

PER CAPITA SUBMISSION

SUBMISSION TO THE SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE – INQUIRY INTO MANAGEMENT AND ASSURANCE OF INTEGRITY BY CONSULTING SERVICES.

Per Capita

April 2023

Per Capita welcomes the opportunity to provide this submission to the Senate Finance and Public Administration References Committee, for consideration in their inquiry into the management and assurance of integrity by consulting services.

Per Capita is an independent think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia, based on fairness, shared prosperity, and social justice.

This submission is primarily concerned with outsourcing functions to private consultants, which have historically been within the purview of the Australian Public Service ('APS'). It will focus on the financial and social consequences, and advocate for better transparency, accountability, and integrity measures applicable to the engagement of private consultants, and how they perform their work.

Introduction

All Australians rely on public services. From the time that we are born until the day that we die, all citizens benefit from services traditionally designed, funded and delivered by government agencies, and staffed by public sector personnel.

Public servants are the 'human machinery'¹ of government and play a crucial role in facilitating the government's constitutional obligations.² Their impartiality and professionalism is vital to the efficacy of our constitutionally mandated system of responsible government, and thus they are bound by special, and sometimes onerous, ethical obligations to act in the public interest.³

In contrast, the chief imperative of private companies is to generate profit. Even where they are performing tasks which aim to benefit the public, they are primarily accountable to the interests of their shareholders. They have no obligations to act in the interests of the public.

¹ *McManus v Scott-Charlton* (1996) 140 ALR 625, 633 (Finn J).

² *Ibid.*

³ Stephen Ranieri and Craig Stevens, 'The Ethical Obligations on Public Sector Employees: When Private Is Not So Private' (2021) 33(3) *Australian Journal of Labour Law* 254.

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There may be some legitimate reasons to engage private consultants to undertake public policy development and related work, but the overreliance on private consultants who operate in an environment requiring less accountability and transparency than their counterparts in the APS is damaging the public service, on which every member of the public relies.

The financial cost of outsourcing policy advice

The Auditor-General's *Australian Government Procurement Contract Report 2022*⁴ reveals a disturbing increase in the amount being spent by the federal government on outside consultants over the last ten years.

Average Staffing Level cap – an own goal

The Abbott Government's *Smaller Government Reform Agenda*, which included an 'arbitrary, ideologically driven staffing cap'⁵ on APS staffing levels ('ASL cap') in the 2015–16 Budget, was deemed 'necessary so that the Government can repair the Budget and strengthen Australia's future'.⁶ Instead, it has been a costly own goal, driving up costs for external contractors and consultants.⁷

This committee has previously heard evidence that the ASL cap has also been a key driver in increasing the reliance on labour hire in public sector agencies,⁸ and in the 2021 inquiry into *The Current Capability of the Australian Public Service*, this committee observed that: '[t]he shadow workforce necessitated by [the] arbitrary, ideologically driven staffing cap is not sustainable, cost-effective or transparent.'⁹

To make up for the shortfall of personnel to deliver essential policy advice, spending on management advisory services has more than tripled from \$1 billion since the implementation of the ASL cap in 2015-2016, to \$3.1 billion in 2021-22.¹⁰ The yearly cost of consultancy related

⁴ Australian National Audit Office, *Australian Government Procurement Contract Report - 2022 Update* (Auditor-General Report No. 11 of 2022–23, 2 February 2023)

⁵ Senate Finance and Public Administration References Committee, Parliament of Australia, *APS Inc: Undermining Public Sector Capability and Performance: The Current Capability of the Australian Public Service* (Report, November 2021) xx ('APS Inc')

⁶ Mathias Cormann, Minister for Finance, 'Delivering A Smaller, More Rational Government' (Media Release, 13 May 2014) <<https://www.financeminister.gov.au/media-release/2014/05/13/delivering-smaller-more-rational-government>>. See also, Mathias Cormann, Minister for Finance, 'Smaller Government – Transforming the Public Sector' (Media Release, 11 May 2015) <<https://www.financeminister.gov.au/media-release/2015/05/11/smaller-government-transforming-public-sector>>.

⁷ *APS Inc* (n 5) xx, 52. See Also Nicola Berkovic, 'Staffing Caps Drive Up External Labour Costs, Public Service Reveals', *The Australian* (Online, 1 March 2018) <<https://www.theaustralian.com.au/nation/nation/staffing-caps-drive-up-external-labour-costs-public-service-reveals/news-story/6fe9c190c00489e3319100e4e0373629>>.

⁸ Evidence to Senate Finance and Public Administration References Committee, Senate, Canberra, 6 August 2021, 8-14 Melissa Donnelly, Michael Tull and Osmond Chiu: Community and Public Sector Union; *APS Inc* (n 5) ch 3.

⁹ *Ibid* xx.

¹⁰ Australian National Audit Office, *Australian Government Procurement Contract Report - 2022 Update* (Auditor-General Report No. 11 of 2022–23, 2 February 2023).

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contracts has similarly ballooned. In 2021-22 their total committed value topped \$888 million, compared to \$532.6 million in 2015-16, and \$353 million in 2012-2013.¹¹

This so-called *budget repair method* reveals at best, incompetence, or poor foresight by government, and at worst, an intentional disregard for the public interest. Neither begets trust or confidence in our governments or political institutions, which, as captured but the Australian Electoral Survey, has been in steady decline over the last 35 years.¹² Trust in government hit an all-time low in 2019,¹³ and although it has slightly recovered since, more than two thirds of Australians still do not trust the federal government to act in the public's best interests.¹⁴ This is a problem: a *really big* problem. It has real potential to undermine our constitutionally mandated system of responsible government, and thus, the effective functioning of our democracy.

The Big Four

The Auditor-General's report shows that the main recipients of outsourced government advisory services are the major management advisory consulting firms KPMG, PWC, Ernst and Young and Deloitte.¹⁵

The Australian people have a right to ask why so much of their money, in direct payments and foregone taxation revenue, is being swallowed up by these big advisory firms. They have a right to ask why public money is going to the shareholders of private companies as profits or dividends and used to pay high executive salaries, especially when this money would otherwise be retained in government revenue to pay for public services.

While the cost of these contracts has more than doubled in the last ten years, the number of contracts given each year has remained relatively consistent.¹⁶

So, where does the money go? Why does it cost so much? Why is the price going up?

The problem is that the public might have a right to ask, but they don't have a right to know...

¹¹ Ibid.

¹² Which has surveyed voters since 1987.

¹³ Sarah Cameron & Ian McAllister, *Trends In Australian Political Opinion: Results From the Australian Election Study 1987–2022* (Report, December 2022)101

¹⁴ Ibid.

¹⁵ Australian National Audit Office, *Australian Government Procurement Contract Report - 2022 Update* (Auditor-General Report No.11 of 2022–23, 2 February 2023).

¹⁶ Ibid.

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The social cost of outsourcing policy advice

Transparency deficit

While spending within the APS is subject to rigorous oversight and full transparency through the Parliament's budget estimates process, the same oversight is not applicable to private companies. Government contracts with private companies for policy advice and service delivery too often include *commercial-in-confidence* provisions that prevent the public from knowing what their money is being spent on, and whether the contracts represent value for money or adequately protect against conflicts of interest.

This committee has previously called on the government 'to strengthen transparency and accountability in monitoring and reporting on the use of consultants as a matter of urgent priority'.¹⁷

Where the Public service requires transparency and accountability in both its core values and in expectations of public servants (APS Code of Conduct),¹⁸ no such statutory requirement exists for private consulting firms.

Giving evidence in 2021, Melissa Donnelly, National Secretary of the Community and Public Sector Union told this committee that without obligations to give frank and fearless advice¹⁹ there is a real risk that the advice given to government by private consultants is not the advice that government needs, but rather the advice private companies think the government wants.²⁰

This is not merely the opinion of a union official representing the public sector workforce, it has come from inside the tent too. In 2021, former KPMG partner Brendan Lyon appeared before the New South Wales Public Accountability Committee for its inquiry into the *Transport Asset Holding Entity*. He provided disturbing revelations about compromised advice given to government to justify pre-determined decisions and ensure the firm continued to receive government contracts.²¹ Lyon told the committee: 'I had to choose between my own professional ethics and my partnership at KPMG'.²²

¹⁷ *APS Inc* (n 5) 92 [5.66]

¹⁸ Public Sector Act 1999 (Cth) s 10, 13

¹⁹ *Ibid* s10(5).

²⁰ Evidence to Senate Finance and Public Administration References Committee, Commonwealth, Canberra, 6 August 2021, 8 (Melissa Donnelly).

²¹ Evidence to Public Accountability Committee, New South Wales Parliament, Sydney, 8 November 2021, 1-29 (Brendan Lyon).

²² *Ibid* 12.

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Accountability measures

The provision of informed, expert and independent policy advice to the government is an essential function of the APS, one on which the effective functioning of our democracy relies.

The *Freedom of Information Act 1982* (Cth) ('*FIO Act*') was enacted to promote open government and democratic accountability. As the Australian Law Reform Commission ('ALRC') observed in its review of the *FIO Act*, it was 'designed to make government more open and accountable by providing a right of access to information in the possession of government',²³ increase accountability of government and improve administration and decision-making by exposing these processes to public scrutiny.²⁴ This stems from principles that 'government departments and authorities should make their structures and functions known to the public and... members of the public are entitled to access to documents held by government departments and authorities unless there are special reasons for not making those documents public.'²⁵

But there is no general legal right to access documents in the possession of a private sector body. This understandably takes account of the fact that private sector bodies do not exercise the executive power of government and do not have a duty to act in the interest of the whole community. In its review, the ALRC observed that 'the increased blurring between the public and private sectors'²⁶ raises issues with this traditional rationale for restricting the application of the *FOI Act* to government agencies and departments.²⁷

The growing overreliance on private consultants endangers core principles of our Westminster system of government, most obviously the principle of responsible government, by which government must be accountable to the people. For this system to work, the public must have the *right to know*.

For example, in 2020 the Health Department provided \$660,000 to McKinsey Pacific Rim to provide vaccine and treatment strategy advice, but when the ABC attempted to see the advice McKinsey provided, they were only able to obtain an eight-page summary of publicly available vaccine data, which contained no specific advice.²⁸ When probed by the ABC, McKinsey directed them to the Department of Health, but all that the Department told the ABC was that 'what fell

²³ Australian Law Reform Commission, *Open Government – A Review of the Federal Freedom of Information Act 1982* (Report No. 77, 20 January 1996) [1.2].

²⁴ *Ibid.*

²⁵ Commonwealth, *Parliamentary Debates*, House of Representatives, 18 August 1981, 41 (Robert Viner). 2

²⁶ Australian Law Reform Commission, *Open Government – A Review of the Federal Freedom of Information Act 1982* (Report No. 77, 20 January 1996) [1.2].

²⁷ *Ibid.*

²⁸ Paul Farrell and Alex McDonald, 'A Consultancy Firm Was Paid \$660,000 to Advise on Australia's COVID-19 Vaccine Strategy. But a Government Official Said They Provided No "Specific Advice"', ABC News (Online, 3 June 2021) <<https://www.abc.net.au/news/2021-06-03/federal-government-mckinsey-covid-vaccine-strategy-advice/100185786>>.

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within the scope of the FOI request does not reflect the level of work undertaken by McKinsey for the Department of Health'.²⁹ Covid-19 was a matter of public health, and measures to stop the spread affected every single Australian. It is incredible that the public is unable to know the specific advice that informed government decisions and, in turn, affected how we all lived, worked and moved during this health crisis.

Per Capita is strongly of the opinion that it should not be possible for governments to avoid accountability and openness by contracting with private sector bodies for policy advice.

Labour hire services

In 2021, the CPSU informed this committee that there was a distinct lack of service-wide data on labour hire workers but, through their own analysis collating data from publicly available sources, they had identified a 'clear increase in APS labour hire expenditure, coinciding with the introduction of the ASL cap in 2015'.³⁰

Like the trend of spending on advisory services, the Auditor-General's report shows that yearly spending on temporary personal services also skyrocketed. It has increased from \$215 million in 2012-2013 to \$3 billion in 2021-22.³¹

By outsourcing work traditionally done by permanent employees of the APS, governments effectively wash their hands of responsibility for workers' pay and conditions.

A notable scandal is just one of the many which involved Paladin Holding's security contracts.³² Paladin was awarded a \$422 million contract, by limited tender, from the Department of Home Affairs to handle security and other services on Manus Island. In February 2019, the ABC reported that Paladin reduced the pay of local workers, who were already some of the lowest paid in the area, by making them redundant and offering their jobs back on lower pay.³³

When governments choose to award contracts primarily based on cost, we can be sure that the workers delivering these services are under constant pressure to do more for less and that corners will be cut to increase the contracted company's profit margin.

²⁹ Ibid.

³⁰ APS inc (n 5) 20, citing Evidence to Senate Finance and Public Administration References Committee, Senate, Canberra, 6 August 2021, 9 (Osmond Chiu).

³¹ Australian National Audit Office, *Australian Government Procurement Contract Report - 2022 Update* (Auditor-General Report No. 11 of 2022-23, 2 February 2023).

³² See also, Jade MacMillan, 'Senators Gird Bureaucrats over \$422m Paladi Holdings Security Contracts on Manus Island', *ABC News* (Online, 18 February 2019) <<https://www.abc.net.au/news/2019-02-18/paladin-security-contracts-manus-island-home-affairs-at-hearing/10822496>>

³³ Natalie Whiting, 'Paladin Solutions Makes PNG Workers Redundant, Rehires Them for Less Money', *ABC News* (Online, 21 February 2019) <<https://www.abc.net.au/news/2019-02-21/paladin-workers-in-png-angry-at-forced-recontracting/10832520>>.

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Neoliberal economic theory argues that these are desirable outcomes from which the public benefits. This is an illusion. The cost saving arises from a cut in the volume or quality of services being offered to the public, rather than from more efficient delivery.

Gender equality at risk

There are consequences for gender equality in the workplace when outsourcing labour. Private companies are not subject to the APS Gender Equality Strategy and while they must comply with the *Workplace Gender Equality Act 2012* (Cth) to be eligible for government contracts, non-compliant employers have continued to receive government funding and contracts in recent years.³⁴ Even when companies do comply, reporting doesn't show the whole picture, and members of the public are not able to access information about how workers are engaged, or specific remuneration data like that accessible in the Australian Public Service Employment Database and Remuneration Reports.

Additionally, the big four consulting firms are male-dominated at the top end. Whilst the APS has achieved gender parity in the Senior Executive Service level,³⁵ all Chief Executive Officers of the big four in Australia are male, and bar one, the same is true of Chief Operating Officers.³⁶

A conflict of interest?

The independence of public sector employees charged with assessing policy options for the good of the nation is vital to ensuring the integrity of advice to our government. Thus, the APS Code of Conduct requires employees to take reasonable steps to avoid any conflict of interest, real or apparent, in connection with their employment.³⁷

If an impartial and independent source of advice is increasingly replaced with advice from private companies who may benefit financially from individual policy decisions, the public cannot have faith that the policies implemented on their behalf are in their best interests, rather than the vested interests of private advisory firms and their private sector clients.

³⁴ David Crowe, 'Flouting discrimination rules no barrier to winning government contracts', *Sydney Morning Herald* (Online, 21 May 2021) <<https://www.smh.com.au/politics/federal/gender-reporting-federal-funds-to-companies-flouting-rules-20210321-p57cpm.html>>.

³⁵ Philip Gaetjens and Peter Woolcott, 'Joint Statement – APS Commissioner and Secretary PM&C' (Joint Statement, 7 December 2021) <<https://www.apsc.gov.au/publication/australian-public-service-gender-equality-strategy-2021-26#joint-statement-aps-commissioner-and-secretary-pmc>>.

³⁶ KPMG, PWC, Ernst and Young, and Deloitte.

³⁷ *Public Service Act 1999* (Cth) s 13(7).

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It is concerning that the big four consulting firms are among the biggest donors to major political parties. It is not unreasonable that the public may infer from the \$850,000 donated by the big four to the two major parties in the last financial year that they are effectively buying contracts.³⁸

Recommendations

Private consultants have a role to play in supporting government and the public service, but the overreliance on private consultants coupled with lack of transparency and accountability is damaging the public service, and with it, public trust in government. To address these concerns, we submit the following measures for the consideration of the committee.

Per capita recommends that the government should:

- Reinststate a fully resourced APS as the primary provider of critical policy advice and development to the Government;
- Alongside its previous commitments to remove the ASL cap, develop a policy to retain APS staff, including minimising the use of non-temporary employment contracts;
- Tighten conditions for the use of limited tenders in the *Commonwealth Procurement Rules*;
- Amend *Commonwealth Procurement Rules* to ensure similar ethical standards related to transparency, integrity, conflict of interest and accountability, like those expected in the APS, are applicable to private consultants and firms when they are engaged to do work on behalf of the public sector;
- Implement a national debarment regime, to exclude consultants who have committed serious misconduct or been convicted of a criminal offence from providing services to government;³⁹
- Extend the *FOI Act* to include private sector bodies that are contracted to provide services or functions to the public on behalf of the government, so that FIO requests can be utilised to obtain documents that relate to the provision of those services and any conflicts of interest that firms or consultants may have, or appear to have;

³⁸ Denham Sadler, 'Big Four Consultancies, Which Get \$1.5B in Government Contracts, Donated \$850K to Labor and Libs Last Year' Crikey (Online, 8 February 2023) <<https://www.crikey.com.au/2023/02/08/big-four-consultancies-government-contracts-political-donations/>>.

³⁹ This was a recommendation (Rec 15) 15 in Australian Law Reform Commission, *Corporate Criminal Responsibility* (Report No. 136, 31 August 2020) 362-66. There is international precedent for the use of debarment regimes to deter corporate crime and protect the public interest: Government of Canada, Ineligibility and Suspension Policy (4 April 2016); Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on Public Procurement and Repealing Directive 2004/18/EC [2014] OJ L 94/65; Federal Acquisition Regulation (US) 48 CFR § 9400 (2020); World Bank, *Procurement Regulations for Investment Project Financing Borrowers* (2nd rev ed, August 2018).

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- Implement political donation restrictions on firms eligible for contracts to provide services or functions to the public on behalf of the government; and
- Eliminate the use of commercial-in-confidence provisions in government contracts by requiring tenders to prohibit their inclusion unless there is unassailable, independent advice provided to government proving that such measures are necessary.

Conclusion

Our gutted public sector, and overreliance on private consultants to fill the gaps, is not a little problem. It is a big problem. The Albanese Government will shortly be handing down the federal budget, and not everyone can be a winner. But you don't need to be a private consultant on a six-figure salary (plus extras) to suggest that pouring more money into the opaque pockets of big business, while Australians struggle with the daily cost of living, would not be a sustainable solution to this problem.

Australians deserve to know that the public services they rely on are being delivered efficiently, fairly, with best value for taxpayers' money, and without conflicts of interest that could compromise policy and service delivery or put private interest about the public's interest.

Per Capita looks forward to the outcome of this inquiry and thanks the members of the Senate Finance and Public Administration References Committee for their consideration of this submission.