



Submission to the Inquiry into the management and assurance of integrity by consulting services provided for the Australian Government

Community and Public Sector Union (PSU Group)

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Introduction

As the primary union representing Australian Public Service (APS) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates.

The CPSU has been a vocal critic of the increased use of consultants by recent Governments.

CPSU members have seen first-hand the substantial negative impacts on APS capability and capacity of more than a decade of budget cuts and staff caps and an over-reliance on the use of consultancies and other external suppliers.

While those impacts and the need to rebuild internal APS capability have been well documented in numerous independent reviews and parliamentary inquiries, there has not been adequate attention until now on the conflict of interest risks created by the creeping privatisation of the public service.

CPSU therefore welcomes the opportunity to make a submission to this inquiry into the management and assurance of integrity by consulting services provided for the Australian Government.

Our submission outlines how:

- The management of conflicts of interest needs to account for both real and perceived risks.
- The risks of conflicts of interest have increased in recent years due to the growth in the use of consultants and the increased use of consultants to perform work that should be done by the public service.
- A lack of transparency and data about the engagement and work of consultants makes managing these risks difficult; and
- What needs to be done to deal with these issues.

1: The APS Code of Conduct as a reference point for understanding conflicts of interest.

The staff of the APS work to a Code of Conduct established through the Public Service Act 1999.

The Code of Conduct (the Code) includes specific provisions around conflict of interest, and the Australian Public Service Commission (APSC) has produced substantial policy and guidance materials to give effect to these provisions.

These are the provisions that CPSU members in the APS work under everyday and which form our frame of reference as we consider the issues around the use of consultants and external parties.

There are several points of specific importance and relevance to this Inquiry:

First and foremost is the understanding that the public is entitled to have confidence in the integrity of their public officials, and to know that an Australian Public Service (APS) employee's personal interests do not conflict with his or her public duties.

CPSU argues that the public should be equally entitled to have such confidence where an external party such as a consultant is brought in to assist in or even perform the duties of the public service.

Secondly, given the paramount importance of retaining public confidence, the Code requires employees to take reasonable steps to avoid any conflict of interest in connection with their employment and disclose details of any material personal interest of the employee in connection with the employee's APS employment'.¹

CPSU submits that such provisions should also apply to consultants.

Thirdly, the Code and supporting policies provide that both real and apparent or perceived conflicts of interest must be avoided:

- A real conflict of interest occurs where there is a conflict between the public duty and personal interests of an employee that improperly influences the employee in the performance of his or her duties.
- An apparent conflict of interest occurs where it appears that an employee's personal interests could improperly influence the performance of his or her duties but this is not in fact the case.

Importantly, APSC guidance materials note that the appearance of a conflict can be just as damaging to public confidence in public administration as a conflict which gives rise to a concern based on objective facts.² CPSU submits that this is equally applicable to both the engagement of consultants and to the work they perform.

Further in assessing what could be an apparent or perceived conflict, the APSC notes that the test to be applied is to consider how a reasonable 'person on the street' would view the situation.³ CPSU submits that the 'person on the street' test is equally applicable to both the engagement of consultants and to the work they perform.

Finally we note that APSC provides that where there is credible evidence that a personal interest has compromised the work of a public servant that situation should be handled as suspected misconduct, and that the Public Service Act enables sanctions to be imposed on employees for breaches of the Code of Conduct.⁴ The CPSU is not aware of any such legislative requirements being placed on consultants, and we submit that it is reasonable to conclude that the public, the person on the street, would expect that there should also be penalties for consultancies who have acted inappropriately.

1 PMC. Public Service Act 1999. <https://www.legislation.gov.au/Details/C2019C00057/Html/Text>, <http://www.legislation.gov.au/Details/C2019C00057>. Accessed 26 Apr. 2023.

2 Section 5: Conflict of Interest, Australian Public Service Commission, 2021 <https://www.apsc.gov.au/publication/aps-values-and-code-conduct-practice/section-5-conflict-interest>

3 Conflict of Interest Policy, Australian Public Service Commission, 2017, <https://www.apsc.gov.au/sites/default/files/2021-04/Attachment%20A%20APSC%20Policies%20-%20HR%20-%20Conflict%20of%20interest%20policy.pdf>

4 Duty to Disclose Interests, Department of Finance, 2021, <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-and-internal-accountability/duties/general-duties-officials-rmg-203/duty-disclose-interests>

2: How the use of consultancies could create conflicts of interest.

There are a number of ways that consultants providing advice or doing public sector work can lead to conflicts of interest both real or apparent.

The key issue here is the potential for the consultancy to act in its own material interests.

One way this could occur is where the consultant makes recommendations that generate further work for the initial consultant or for a business unit of the same company. CPSU is aware that among the consultancy industry this approach is referred to as “land and expand”.

CPSU members report that there is a widespread view that consultancies commonly recommend courses of action that deliver further work and payments for that consultancy.

The limitations on available data and the general lack of transparency around the procurement and work of consultancies makes it difficult to assess the extent to which this may be occurring.

However, two possible data points that the Committee may wish to consider is the frequency and size of contract variations published on Austender, and cases where an initial contract won in a competitive tender leads to further contracts awarded through limited or closed contracts. Also, recent evidence to the Royal Commission into the Robodebt Scheme, discussed below, provides some further insight into the issue.

Another potential source of conflict of interest is where the work of the consultancy creates real or perceived benefits for other clients of the consultancy.

One factor influencing the scale of this risk is that the consultant industry in Australia is dominated by a small number of very large players who have substantial business interests across the economy.

Put simply, the larger the client list the more chance there could be of conflict of interest.

The development of taxation policy and advising on the administration of tax laws is one area where this type of potential conflict is readily apparent – in that the same corporations advising government also provide tax strategy advice to other clients, including clients who use very aggressive strategies to avoid taxation. The potential conflict is readily apparent, and it is understandable that the public question whose interests the consultants are serving.

Conflicts of interest do not only arise around the provision of advice.

In recent years, the policies of Coalition governments to impose staff cuts and staffing caps while shifting work to external suppliers, has seen consultants increasingly engaged to perform core public service work. The administration and assessment of grants applications or exercising public service powers on behalf of a regulatory agency

are two examples where CPSU argues that there are substantial risks of real or at least apparent conflicts of interest.

A further apparent risk arises from the movement of staff between the Australian Public Service and consultancies, particularly at senior levels.

There is very limited information about such movements, and CPSU believes such movements are largely unregulated.

There are several ways such movements could create conflict of interest issues.

One example would be where senior staff have moved from a consultancy firm into a public service role that has power to decide or influence procurement decisions.

The recent Australian National Audit Office (ANAO) performance audit into the Digital Transformation Agency's (DTA) procurements provides an example (at Case Study 1) of a procurement where a member of the DTA's evaluation panel had previously worked for the supplier being evaluated, and a conflict of interest evaluation was not completed.⁵ The ANAO report also notes that a subsequent probity investigation into this procurement was also inadequate. That ANAO audit also includes other examples of failures to adequately manage conflicts of interest or meet ethical standards.

There are also potential risks where senior APS staff take up a consultancy role that they could use their inside knowledge and contacts to advantage their new employer.

Assessing the extent of risk arising from senior staff movements between the APS and consultancies is difficult. Given the lack of data around such staff movements, and the well documented deficiencies of AusTender, CPSU is unable to supply any data around the above issues. One possible line of inquiry for the Committee may be to seek information where there has been movement of senior personnel between the APS and consultancy firms, and compare that to procurement outcomes for specific firms.

Secondly, CPSU has received reports from members of circumstances where a senior APS role has been filled by a person from a consultancy and then over time further vacancies in the APS are filled by staff from that same consultancy firm.

A third potential risk is where consultancy firms are able to use insider knowledge from their staff who have been seconded to public service work or had access to inside information, to trade off that information with other clients. A recent scandal in the UK, discussed later in this submission, provides an example of this.

5 Digital Transformation Agency's Procurement of ICT-Related Services. Australian National Audit Office, 2022, <https://www.anao.gov.au/work/performance-audit/digital-transformation-agency-procurement-ict-related-services#footnote-037>

3: Why the Conflict of Interest risk has increased

The risks of conflicts of interest from the use of consultants in the Australian Public Service has increased in recent years. There are several reasons for this.

Firstly, there has been a vast increase in spending on consultants.

A 2023 ANAO analysis of Austender data found that the value for consultancy-related contracts increased from \$325m in 2012-13 to \$888m in 2021-22.⁶

It should be noted that, due to deficiencies with Austender and agency reporting of procurements, this figure does not capture all the work done by consultancies.

While full and complete data on consultancy spending is not available, one data point to help illustrate the growth in consultancy spending is that, prior to COVID-19, the consultancy industry itself had grown at almost three times Australia's economic growth rate, in part because of consultancy contracts with the public sector.⁷

Secondly, we have seen consultancies expand into the provision of day-to-day public sector work.

This expansion has been largely, but not entirely, driven by the staff cuts and staff caps of recent Coalition Governments. Analysis by the ANAO found that the 'Need for specialised or professional skills' being the most cited reason for consultancy-related contracts.⁸

The extent of this expansion, and the substantial negative impacts it creates, have been well documented in a number of reviews and Inquiries, including the recent Senate Inquiry into APS capability.⁹ It is widely understood that the over reliance on external consultants has eroded public sector capability, including the capability to procure and manage external contracts.

CPSU submits that this expansion into core public service work brings increased conflict of interest risks and creates new challenges in managing those risks.

Thirdly, there is a significant concentration in consultancy contracts with the market being dominated by the Big 4.

The Big 4 were the biggest suppliers by value of consultancy-related contracts between 2012-13 and 2021-22.

- PricewaterhouseCoopers (PwC) had a combined 1,205 contracts, worth \$541.4m.
- KPMG had 1,360 contracts, worth \$329.4m.
- Ernst and Young had 1,107 contracts worth \$320.2m.

6 "Australian Government Procurement Contract Reporting – 2022 Update." Australian National Audit Office, 2023, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-2022-update>

7 Australia's Management Consulting Industry Books Record Growth. 8 Aug. 2019, <https://www.consultancy.com.au/news/986/australias-management-consulting-industry-books-record-growth>.

8 "Australian Government Procurement Contract Reporting – 2022 Update." Australian National Audit Office, 2023, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-2022-update>

9 "APS Inc: undermining public sector capability and performance", Senate Finance and Public Administration References Committee, November 2021, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CurrentAPSCapabilities/Report

- Deloitte had 860 contracts worth \$190.5m.

Other suppliers in the top 10 then had less than a third of the number of contracts, for example, Aecom had 254, followed by the Boston Consulting Group at 106 contracts.¹⁰

This market concentration raises questions about how competitive tendering processes actually are.

4: The lack of transparency and accountability in consultant use makes identifying and managing conflicts of interest harder

In general, the use by government of consultancies and other external suppliers lacks transparency and accountability.

The issues are long standing and well documented, having been the focus of the ANAO,¹¹ the Joint Committee on Public Accounts and Audit (JCPAA),¹² and of Senate inquiries.

The CPSU previously raised concerns about these problems in submissions to the Inquiry based on Auditor-General's report No. 19 (2017-18), the APS capability inquiry and the Independent Review into the APS, among others.

Of particular relevance to this inquiry are three specific concerns:

Firstly, there is a distinct lack of data around the value of consultancy contracts. For example, there is no service-wide reporting on the total number of consultants engaged, nor total expenditure on consultancies. And it is difficult to assess how much is going to specific firms.

This lack of data is further compounded by major gaps in the reportage of non-consultancy contracts.

There is also a lack of clarity about what is a consultancy or non-consultancy contract. This poor data means that there is often a 'substantial difference' in the value of contracts identified in AusTender using the 'consultancy' flag and the total value of contracts for the identified suppliers and categories.¹³

10 "Australian Government Procurement Contract Reporting – 2022 Update.", Australian National Audit Office, 2023, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-2022-update>

11 Australian Government Procurement Contract Reporting." Australian National Audit Office, 2017, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

12 Australian Government Contract Reporting - Inquiry based on Auditor-General's report No. 19 (2017-18), Joint Committee of Public Accounts and Audit, 2019, https://www.aph.gov.au/~/_link.aspx?_id=4F19144C47DF41C2940C069996DBFC8D&_z=z

13 "Australian Government Procurement Contract Reporting – 2019 Update.", Australian National Audit Office, 2020, <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019>

Further there are there also problems with understanding, from the available reports, why some contracts are tagged as a consultancy when seemingly very similar contracts are not. For example, while some legal services are listed as consultancies, others are not. Similarly some research related data services are listed as consultancies while others are not. The description provided is limited, making it hard to identify why it is a consultancy.

This lack of data is a barrier to parliamentary oversight, and the effective management of conflicts of interest.

Secondly, there is also a lack of transparency around what these contracts are for.

For example, it is not uncommon to see a contract reported on Austender as “strategic advice” and with no further explanation. Such contract reportage provides the public with no useful information as to what the consultants are doing or why they are doing it. Media reports of a one-month, \$726,000 contract for McKinsey to provide “strategic advice” rightly draws public concern,¹⁴.

Thirdly, there is inadequate reportage or information available about what these contracts actually produce. Recently we have seen media stories such as the failure of consultancies to produce any written advice,¹⁵ while the Royal Commission into the Robodebt Scheme shone a spotlight on how advice can be procured but not delivered, or delivered but not acted upon. These examples raise public perceptions that Government uses consultants to get the advice that it wants, and to circumvent the transparency and accountability that comes from Departmental advice – which is readily accessible by FOI, is subject to Senate Estimates and other parliamentary oversight, and for which a Minister is more clearly accountable.

In summary, the lack of transparency in procurement, and inadequate reportage and accountability around what consultants are actually doing, creates an environment in which conflict of interest risks are increased, and the management of them made harder.

5: Case studies

To assist this Inquiry, CPSU is providing a number of case studies that illustrate the potential for real or apparent conflicts of interest to arise.

Case study: ACQSC Third-Party Partner program

A central task for the Aged Care Quality and Safety Commission (ACQSC) is to accredit aged care residential facilities.

14 “Permissions Capability Platform Abandoned after Two Years, \$16m.” InnovationAus.Com, 12 Apr. 2023, <https://www.innovationaus.com/permissions-capability-platform-abandoned-after-two-years-16m/>.

15 “A Consultancy Firm Paid \$660,000 Provided No ‘specific Advice’ on Australia’s COVID-19 Vaccine Strategy.” ABC News, 3 June 2021. [www.abc.net.au, https://www.abc.net.au/news/2021-06-03/federal-government-mckinsey-covid-vaccine-strategy-advice/100185786](https://www.abc.net.au/news/2021-06-03/federal-government-mckinsey-covid-vaccine-strategy-advice/100185786).

As part of this, aged care residential services undergo a full site audit at least once every three years, where they are assessed against all 8 Quality Standards and 42 Requirements for compliance.

The ACQSC has contracted at least four external businesses to provide accreditation assessors and other services to the ACQSC. The Commission calls this the Third Party Partner program (TPP).

The four suppliers are KPMG, SAI Global, RMS, and HDAAU.¹⁶

The CPSU is aware that at least two of the external suppliers (KPMG and SAI Global) also offer consultancy services to aged care providers.

The KPMG website makes it clear that its service to aged care providers includes assisting providers with accreditation.¹⁷

CPSU submits that such an arrangement, whereby a consultancy is simultaneously assisting a Regulator and those being regulated, creates an obvious potential conflict of interest risk and could undermine public confidence in the independence of the ACQSC.

There are also concerns about how those risks are managed.

At a Senate Estimates Hearing¹⁸ on 16 February 2022 the ACQSC Commissioner Janet Anderson was asked a number of questions about the TPP and how potential conflicts of interest were managed:

Senator GROGAN: Can you confirm that the Aged Care Quality and Safety Commission has contracts with four external providers to do accreditation and assessment of staff support—so they provide accreditation and audit services?

Ms Anderson: Yes, that's correct.

Senator GROGAN: Can you outline for us what sort of conflict-of-interest barriers you may have for those providers? It is my understanding that at least one of those providers—KPMG—provides services both to the commission and to aged-care providers, therefore effectively marking their own homework, if you would.

Ms Anderson: Hardly—no. KPMG, as a global consultancy firm, has a number of arms and areas of expertise. In all our procurement arrangements we are very particular about, firstly, requiring identification: the declaration of any interests by the people who respond to the tender. Then we look closely at their response. As part of assessing the quality of their tender, if we were at all troubled by the declaration we would ask further questions. Then it is a matter of, in the agreement we strike with each of the providers, covering off any risks of conflict. I am absolutely confident that is rock solid.

16 Standing Offer Notice View - SON3811547: AusTender. <https://www.tenders.gov.au/Son/Show/3a64da85-24da-4dc7-83d5-35cb905011f8>. Accessed 17 Apr. 2023.

17 "Ageing - KPMG Australia." KPMG, 2 Apr. 2023, <https://kpmg.com/au/en/home/industries/ageing.html>.

18 Spoken, Hansard page 55, 16 February 2022

Senator GROGAN: So are KPMG being paid by the commission to audit aged-care providers while also being paid by aged-care providers to advise them on how to get through that audit?

Ms Anderson: I can't answer the second part of that question, Senator.

Senator GROGAN: Could you take that on notice?

Ms Anderson: Yes, I am happy to do that.

From Commissioner Anderson's evidence it appears that the ACQSC's procedures consist of a declaration by the external provider during the procurement process. This is confirmed by the ACQSC's answers to the Questions on Notice, where the ACQSC says

“As part of its tender response, KPMG was required to declare any conflicts of interest and this declaration was closely scrutinised by the selection panel in its evaluation of KPMG's submission.

Under the Deed of Standing Offer established with KPMG (as with the other contractors), the Commission requires personnel engaged by KPMG to declare conflicts of interest. The Commission also prompts KPMG on a monthly basis to declare any conflicts of interest.

Before a site audit is allocated to KPMG under the Standing Offer, the Commission reviews declared conflicts of interest on an organisational and individual level. Where a conflict is declared, the Commission does not assign the audit to KPMG.”

Given the public concerns about aged care services, and the clear potential in the TPP arrangement for there to be conflicts of interest, CPSU suggests that relying on declarations by the external provider is not an adequate response.

CPSU also notes that KPMG Australia has recently had action taken against it for failures on integrity. In this case the US Accounting standards body fined KPMG Australia \$615,000AUD for cheating on integrity exams. More than 1000 staff were involved.¹⁹

Case study: Grants administration and assessment and contract management

The use of consultancies has expanded beyond providing specialist advice to now performing the day-to-day work of the public service.

¹⁹ Cassidy, Caitlin. “US Watchdog Fines KPMG Australia over ‘Widespread’ Cheating on Online Training Tests.” The Guardian, 15 Sept. 2021. The Guardian, <https://www.theguardian.com/australia-news/2021/sep/15/us-watchdog-fines-kpmg-australia-over-widespread-cheating-on-online-training-tests>.

One such example is the Department of Industry, Science, Energy and Resources (DISER) which has paid more than \$15m to a range of consultants for the administration and assessment of government grants. This includes \$3.7m to consultancy Synergy to be a 'grants administration service provider',²⁰ and PwC being paid \$105,000 a fortnight to draw up grant guidelines and assess applications.²¹

This arrangement creates potential for both real and apparent conflicts of interest in the form of the external providers awarding contracts to its clients or using its internal knowledge of grants requirements and processes to advise tenderers. CPSU is not aware of what conflict of interest procedures, if any, are in place beyond the standard declarations required through the procurement process.

Given recent scandals with pork barrelling and grants administration, CPSU also suggests that the area of grants administration requires transparency of the highest level.

The extension of consultants into work that can and should be performed by public servants also includes contract management. One such example is the Department of Defence paying Deloitte \$1.8 million for "contract management and procurement support" in February 2021.²² This represents a situation where contractors are awarding contracts to other contractors. The risks are obvious.

The just released Defence Strategic Review notes that the Defence Department lacks sufficient staff and capability to effectively oversee and manage its external contracting. The Review recommends the Department and the ADF rebuild its internal capability and capacity and ensure in the future that APS and ADF staff outnumber the external workforce.²³

Case Study: Insider information

In 2013 the Public Accounts Committee (PAC) of the UK parliament found that the 'big 4' accountancy firms were using knowledge gained from staff seconded to the Treasury to assist wealthy clients avoid paying UK taxes.²⁴ The PAC described this as a "ridiculous conflict of interest".²⁵

Nearly a decade later, the PAC's findings are very similar to the recent PwC tax scandal in Australia. The Australian public could rightly say that the Australian authorities, who are dealing with the same 'big 4' firms should have been aware of such potential conflicts and taken steps to ensure it could not happen here.

20 "Canberra Consultancy Paid \$3m to Help Assess Industry Department Grants." InnovationAus.Com, 28 Feb. 2022, <https://www.innovationaus.com/canberra-consultancy-paid-3m-to-help-assess-industry-department-grants/>.

21 "PwC's \$105,000 a Fortnight for Six Staff to Assess Industry Grants." InnovationAus.Com, 17 Feb. 2022, <https://www.innovationaus.com/pwc-paid-105000-a-fortnight-for-six-staff-to-assess-industry-department-grants/>.

22 Morton, Rick. "How Private Management Consultants Took over the Public Service." The Saturday Paper, 9 Oct. 2021, <https://www.thesaturdaypaper.com.au/news/politics/2021/10/09/how-private-management-consultants-took-over-the-public-service>.

23 Defence Strategic Review. Australian Government, 2023. <https://www.defence.gov.au/about/reviews-inquiries/defence-strategic-review>

24 Syal, Rajeev, et al. "Big Four' Accountants 'Use Knowledge of Treasury to Help Rich Avoid Tax.'" The Guardian, 26 Apr. 2013. The Guardian, <https://www.theguardian.com/business/2013/apr/26/accountancy-firms-knowledge-treasury-avoid-tax>.

25 Syal, Rajeev, et al. "Big Four' Accountants 'Use Knowledge of Treasury to Help Rich Avoid Tax.'" The Guardian, 26 Apr. 2013. The Guardian, <https://www.theguardian.com/business/2013/apr/26/accountancy-firms-knowledge-treasury-avoid-tax>.

Case Study: Land and expand

Earlier in this submission CPSU outlined concerns around consultancies adopting a practice where they use a contract to create further work for themselves. The practice is known within consulting circles as 'land and expand'.

A possible example of this practice was uncovered by the Royal Commission into the Robodebt Scheme.

Evidence to the Royal Commission on Friday 3 March from PwC partner Terry Webber suggested that PwC were confident that an initial contract would put them in the box seat to win substantial further work.²⁶

An extract from the evidence makes this clear:

(Royal Commission transcript extract – Friday 3 March. Council Assisting is Mr Greggery. Witness is Mr Terry Webber PwC partner)

MR WEBER: That wasn't the expectation at the time. But as - as we were into the program, they were needing - it was identified they were needing help, and potentially we could help with that.

MR GREGGERY: And is that what you are referring to in the last sentence where you say: Budget won't be a problem and we will be there for the next three years and will actually take on the outsource of the data analytics function. Is that there was a contemplation by you or PwC that this initial scope of works would lead to a need for further support for the Department over a period of time?

MR WEBER: It was certainly a need for further support, whether it was from us or from whoever, but there was a need for further support which we identified.

MR GREGGERY: You expressed it in terms as - which might convey some confidence about it being PwC who got the contracts for the further work?

MR WEBER: Sorry, could you - sorry.

MR GREGGERY: You appear to be confident that it might be PwC who got the contracts for the further work?

MR WEBER: It made logical sense that it would - should be PwC, yes.

MR GREGGERY: And it was logical because the work done by PwC in this engagement

Mr Webber's evidence appears to suggest that PwC had a deliberate strategy to provide advice to the Department with the purpose of creating a situation where PwC could undertake further work.

²⁶ Transcript Hearing Day 41. Royal Commission into the Robodebt Scheme, 3 March 2023. <https://robodebt.royalcommission.gov.au/publications/transcript-hearing-day-41-3-march-2023>

What needs to be done?

The scale of consultant use, and the extent to which consultancies are used to perform the day-to-day work of the public service, creates challenges for the avoidance and management of conflicts of interest.

CPSU notes that there appears to be a growing public view that the widespread use of consultancies benefits big business and the government of the day – and is not in the public interest. This public perception is damaging to trust in our institutions and faith in democracy, and therefore requires serious and urgent attention.

CPSU proposes that a number of steps be taken to reduce the conflict of interest risk and improve the management of them.

Greater transparency and accountability

Greater transparency and accountability around the use of consultants is long overdue.

AS A SIMPLE TEST THE PUBLIC AND THE PARLIAMENT SHOULD HAVE ACCESS TO INFORMATION THAT CLEARLY SHOWS WHY A CONSULTANT IS BEING ENGAGED, WHAT WORK THEY WILL BE DOING, HOW MUCH THEY ARE BEING PAID, AND WHAT WAS THE OUTCOME OF THIS WORK.

As a first step towards achieving that simple test, the Commonwealth Government should implement the previous recommendations from the APS Capability Inquiry which included regularly publishing agency and service-data on consultancy expenditure and numbers, and the Department of Finance leading work to reform how consultancies are categorised and tagged in AusTender with the goal of more accurately capturing the level of expenditure on consultants across the Australian Public Service.²⁷ These recommendations would greatly assist in understanding what is being contracted for, who the contract is with, and how much it is costing.

As identified earlier in this submission, a key issue is that consultants have multiple clients and that this can create conflicts of interest. It appears to CPSU that the standard method for dealing with this is requiring consultants to self declare their conflicts of interest. CPSU does not believe this is adequate. We therefore suggest that:

- Consultants should be required to provide a client list to agencies as part of the tender process to ensure there are no real or apparent conflicts of interest. This proposal has previously been recommended by Marianna Mazzucato and will provide a level of assurance about what conflicts of interest there may be.²⁸, and
- Consideration be given to whether it is possible for such client list and declarations to be made public.

²⁷ “APS Inc: undermining public sector capability and performance”, Senate Finance and Public Administration References Committee, November 2021, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CurrentAPSCapabilities/Report/section?id=committees%2freportsen%2f024628%2f77323

²⁸ “Academic Cited by Chalmers Wants Consultants to Disclose Client Lists.” Australian Financial Review, 6 Mar. 2023, <https://www.afr.com/companies/professional-services/academic-cited-by-chalmers-wants-consultants-to-disclose-client-lists-20230305-p5cpha>.

Transparency and accountability should also extend to what work is produced by consultants. The CPSU would be supportive of making consultancy reports publicly available through a Senate order for the production of documents to improve transparency and accountability.²⁹

Strong action taken against breaches

Current arrangements fail to provide adequate penalties against consultants and other external providers for conflict of interest breaches. This provides no effective deterrent and undermines public confidence.

The CPSU calls for further action to be taken against PwC for the tax leak of privileged information. This was a most egregious breach – given it appears to have involved a considered attempt to provide material benefits to both PwC and its clients. CPSU notes that a public servant who was alleged to behaved in such a manner would face a substantially more serious investigation and potential penalties, including the prospect of potential criminal actions. CPSU suggests that the PwC scandal is comparable to individuals who used unreleased ABS data for insider trading,³⁰ who were prosecuted and jailed.

While there is discretion under the Commonwealth Procurement Rules to exclude companies,³¹ there is no clear service-wide policy framework for debarment and suspension.

The CPSU notes that Western Australia recently introduced Australia's first debarment and suspension regime that captures conduct that is not related to the supply of goods, services or works to the government, as well as conduct that occurs overseas. The regime is broad, enables the cancellation of existing contracts and has some retrospectivity.³²

Drawing on the experience from Western Australia, a similar broad debarment and suspension regime should be developed at a Commonwealth level to be a strong stick to dissuade consultancies from engaging in unethical behaviour.

Improved Whistleblower protections

Strong whistleblower protections for public servants are essential to both reveal corruption, conflicts of interest and other unethical behaviour, and to act as a deterrent.

However current whistleblower protections for public servants are inadequate, and CPSU calls for urgent legislative change to establish a best practice scheme that would include:

- safe, effective and accessible protections for whistleblowers to access union support.

29 "Talk Isn't Cheap." The Australia Institute, 4 Oct. 2021, <https://australiainstitute.org.au/report/talk-isnt-cheap/>.

30 "Greedy' Pair Jailed over \$7m ABS Insider Trading Scheme." ABC News, 16 Mar. 2015. www.abc.net.au, <https://www.abc.net.au/news/2015-03-17/pair-sentenced-over-abs-insider-trading/6324526>.

31 "Foreign Bribery", Senate Standing Committees on Economics, 2018, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th/Report/c08. Accessed 17 Apr. 2023.

32 Debarment Regime. <https://www.wa.gov.au/organisation/departments-of-finance/debarment-regime>. Accessed 17 Apr. 2023.

- easier access to effective remedies, and
- the establishment of a whistle blower protection authority and commissioner.

CPSU notes that access for whistleblowers and potential whistleblowers to trade union support and advice was recently considered by the International Labour Organisation (ILO) who found that “protected avenues for whistle-blowers to receive independent and trusted advice and support from appropriate bodies, including workers organisations” is an important element of effective whistle-blower protections.³³

The CPSU recommends that the second tranche of reforms for the Public Interest Disclosure Act promised by the Commonwealth Government, due in 2023, provide these protections.

Rebuild APS capability

As noted in this submission a key reason for the increased risk of conflicts of interest has been the growth in the use of consultancies and the expansion of that use into day-to-day public service work.

Addressing this requires a long term and serious commitment to rebuilding APS capability. This includes increasing APS staff numbers while reducing the use of consultants and external suppliers.

It also requires targeted work by agencies, driven by Government, to identify the skills gaps that lead to the regular or repeat use of consultants for the same work, and then developing a plan to develop those skills in-house.

CPSU also argues that contracts for consultants and contractors should include mandatory provisions for the transfer of skills and knowledge to APS staff, with savings from the reduced need for consultants being reinvesting into building APS staff numbers, capability, and capacity.

Open Contracting

Consideration should be given to adopting an open contracting regime. The purpose of open contracting is to publish and use open, accessible and timely information on public contracting to engage the community to fix problems and deliver results.³⁴

While Australia has adopted some principles of open contracting, such as enabling machine readable information,³⁵ much more can be done. Further adoption will enable a better and timely monitoring of public expenditure on consultancies as well as greater efficiency and cost savings. A study of more than 3.5 million government contracts across Europe determined that every additional item of information shared about a

33 Office 4, Sectoral Policies Department International Labour. Technical Meeting on the Protection of Whistle-Blowers in the Public Service Sector. 22 Oct. 2021, http://www.ilo.org/sector/activities/sectoral-meetings/WCMS_824077/lang--en/index.htm.

34 “What Is Open Contracting.” Open Contracting Partnership, <https://www.open-contracting.org/what-is-open-contracting/>. Accessed 26 Apr. 2023.

35 Marshall, Matt. “What Does Australia’s Open Contracting Data Look like?” Open Contracting Partnership, 11 Feb. 2020, <https://www.open-contracting.org/2020/02/11/what-does-australias-open-contracting-data-look-like/>.

tender decreases the risk of a single bid contract, which are both a governance risk and over 7% more expensive.³⁶

An expanded approach to open contracting should include affirmative disclosure of any:

- a. Related pre-studies, bid documents, performance evaluations, guarantees, and auditing reports.
- b. Information during the initial procurement process, including:
 - The planning process of the procurement;
 - The scope and specifications for each contract;
 - The criteria for evaluation and selection;
 - The bidders or participants in the process, their validation documents, and any procedural exemptions for which they qualify;
 - Any conflicts of interest uncovered or debarments issued;
 - The results of the evaluation, including the justification for the award; and
 - The identity of the contract recipient and any statements of beneficial ownership provided;
- c. Information related to performance and completion of public contracts, including information regarding subcontracting arrangements, such as:
 - General schedules, including major milestones in execution, and any changes thereto;
 - Status of implementation against milestones;
 - Dates and amounts of stage payments made or received (against total amount) and the source of those payments;
 - Service delivery and pricing;
 - Arrangements for ending contracts;
 - Final settlements and responsibilities;
 - Risk assessments, including environmental and social impact assessments;
 - Assessments of assets and liabilities of government related to the contract;
 - Provisions in place to ensure appropriate management of ongoing risks and liabilities; and
 - Appropriate financial information regarding revenues and expenditures, such as time and cost overruns, if any.³⁷

This increased disclosure required by consultants wanting to win public sector contracts and publication would enable a better assessment of the quality of any work produced by the advisers and better manage the risk of conflicts of interest.³⁸

End.

36 D3.2 Lights on the Shadows of Public Procurement. Transparency in Government Contracting as an Antidote to Corruption? – Digiwhist. <https://digiwhist.eu/publications/lights-on-the-shadows-of-public-procurement-transparency-in-government-contracting-as-an-antidote-to-corruption/>. Accessed 18 Apr. 2023.

37 “Global Principles.” Open Contracting Partnership, <https://www.open-contracting.org/what-is-open-contracting/global-principles/>. Accessed 17 Apr. 2023.

38 “Academic Cited by Chalmers Wants Consultants to Disclose Client Lists.” Australian Financial Review, 6 Mar. 2023, <https://www.afr.com/companies/professional-services/academic-cited-by-chalmers-wants-consultants-to-disclose-client-lists-20230305-p5cpha>.

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