



## **Submission**

**to**

**Joint Committee of Public Accounts and Audit**

### **Inquiry Based on ANAO Report No. 19 (2017–18) Australian Government Procurement Contract Reporting**

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## 1. INTRODUCTION

1.1 This submission is made in response to the Joint Committee of Public Accounts and Audit's (JCPAA) inquiry based on *Auditor-General's report No. 19 (2017-18)* (the report). The submission is made by the Melbourne School of Government (the School) at the University of Melbourne.

1.2 Contributors to the submission are as follows:

- Mr Martin Bortz, Research Fellow (lead author)
- Professor John Howe, Director of the School
- Professor Janine O'Flynn, Professor of Public Management
- Ms Melissa Kennedy, Research Assistant.

1.3 Staff members from the School are available for further discussion and comment. The lead author of this submission is currently completing his PhD on the use of consultants by government, and would also be available for further comment.

1.4 More specifically, the submission focuses on the elements of the report that inquire into the use of consultancies by government agencies. As per the JCPAA's *Complementary Submission Guidance*, the submission comments on the following matters:

- Effectiveness of Commonwealth procurement policy and guidance
- Use of consultancy and non-consultancy services in the Australian Public Service (APS)
- Transparency of reporting of Commonwealth procurement
- Australian Public Service (APS) capability and capacity
- Jurisdictional comparison and lessons

1.5 The submission is broken into three sections. The first section provides some general insights and commentary on the use of consultants by government. The second section responds specifically to the matters outlined in paragraph 1.4 above. The final section provides some additional thoughts on ways to enhance the utility of consulting engagements.

1.6 In addition, **Appendix A** to this submission includes a recently published article by the lead author of this submission. This article appeared in the online publication *The Mandarin* on 8 February 2018.

## 2. GENERAL COMMENTS

### *Introduction*

2.1 This section provides general comments and insights on the use of consultants by governments. It provides some background to the issue, and describes in depth some of the more significant concerns about the phenomena.

### *Background to the use of consultants*

- 2.2 Government use of consultants can be traced back to at least the late-19<sup>th</sup> Century. During this time, the United States Government turned to the first management consultants for advice on how to improve the efficiency of its operations. Over the subsequent decades, several Congressional committees involved consultants in discussions about how to improve the overall administration of the executive branch.
- 2.3 More broadly, the use of consultants by government can be considered part of the general trend for political decision-makers to turn to external advisors for guidance. Thus, it is nothing new.
- 2.4 The use of consultants by governments – particularly in wealthy, industrialised countries – grew significantly as part of the new public management reforms (NPM) of the early 1990s. As part of the NPM, governments began adopting more private sector styles of management. This included use of private consultants in an advisory capacity.

### *Issues and problems*

- 2.5 There are two main concerns with the extensive use of consultants. First, is the extent of their influence. The second concern is the ways in which they are held accountable.
- 2.6 General concern over consultant influence can be traced back to a book called *The Shadow Government*, by journalists Daniel Guttman & Barry Willner. In the academic literature, this concern is expressed as the ‘consultocracy’. The basic idea here is that consultants are used so much that they form some kind of ‘power behind the throne’.
- 2.7 The academic literature provides quite a mixed picture regarding the extent of consultant influence. Some scholars do suggest that consultants are hugely influential. Others (most notably Canadian political scientist Denis Saint-Martin) argue that consultant influence is highly variable, and very context-dependent.
- 2.8 It is important to separate use from influence. Ultimately, consultants are never the decision-maker. While their advice and recommendations may be adopted, this does not automatically mean that policymakers are subservient to the consultants. In fact, some scholars would argue that just the opposite is true, or, at least, that policymakers and consultants influence each other in different ways.
- 2.9 Concerns about accountability and transparency are related to commercial-in-confidence (or, sometimes, Cabinet-in-confidence) privileges that attach to consultant reports. This state-of-affairs means that it is often very difficult to hold consultants to account for the advice that they might give. This is different to advice provided by, for instance, a government department, which forms part of the public record.

### *The current inquiry*

- 2.10 The current, bi-partisan concerns over the use of consultants is thus a continuation of debates that began in the 1970s.
- 2.11 As outlined in the *Complementary Submission Guidance*, the present JCPAA inquiry is focused on use, and does not consider influence. This is understandable and appropriate, given the

inherent challenges in making very general claims about the influence of consultants. It is important, however, to not infer influence from mere use.

- 2.12 The inquiry specifically focuses very much on the appropriateness of procurement arrangements, insofar as they support democratic values of accountability and transparency. This is welcome, given that one of the central concerns regarding the use of consultants relates to these very issues.
- 2.13 In addition, the inquiry focuses on the effect of consulting on the capacity and capability of public servants. As described in paragraphs 3.25 to 3.29 below, the evidence on this phenomenon is currently inconclusive.
- 2.14 The remainder of this submission addresses the key matters outlined in paragraph 1.4 above.

### 3. SPECIFIC COMMENTS

#### *Effectiveness of Commonwealth procurement policy and guidance*

- 3.1 It is interesting that more than two-thirds of the APS' consulting work is completed by five organisations, with four of these being the 'Big 4' accounting firms. It would be helpful to understand why exactly this is.
- 3.2 The research literature on consultants suggests that consulting is based on individual relationships. That is, consultants need to develop ongoing relationships with their clients to ensure future work. Thus, it may be the case that the 'Big 4' are successfully entrenching their relationships with individual public-sector managers, and those managers continually seek the advice of the same consultants (thus diminishing competition).
- 3.3 This is not to suggest that this is definitely the case. Rather, the extensive use of the 'Big 4' needs further interrogation.
- 3.4 The inquiry is also asking for specific comments on the *Commonwealth Procurement Rules* (CPR) definitions of consultancy and non-consultancy contracts. An engagement is defined as a consultancy when it meets *all three* of the following criteria:
  - It involves the development of an intellectual output that assists with decision making;
  - The intellectual output represents the independent view of the service provider; and
  - The output is the sole or majority element of the contract in terms of relative value or importance.
- 3.5 These definitions are largely clear, comprehensive, and appropriate.
- 3.6 At the same time, the text under "Integration or organisation test" could be given additional consideration.<sup>1</sup> Sometimes consultancies will perform work that is a 'core' part of government operations. This is entirely appropriate. For instance, consultants will often conduct evaluations

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<sup>1</sup> See <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/consultancies-reporting/practice.html>

of government policies and/or programs. This is an essential part of the policy cycle. For reasons outlined in paragraph 3.28, it is entirely appropriate for this to be the case. Thus, it is difficult to distinguish these types of consulting engagement from 'core' government work.

- 3.7 Note as well that in 1991 the United States' Government Accountability Office considered in depth the issue of 'core government functions' and found that it is a very difficult concept to define (Ungar, 1991).
- 3.8 The inquiry is also asking for specific comments on value-for-money considerations. The CPRs provide a very detailed description of what amounts to value-for-money (see section 4 of the CPRs).
- 3.9 What is less clear, however, are the ways in which value-for-money is actually reported by Commonwealth agencies. Reporting arrangements specifically relating to value-for-money considerations are not specified under the CPRs. This means it is not possible to understand the ways in which value-for-money was assessed for specific consultant engagements, and the extent to which a particular engagement did, in fact, deliver that value.
- 3.10 Moreover, the kinds of considerations that are specified in the CPRs as being relevant to making a value-for-money assessment are difficult to apply to a consulting engagement (see section 4.5). Consulting work tends to be highly uncertain and ambiguous. Because of this, public sector managers may have difficulty in making an assessment of the overall quality of the services provided. If this is the case, then it will not be possible to report the value-for-money consideration, as they may not be applicable.
- 3.11 It may also be difficult to actually enforce value-for-money considerations in the context of consulting. Consultant work is typically part of a much broader (and far more complex) policy or program. Because of this, it is very difficult to tie a consultant report directly to whatever it is that the policy/program aimed to achieve. That is, there are several confounding factors that may influence the extent to which a consultant engagement had a direct impact on a policy or program. In light of this, payments tend to be made on a milestone/output basis, which is a far simpler calculation than determining 'value-for-money'.
- 3.12 Finally, in relation to enforcement, consultants may be reluctant to sign on to contracts that provide too much discretionary power to the client to determine the circumstances under which payments will be made. Payments made on somewhat vague or tenuous value-for-money considerations (rather than output/milestone basis) are likely to fall into this category.

*Use of consultancy and non-consultancy services in the APS*

- 3.13 As reported by the *Australian Financial Review* on 21 January (Tadros & McIlroy, 2018), the JCPAA inquiry has been commissioned in response to concerns that consultants are being used too much (as indicated by increases in overall spending on consultants in the report).
- 3.14 This raises two questions. First, how much *should* agencies be spending on consultants? On the data available, it is not possible to make such an assessment. Rather, what is needed is an assessment of the *appropriateness* of different consulting engagements. That is, a qualitative, rather than a quantitative, assessment of this issue would be particularly beneficial.

- 3.15 Second, it is important to interrogate the agencies that are procuring the most consulting work. The report doesn't provide this information. It is possible that there are individual agencies that are responsible for significant percentages of expenditure on consultancies. Knowing this information will provide a more nuanced understanding of the extent and nature of the problem (or if there is even a problem in the first place).
- 3.16 Furthermore, in a separate submission to the inquiry, the Department of Finance (2018a, p. 9) notes that the figures reported by the Attorney-General on consultancy use were incorrect. The Department's revised figures suggest that the cost increases were not as substantial as first reported by the Attorney-General. The actual figures should be confirmed.
- 3.17 The inquiry is also asking for specific comments on the cost implications of engaging consultants. One benefit of using a consulting firm is that the APS can access all the skills it needs at once (i.e. they can construct an 'ideal' worker). So rather than paying a public servant \$100,000 a year to finish one project, they can give that money to a consulting firm and get the combined skill sets of three different consultants. This has the potential to get a higher quality result in less time. Thus, the use of consultancies has the potential to introduce efficiencies due to economies of scope.
- 3.18 The inquiry is also asking for comment on the categories of services. In its submission to the inquiry, the Department of Finance (2018a) analyses six codes with the largest number of contract notices that are flagged as consultancies. It is interesting to note that three of these codes have the word 'consulting' in them, but that the CPRs make allowance for contract notices in these categories to *not* be marked as consultancies. This may cause confusion in reporting of consulting projects. If such confusion exists, it may affect the quality of the data overall. This classificatory scheme should be reconsidered to avoid confusion.
- 3.19 The academic literature also contains some detail on the kinds of services that consultants provide. Indeed, the role of consultants in government is one of the central concerns of the academic study of the consultancy phenomenon. On this point, Tisdall (1982) has (quite influentially) argued that consultants perform one of three roles – experts, extras, or facilitators (where 'extras' refers to an extra resource for the client agency). Likewise, Howlett & Migone (2013) studied the use of consultants in Canada, focusing specifically on the kinds of services that they performed. The authors find that, most commonly, consultants work as advisors, analysts or researchers.
- 3.20 In Australia, John Martin (1998; 2000) has studied the role of consultants. However, Martin's work is a case study analysis of one consultant engagement, and so its insights for general application are limited. While other Australian studies do exist (see, for instance, Wright & Kitay, 2004), they also tend to be case studies, and so general application is limited.
- 3.21 Given the wide range of consulting engagements that occur, it may also be the case that the number of categories is too few.
- 3.22 Finally, the category 'management advisory services' is incredibly broad. On one interpretation, this category could potentially encompass all consulting contracts. This is because consultants almost always provide advice to managers.

*Transparency of reporting Commonwealth procurement*

- 3.23 The value, duration, and type of services engaged are relatively easy to find (via AusTender), and can thus be considered transparent.
- 3.24 Additional categories that may be of use in the reporting data could be the extent of any budget or timeframe overruns, and the reasons for the overrun. This would aid in government assessment of overall value-for-money (i.e. it would provide an understanding of the actual costs of engagements and why costs may vary). Such data may aid in future management of consultants (i.e. the typical reasons for costs overruns would be known).

*APS capacity and capability*

- 3.25 The inquiry is asking for comment on the relationship between consulting advice and the loss of capacity of public servants. The limited scholarly research into the policy role of consultants does not provide any clear answers as to this issue. Given the nature of this literature, it is highly likely that the extent to which consultancy improves or diminishes the skills set of public servants varies by the nature of the engagement, as well as the level of skill of both the client, the client's organisation, and the consultant.
- 3.26 There are some insights into this question available from research into government outsourcing. This body of work tends to suggest a loss of capacity. However, it must be stressed that consulting is not the same thing as outsourcing. As the CPRs recognise, consultants are brought in specifically to provide a specialist expertise to which the government agency had limited (or no) access. In this situation, it makes little sense to talk about loss of capacity as the in-house skill set was very limited (or non-existent) in the first place.
- 3.27 Moreover, and as the CPRs recognise, consultants are typically hired to provide an independent opinion or advice, while outsourcing tends to be for service delivery and/or implementation. These are very different functions, and so the outsourcing literature is of limited use. Put simply, we just don't know.
- 3.28 In certain situations it is entirely appropriate for the agency to have a limited skill set in an area, with the majority of work provided by external consultants. This is the case for program evaluation. Indeed, the robustness of program evaluations would be undermined if it was carried out by agency employees. This is due to perceptions of the independence of external consultants.
- 3.29 Finally, in certain circumstances, it may be that the government agency wants to draw on the skill set of the consultants to train its staff over the course of an engagement. This may be appropriate, again, depending on the engagement. In such circumstances, an explicit contractual provision requiring skills development of government employees is one avenue that may be worth exploring.

### *Jurisdictional comparison and lessons*

3.30 The Victorian Auditor General's Office (VAGO) recently considered the ways in which the Victorian Public Service was managing consultants and contractors.<sup>2</sup> Some of VAGO's main findings were that:

- Advisory engagements had not been consistently classified
- The departments under review had not demonstrated high levels of integrity in procurement process while pursuing value-for-money outcomes
- The departments under review did not apply processes that were structured, documented, and transparent.

3.31 Based on this, VAGO makes several reform recommendations for departments and the Victorian Government Purchasing Board. These include reforms of policies and practices; updates to guidance documents; and improvements to collation and analysis of key information (see p. xiii) (Doyle, 2014).

## **4. CONCLUDING REMARKS**

- 4.1 Overall, consultants are one tool that governments have at their disposal. They should be seen as one part of a broader network of advisors.
- 4.2 Given that policy challenges are becoming more and more complex, it is important that policymakers have wide access to a variety of different skillsets and bodies of knowledge. Consultants help governments achieve this aim.
- 4.3 That said, there are improvements that could be made on both sides of the consultant-client relationship.
- 4.4 On the client end, public servants need to better understand what consultants actually do on a day-to-day basis. Typically, consulting (as it is defined in the CPRs) involves a form of applied research. To better scrutinise consulting engagements, public servants should thus have a better understanding of the research process. This would include a greater understanding of methodological considerations, as well as the strengths and limitations of different approaches to data analysis. To a degree, public servants should be trained researchers themselves.
- 4.5 This approach would also allow public servants to better scrutinise and oversee consultant engagements, as well as critically engage with a consultant proposal.
- 4.6 Consultants should also have a better understanding of how government works. Typically, consultants come from business backgrounds. This can often result in a misunderstanding (or lack of awareness) of the political environment in which policymakers operate. As the lead author's PhD research shows, this can lead to (very expensive) consulting projects not producing the kinds of advice that is helpful to public sector decision-makers.

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<sup>2</sup> See <https://www.audit.vic.gov.au/sites/default/files/20140612-Managing-Consultants.pdf>



- 4.7 It should also be stressed that the consulting industry is still a bit of a 'wild west'. That is, unlike the professions (law, accounting, engineering, etc.) there is no formal accreditation for becoming a consultant, nor is there a professional body ensuring that practitioners meet basic professional or ethical standards. This means that there are no generally accepted rules regarding who can legitimately call themselves a 'consultant'. Initiatives to standardise consulting practice in this way would go some way to improving the quality and consistency of advisory engagements.
- 4.8 Finally, one aspect of this debate that often gets overlooked is the precise nature of expertise that consultants provide. Often, consultants will bring a form of 'process expertise', which is typically contrasted with 'content expertise'. The former includes expertise about the best way to run a process, be it evaluation, strategic planning, general research, etc. The expertise here is generally more experiential, insofar as it is developed by doing the same thing several times. The value to the client of a process expert is having an understanding of the common mistakes and errors that may arise, and the knowledge of good practice in the resolution of issues. On the other hand, a content expert generally has more substantive knowledge about a particular topic (i.e. water, sustainability, education, health, etc.). Put simply, the former is 'know-how', while the latter is 'know-what'.
- 4.9 In the view of the lead author, the quality of a consulting engagement is generally enhanced when the project team (or individual consultant) contains both process and content expertise. Future initiatives that seek to ensure that consulting engagements contain both forms of expertise would be welcome.

## REFERENCES

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## **APPENDIX A: ARTICLE APPEARING IN *THE MANDARIN*, 8 FEBRUARY 2018**

Available from: <https://www.themandarin.com.au/88207-know-government-getting-quality-advice-from-consultants/>

Policymaking today is as complex as it has ever been – perhaps more so. Given this, it makes sense that policymakers sit at the centre of a complex web of advisors. This web includes universities, think tanks, advocacy groups, international organisations, Ministerial staff and, of course, public servants. One of these advisors – the consultant – has recently become the focus of additional parliamentary scrutiny. Fuelled by concerns over their extensive use, the Joint Committee of Public Accounts and Audit (JCPAA) is currently inquiring into the use of consultants and contractors across the Commonwealth public sector.

Concerns over the extensive use of consultants are understandable. Private entities exist to make a profit. It is entirely conceivable that such a goal may come into conflict with providing advice in the public interest. Indeed, we have recently seen this problem erupt in a dramatic fashion in the United Kingdom, where McKinsey & Company played a pivotal role in the restructuring of the National Health Service – with attendant complaints of conflict of interest. Furthermore, consultant reports are often provided on a commercial-in-confidence basis. This means that they are generally exempt from Freedom of Information laws. As such, it makes it difficult to hold consultants to account for any advice that they may give.

At the same time, attempts to ensure that agencies are procuring an appropriate amount of consulting work are problematic. As the current Commonwealth Procurement Rules acknowledge, consultants are typically called in to provide advice on projects that require a highly technical or specialist view. These kinds of matters are inherently ambiguous, and it can be difficult to predict when exactly such expertise might be needed. Research also highlights that clients have a limited understanding of what consultants actually do on a day-to-day basis. This can pose challenges in conducting a meaningful assessment of whether the amount or type of work was appropriate. Thus, determining some ‘right’ quantity of consulting work is always going to be a challenge.

So what to do? While there are sound reasons for policy-makers to seek as many sources of advice as possible, these issues must be balanced with concerns for democratic accountability, particularly when consultants are being used in political or policy-making capacities. One approach to resolving this issue has been to allow consultants to be used only for work that is not of an ‘inherently government’ nature. Indeed, the Victorian Department of Treasury and Finance had, until June 2013, taken this approach. However, what is ‘inherently government’ work is not so clear. In 1991, the American Government Accountability Office considered this issue in great depth and found the concept very difficult to define.

While it is vital to be vigilant about the nature, role, and use of government consultants, our efforts should instead focus more on ensuring that consulting projects elicit the best possible advice. On this point, the inquiry focuses too much on reporting and governance arrangements. While this focus is reasonable within the JCPAA’s remit, it is insufficient to ensure that we are getting the most value-for-money from consulting engagements. Rather, we need to enhance the ability of public servants to

not only effectively manage their consultants, but also to be able to scrutinise and critically engage with their advice.

This means two things. First, it necessitates a deeper knowledge of what consultants do on a day-to-day basis. Typically, advisory engagements will involve forms of applied research. Thus, to better understand consulting work, public servants need to better understand the research process. Second, it means that public servants should be trained in the logic of critical argument. This is not to suggest that public servants don't have the capacity for deep thought – far from it. Rather, I am suggesting that there are technical components of argumentation, reasoning, and analysis that could be better inculcated across the public sector

Though problematic, consulting to government definitely has a place within modern systems of public policy. Because of this, the consulting phenomenon is not likely to go away any time soon – we just need to get better at understanding it.

**Martin Bortz is a research fellow at the Melbourne School of Government. He is currently completing a PhD on the use of management consultants in public policy, and also worked as a consultant for several years.**

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