



Australian Government
The Treasury



The Senate Finance and Public Administration References Committee

Submission - Inquiry into the management and
assurance of integrity by consulting services

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Introduction

The Commonwealth Department of the Treasury welcomes the opportunity to make this submission to the Senate Finance and Public Administration References Committee's inquiry into the management and assurance of integrity by consulting services.

Treasury provides advice to the Government and implements policies and programs to achieve strong and sustainable economic and fiscal outcomes for Australians.

Treasury provides economic analysis and authoritative policy advice on issues such as: the economy, budget, taxation, financial sector, foreign investment, structural policy, superannuation, small business, housing affordability and international economic policy.

Treasury engages consultants where specialist skills are required but are not available in-house. Consultants are engaged to investigate or diagnose a defined issue or problem; carry out defined research, reviews or evaluations; provide independent advice; and provide information or creative solutions to assist the Treasury in its decision-making.

For the purposes of this submission, consulting services are considered those where a contract for consultancy services has been entered into in line with the Commonwealth Procurement Rules. The Department of Finance distinguishes a consultancy services contract from a non-consultancy contract as one that:

- Involves specialist professional knowledge or expertise that may not be maintained in-house
- There is a need for independent research or assessment and
- Involves development of an intellectual output.

The Treasury Annual Report, available on the Treasury website, contains information about actual expenditure on contracts for consultancies, including any exceptions under the *Freedom of Information Act 1982*. Information on the value of individual contracts and consultancies is available on the AusTender website at www.tenders.gov.au.

Treasury's Management and Assurance of Integrity by Consulting Services

Treasury engages consultants where specialist skills are required but are not available in-house, or where independent advice is required. Treasury officials consider on a case-by-case basis the appropriateness of, and risks associated with, engaging consultants. Treasury officials are bound by the Australian Public Service Values and Code of Conduct, as well as duties to apply care and diligence and acting honestly, in good faith for a purpose, in making these decisions.

Treasury selects and engages consultants in accordance with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), Commonwealth Procurement Rules and Treasury's internal policies. Treasury's internal delegations, procedures and processes ensure internal checks and balances apply to the selection and engagement of consultants.

Treasury complies with Whole of Australian Government Arrangements when procuring consultancy services, by engaging consultants through the Department of Finance's Management Advisory Services (MAS) panel and the Attorney General's Department's Legal Services panel. These coordinated procurement arrangements offer increased transparency, standard terms and conditions, and improved contract management.

Treasury acknowledges the importance of having appropriate systems and policies in place to ensure the integrity of external consulting services it engages, including ensuring any real or perceived conflicts of interest are promptly identified and carefully managed.

Treasury's management of conflicts of interest of consultants is guided by the department's Conflict of Interest Policy. Procurement has been identified as a function at higher risk of conflicts of interest in Treasury's Conflict of Interest Policy. Under Treasury's Conflict of Interest Policy, consultants have responsibility to:

- Adhere to any conflict-of-interest requirements or obligations to behave consistently with the APS Code of Conduct, as required by Treasury, and to the extent of their (or their organisation's) contract
- Assess their personal interests and relationships to identify whether they conflict, or have the potential to conflict, with their role and responsibilities at Treasury
- Disclose personal interests (financial or otherwise) that could give rise to a conflict of interest as soon as they become apparent
- Seek advice from their contract manager if they are uncertain about whether a conflict of interest arises or exists from their personal interests
- Cooperate with Treasury managers to avoid or manage conflicts of interest, including abiding by any specific probity plans that may be in place for their work area or tasks
- Reconsider personal interests at appropriate times, for example during a change in role or responsibility, or when they are undertaking specific activities (for example, procurement, grant administration or recruitment)
- Refer to trigger points in Treasury's 'Conflict of Interest Management Cycle' for guidance on when to reassess conflicts.

Treasury generally uses the Whole of Australian Government Management Advisory Services (MAS) panel or the Commonwealth Contracting Suite (CCS) when engaging consultants. There are conflict of interest provisions in the MAS Head Agreement and in the CCS terms and conditions.

Treasury appreciates the importance of having appropriate systems in place to ensure the integrity and confidentiality of information is maintained by consultants. Treasury utilises a number of confidentiality safeguards when working with consultants, including:

- deciding how and who to consult based on an assessment of the value of particular stakeholder's expertise, and
- where appropriate, Treasury requires consultant personnel to sign confidentiality agreements to protect any confidential information that they may be required to access to provide a service to Treasury.

Consultants are accountable for their work under the terms of an agreed contract with Treasury. Consultant deliverables are monitored by contract managers to ensure the quality of the work they deliver is in line with the agreed contract.

In addition, Treasury uses contractual arrangements to help ensure consultants perform services for Treasury in an appropriate and ethical manner that does not conflict with the Australian Government's interests. For instance, the Head Agreement (with Department of Finance) for the MAS panel requires a Service Provider (including a provider of consultancy services) to:

- comply with all relevant laws and advise the Commonwealth of adverse court judgements
- detect and prevent fraud and reimburse the Commonwealth for any costs incurred as a result of consultant fraud
- for contracts over \$4M, provide a statement from the Australian Taxation Office showing they have a satisfactory tax record
- indemnify the Commonwealth for any cost, loss or damage it incurs as a result of the Service Provider's breach of contract or unlawful or negligent act or omission
- protect the confidentiality of Australian Government information and only use it as required for the provision of the services
- avoid, or declare and manage to the satisfaction of the Commonwealth, any conflict of interest
- maintain the security of Commonwealth information in accordance with applicable requirements in the Commonwealth's Protective Security Policy Framework and
- agree to the Commonwealth auditing the Service Provider's performance of services including attending the consultant's premises and inspecting the consultant's records.

If a Service Provider breaches the MAS Panel Head Agreement, the Commonwealth may suspend the provider from providing services under the panel or terminate the Head Agreement.

Similarly, the Commonwealth Contract Terms in the CCS require a service provider (including a provider of consultancy services) to:

- comply with all relevant laws
- act honestly and ethically
- detect and prevent fraud

- comply with its tax obligations
- avoid, or declare and manage to the satisfaction of the Commonwealth, any conflict of interest
- protect the confidentiality of Australian Government information and only use it as required for the provision of the consultancy services
- agree to the Commonwealth auditing the service provider's performance of services including attending the consultant's premises and inspecting the consultant's records
- acknowledge giving false or misleading information to the Commonwealth is an offence
- indemnify the Commonwealth for any negligent or wilful breach of the contract.

If a service provider breaches a contract based on the CCS, the Commonwealth may terminate the contract.

Treasury also has measures in place to identify and manage fraud and corruption risks. Specific fraud and corruption risks, including through procurement activities, are assessed at least biennially as part of Treasury's Fraud Risk Assessment. The fraud risk assessment is supported by the department's Fraud and Corruption Control Plan, and sets out the department's approach to preventing, detecting and responding to fraud and corruption, or the misuse of Commonwealth resources. A key obligation of all officials is to report all cases of suspected or actual fraud or corruption.

Treasury has multiple avenues for reporting fraud and corruption. These include under Treasury's Fraud and Corruption Control Plan, through public interest disclosures that can be made by government officials and service providers to authorised Treasury officials, as well as through Code of Conduct processes. The *Public Interest Disclosure Act 2013* applies to contracted service providers as well as public officials and provides avenues for disclosures by contracted service providers and public officials about wrongdoing by contracted service providers.

Fraud awareness training is a key preventative measure for managing risks that may arise from the engagement of consultants and the training is mandatory for all Treasury staff to complete on an annual basis.