing of self-regulation, especially as it applies to managing conflicts of interest between the big four *et al.*’s auditing and their consulting, accounting and other divisions—conflicts which in his opinion can only truly be resolved by breaking them up. His logic, reminiscent of that behind the USA’s *Banking Act of 1933* a.k.a. the Glass-Steagall Act, which separated essential retail banking services from all other forms of finance (and which Fels also supports), is starkly simple. “Audit is critical to the economy and should not be compromised unnecessarily”, Prof. Fels told the Senate.



Professor Allan Fels, calling for the big four accounting firms to be broken up. Photo: Screenshot

“Non-audit activities have the potential to compromise the conduct of audit. Self-regulation can’t be relied upon, nor can government regulation. We therefore need legislation to break up the big four—and, in time, other audit businesses—and to prohibit audit businesses from doing consulting, advisory and other forms of business.”

Previous inquiries have identified the conflict-of-interests problem, Fels, recalled, but “on balance, they’ve tended to take the view that the required action of break-up is rather drastic and that other, lesser solutions should be looked for to see if they work—namely, self-regulation and government oversight.” But now, the verdict is in: they don’t work. At all.

Meanwhile, the industry’s arguments against a break-up don’t stack up. Fels mused, “The big four have argued that there are benefits from combining consulting and advisory work in a business that does audit. This is a rather dangerous argument for them to run because it seems to admit that there is indeed a connection between consulting and advisory activities and audit, despite their claims that they can be kept separate.” Oops. “It’s also argued that breakup will be difficult because the big four are part of global businesses”, he said. “I believe this is a problem of the industry’s own making—these special arrangements it makes—and it should and can solve those problems.” And sounding more statesmanlike than anyone in this or the previous government, he added: “I also believe that Australia can lead internationally. The PwC scandal, in some respects, is a global one, but it originated in Australia, and *the solutions can come from Australia*. ... I’m a strong believer in free markets and minimum regulation, so far as possible. But I believe that the way to look at this set of issues is to recognise that *this is not one of these areas*.” (Emphasis added.)

Fels made similar recommendations to one of those previous inquiries he mentioned, in late 2019, warning that “There are major complications, pitfalls, costs and inconveniences in all compromise measures that are sometimes proposed as an alternative, such as internal separation of the functions within one firm. ... The only solution is full separation.”² He was duly ignored by the Morrison Liberal government. Thus far the Albanese Labor government has proven itself just as deeply mired in neoliberal ideology as its predecessors, but it is to be hoped that the ever growing PwC scandal will induce Canberra to listen this time.

2. “International auditing reformers expose Big 4 in Australia”, *AAS*, 6 Nov. 2019, reprinted p. 16.