



T H E M C K E L L I N S T I T U T E

Submission to the Commonwealth Parliamentary Joint Committee on Corporations and Financial Services' Inquiry into Ethics and Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry

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About the McKell Institute

The McKell Institute is an independent, not-for-profit research organisation dedicated to advancing practical policy solutions to contemporary issues.

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Acknowledgement of Country

This report was written on the lands of the Wurundjeri people of the Kulin nations. The McKell Institute acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Owners of Country throughout Australia and their continuing connection to both their land and seas.

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Committee Secretary

Parliamentary Joint Committee on Corporations and Financial Services

Parliament House

Canberra ACT

Dear Secretary

The McKell Institute thanks you for the invitation to submit to the inquiry *Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry*.

Established in 2011, the McKell Institute is a research institute dedicated to providing practical and progressive solutions to Australia's greatest policy challenges. Our forward-thinking research brings together expertise from academia, industry, civil society and government.

Our submission addresses the explicit Terms of Reference 1(c), 2(d)–(e), 2(h), 3(a) and, mainly, 4.

We first outline the endemic embeddedness of consulting firms in Australian public administration, and find that, especially since 2013, use of external consultants has risen considerably.

Our submission then details how this has influenced Australian governance, accountability mechanisms, and institutional quality – particularly when such firms are engaged for core public service work. Consulting firms are not subject to the same obligations or incentives as APS staff, operate with a different ethos, and produce work which remains difficult for the public to access.

We conclude with a suite of recommendations including changes to procurement practices, embedding public service values in contractual engagements, limiting the application of freedom of information exceptions, instituting caps on departmental spending on consultants, and imposing more stringent disclosure and loyalty obligations.

Those working for the Commonwealth must be responsive, accountable, and cost efficient – including private contractors. Reform is needed to ensure this outcome.

We thank you for considering our submission and would welcome any opportunity to present our findings to the Committee.

Sincerely,

Edward Cavanough

CEO, McKell Institute

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Key Findings

1. The past decade has seen Australia become **the most dependent country on external consultants for government work in the developed world**. Total contract value at only six consulting firms grew **545 per cent** between 2013 and 2022.
2. For core public service work, the total contract value grew **1118 per cent** between 2013 and 2022.
3. This ‘privatisation by stealth’ is largely attributable to the APS staffing level caps imposed by the Coalition Government in 2015-16. After accounting for the privatised workforce, the public service is in fact **37 per cent larger** than previously estimated.
4. Private consultants are not subject to the same obligations as public servants. They are not bound by the APS Code of Conduct, their work is not subject to freedom of information requests, and they are incentivised to tell senior executives and ministers what they want to hear, rather than give frank and fearless advice. These jointly serve to **undermine accountability mechanisms** which are fundamental to Australia’s Westminster system of government.
5. Overreliance on consultants corrodes the APS’ institutional memory and core policy making capacities. There is a cycle in which outsourcing leads to diminished APS capability and more outsourcing. Ultimately, there is a ‘privatisation’ of public knowledge, and **no structural incentive** for consulting firms to share such knowledge with their biggest client.
6. Private consulting firms are understandably loyal to profit. They are incentivised to tailor advice to maximise the chance of new business or supplementary work not subject to the ordinary tender processes. Some partners are known to **charge up to \$16,000 per day**, an arrangement which is fiscally irresponsible and does not always represent value for money.
7. The Government’s attempts to reinvigorate the APS since its election in May 2022 are commendable, but there is room for **further reform to the institutional architecture and regulatory framework** to achieve better outcomes in the long run.
8. The NSW Government’s pricing cap on external consultants could be replicated at a Commonwealth level. Doing so would achieve considerable savings for taxpayers. If the Commonwealth had applied NSW’s price cap on consultants over the 2017-18 to 2021-22 period, for example, it would have saved **\$836.6 million**.

Recommendations

Recommendation 1: The Parliament should pass binding guidelines on when use of external consultants for core public service work is allowable. These guidelines should be enforced and overseen by the Australian Public Service Commissioner.

Recommendation 2: Based on significant savings on outsourcing between the 2021-22 and 2022-23 financial years, the Commonwealth should make greater contributions to the APS Capability Reinvestment Fund. The Parliament should also enshrine the recently announced 'in-house consulting service' in law.

Recommendation 3: The APS Values should be embedded in all externally provided policy advisory service contracts.

Recommendation 4: The exemptions for business and commercial information ('commercial-in-confidence exemptions') in the *Freedom of Information Act 1982 (Cth)* ss 47, 47G ('FOI Act') should be limited in their application to private firms performing core public service functions.

Recommendation 5: Following New South Wales, the Commonwealth Procurement Rules should prescribe daily price caps on individual consultants. Commonwealth government departments should also, subject to limited exceptions, face caps on their annual external consultant budget.

Recommendation 6: The Commonwealth should maintain and proactively publish department-level statistics on the use of external labour and consultants.

Recommendation 7: For highly sensitive external advisory engagements, the Commonwealth should contractually impose fiduciary obligations on consultants for the duration of the engagement.

Recommendation 8: The Commonwealth procurement rules should require that, during the tender process, consulting firms disclose other engagements which could give rise to the reality or perception of a conflict of interest. This should be complemented by an ongoing disclosure obligation throughout the duration of the contract.

1. The rising use of external consultants between 2013-2020

This submission examines the ways in which the Commonwealth has come to engage external advisors in recent years, the extent to which this has occurred, its effects on APS capacity, and how a series of reforms can address this dynamic.

This submission notes that the Committee is convening during a period of heightened scrutiny on the relationship between external consulting firms and the Commonwealth.

Revelations that individuals working for major consulting and auditing firm PwC inappropriately divulged information about proposed Commonwealth multinational tax avoidance laws, and *sold* such information for a profit to clients, have raised fundamental questions about the relationship between consultancy firms and the executive government.¹

The McKell Institute believes that external consulting firms play an important role in the public policy debate and are at times genuinely required by government to augment existing APS capacity through the provision of highly specialised skills.

But, as this submission notes, there has been an unsustainable growth in Commonwealth expenditure on such external advice, which warrants debate, reform, and regulation.

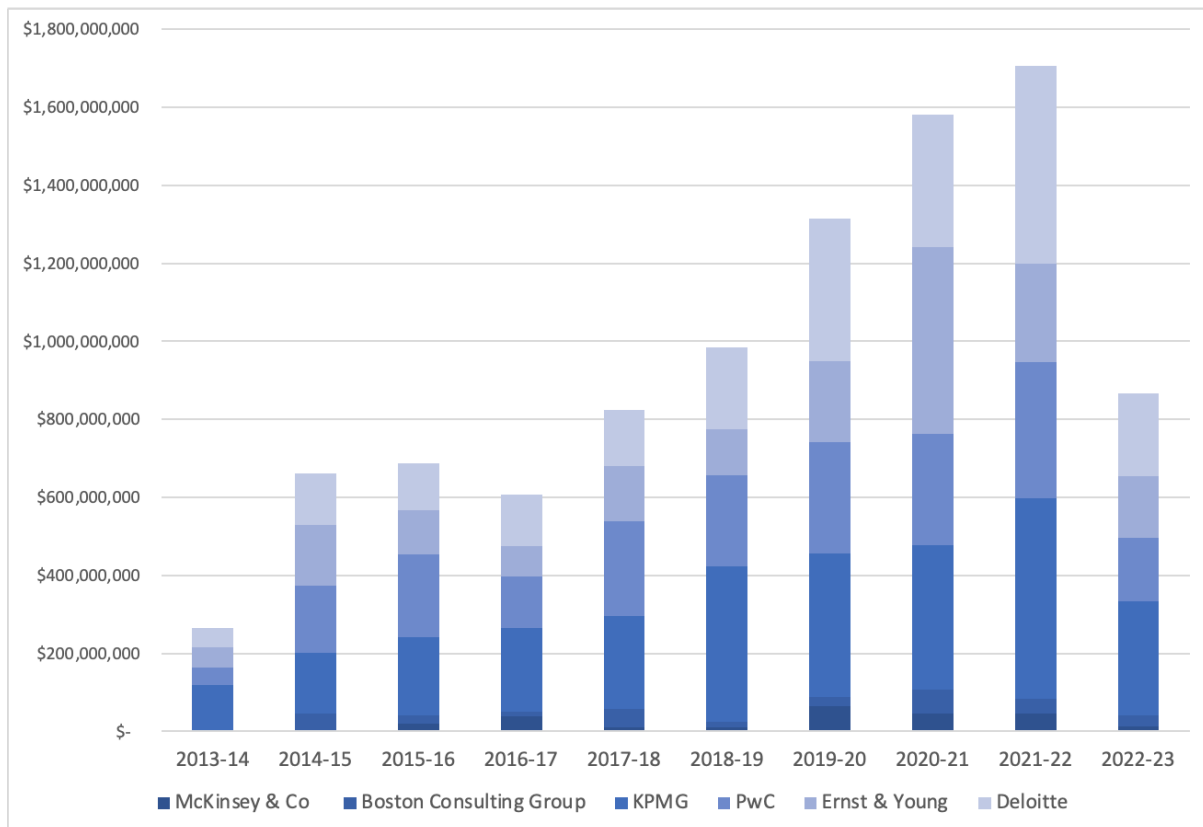
Value of external consulting contracts rose between 2013-2022

For the decade spanning 2013-2022, the use of external advisors, who aren't subject to the same degree of oversight and accountability as the public service is, became embedded in Australian public administration.

As this submission notes, this trend has had adverse consequences for the quality of public administration in Australia.

Between the election of the Abbott government at the beginning of the 2013-14 financial year and defeat of the Morrison government at the end of the 2021-22 financial year, spending on six of the largest consulting firms alone increased from \$264.5 million to a peak of \$1.706 billion – an increase of **545 per cent** (see Figure 1).

Figure 1: Total value of contracts awarded at six major consulting firms: 2013-14 – 2022-23 (Inflation-adjusted 2022-23 dollars)²

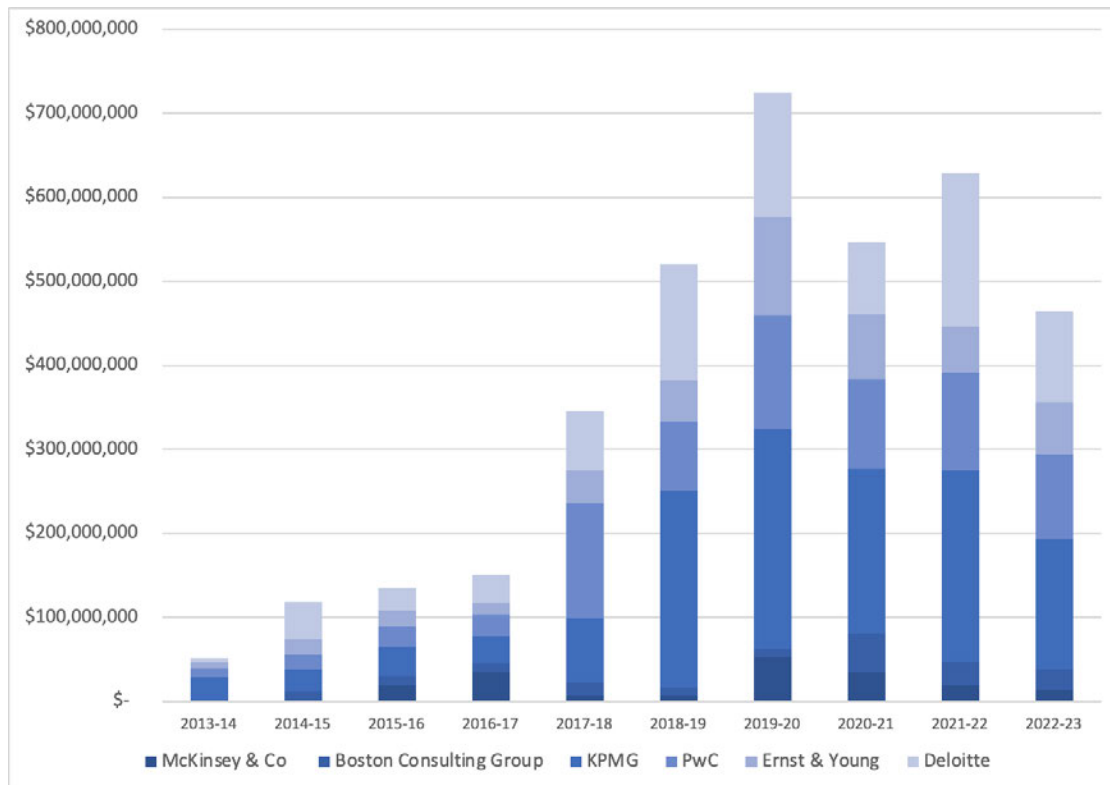


The sharp rise in 2020-2021 can be largely explained by the onset of the COVID-19 pandemic. But the increase in spending brought about by the pandemic only hastened what had already been an observable increase in the reliance on external consultants in the years preceding the pandemic.

The Department of Finance tracks a budget item known as ‘management advisory services’, which includes services such as ‘policy development and analysis’, ‘project development and design’, ‘strategic procurement advice’ and ‘research and data collection’.³ These are part and parcel of the work which traditionally is, and ought to be, done by the APS.

Between the election of the Coalition in 2013-14 and their defeat in 2021-22, spending on this budget item increased from \$51.6 million to \$628.6 million – an increase of **1118 per cent**. Between 2013-14 and the peak spend of \$724.6 million in 2019-20, spending on this budget item increased by **1304 per cent**.

Figure 2: Value of ‘management advisory services’ contracts awarded at six major consulting firms: 2013-14 – 2022-23 (Inflation-adjusted 2022-23 dollars)



Introduction of ‘staffing level cap’ arguably led to excessive outsourcing

The exponential increase in the use of external consultancy firms coincided with the introduction of the average staffing level cap (‘ASL cap’) in the 2015-16 budget, which sought to keep the number of public servants at or below the 2006-07 staffing level.⁴

This was a crucial and causal factor in the increased use of external consulting firms. Indeed, some have even argued this trend to be a privatisation of the APS ‘by stealth’.⁵

David Thodey’s 2019 *Independent Review of the Australian Public Service* (‘the Thodey Review’) noted that the ASL cap made it ‘difficult [for the APS] to maintain long-term strategic policy functions’ and noted that ‘spending on contractors and consultants has significantly increased while spending on APS employee expenses has remained steady’.⁶

The ASL cap concealed the reality that an increasing amount of core public service work was simply being transferred to a privatised, less accountable and more costly workforce, all in the supposed pursuit of ‘maintaining affordable staffing levels’.⁷ Under the Coalition government of 2013-2022, agencies were expected to apply for exemptions if they wanted to hire additional staff,⁸ but no exemption was required to contract out to external providers.

The recent Commonwealth government audit of employment reveals the extent to which consultancy firms, and private contractors more generally, have become a crucial part of the day-to-day functioning of government.

It found that in 2021-22, for 112 government entities, there were 144,271 public servants employed under the *Public Service Act 1999* (Cth), but there were also 53,911 full-time equivalent staff employed under external labour contracts.⁹

The government workforce was *37 per cent larger* once external labour was accounted for, with *one in four* dollars spent by agencies for all departmental purposes being on external labour.¹⁰

Of course, not all of this increase was spending on ‘consultants’ as defined by the audit,¹¹ but it revealed the extent to which external advisers and service providers had embedded themselves in workings of the Commonwealth government.

Australia’s reliance on external advice unique amongst advanced democracies

The Commonwealth’s dependence on outsourced advisory services is unique among comparable democracies. In a comparative study of policy advisory systems in Australia, New Zealand, Britain and Canada, Jonathan Craft and John Halligan have contended that Australia ‘arguably has had the heaviest reliance on consultants for policy advisory work’ in the world.¹² Indeed, while having the world’s thirteenth largest economy, Australia maintains the fourth largest consulting sector.¹³

While there is no doubt that consulting firms have a proper and valuable place in the policy environment,¹⁴ an overreliance on external firms by the APS has significant ramifications for the accountability, values and culture of those that perform routine APS work; the institutional memory and capacity of the APS; as well as the government’s bottom line.

2. Why an over-reliance on external advice can undermine the APS and government policymaking

The overuse of consultancy firms for routine advisory work can have negative impacts on the quality of public administration. The provision of ‘frank and fearless’ advice by an impartial public service is ‘one of the key characteristics of a properly functioning Westminster democracy’.¹⁵ The hiring of external advisers allows Ministers and increasingly politicised departmental senior executives to bury advice they disagree with or do not wish to see.¹⁶ Unlike advice given by the APS, advice from consultancy firms will often be ‘commercial-in-confidence’ and thus inaccessible to the public via freedom of information requests.¹⁷

Consulting firms’ main interest is, understandably, maximising their company’s revenue. This creates the risk that, in order to win more work, firms will give ‘the advice you want rather than the advice that perhaps should be given’.¹⁸ Firms are incentivised to support more and more outsourcing of core APS work to support their revenue, and therefore ‘[b]y their nature ... are poorly placed to advise governments to reserve the process of which they are part’.¹⁹

Furthermore, APS staff are bound by the APS Code of Conduct enshrined in the *Public Service Act 1999* (Cth).²⁰ The APS Code of Conduct requires that APS staff act subscribe to the ‘APS Values’ and be committed to service, ethical, respectful, accountable, and impartial.²¹ Private firms contracting with government, on the other hand, owe no such express obligations to government clients.

The joint effect of these is to undermine foundational mechanisms of accountability and APS values. Ministers need impartial advice, accessible to the public, from a professional and permanent APS given without fear or favour. An unhealthy reliance on private consulting firms rather than the APS risks the creation of a ‘yes-man’ culture in which ministers and secretaries first come to conclusions, then seek advice to justify them from private sector actors with an ‘ethos vastly different’ to that of the APS, whose work they can shield from public view.²²

An over-reliance on external advice can undermine institutional memory and capacity within the public service

Institutional memory is valuable. A strong and capable public service can leverage historical perspective when facing new challenges.²³ A culture of outsourcing has meant that

‘[m]emories that were once held close in government departments have instead become shared, iteratively dispersed through both public and private sector networks of actors’.²⁴

In the Australian context, Ken Henry, former Secretary of the Treasury Department noted as early as 2015 that while many departments have lost the capacity to develop policy, they have also ‘lost their memory’.²⁵

In recent years, external firms have been hired by government to advise on issues as diverse as pandemic preparedness and climate change, refugee resettlement and defence policy — projects which furthered the development of expertise in these critical fields within the private sector, rather than within the APS.

This ‘privatisation of public knowledge’ can create unsustainable and overly dependent relationships between government and consulting firms.²⁶

The Thodey Review noted that there had been a serious decline in APS capacity in all key areas of responsibility, with Ministers, scholars and practitioners alike harbouring ‘serious questions (and doubt) about the APS’s capacity to support policy decision-making’.²⁷ The Review *expressly cited* outsourcing to labour contractors and consultants as one of the four main reasons for this decline in capability.²⁸

An over-reliance on external consultants is expensive and not always value-for-money

Outsourcing is often extremely expensive. As the data in Part 1 shows, the Commonwealth government spent over \$1.7 billion on only six consulting firms in 2021-22.

This upfront cost to the taxpayer also cannot be measured without the concomitant cost of the decline in public sector capacity.

With some senior consultants charging the Commonwealth up to \$16,000 per day,²⁹ the upfront and long-term costs of disproportionate outsourcing should not be overlooked.

External consultants may be pursuing objectives in direct conflict with government policy priorities

There is a fundamental conflict between external consultants’ financial interest in winning more work, and their apparent obligation to provide impartial advice.

But external consultants are often subject to more pernicious and direct conflicts of interest between their own clients' best interests.

The PwC example is illustrative. The Commonwealth government sought advice on how to maximise tax revenue from multinational corporations, and multinational corporations sought advice on how to minimise their revenue paid to the Commonwealth from *the same firm*.

In a similar vein, it was recently revealed that the NSW government had engaged external consultants to advise on gas policy, while the same firm was providing external assurance services for a large gas company.³⁰

It is not difficult to see how such conflicts can undermine both the *perception* and the *actual quality* of external advice given to government in pursuit of their policy objectives. This is particularly pronounced in Australia as reporting of conflicts of interests 'is limited to self-reporting and self-regulation'.³¹

As long as external consultants are not prohibited from advising private firms with 'skin in the game' while advising governments on relevant policy matters, there is an inherent risk that the quality and impartiality of advice, and therefore governance, will suffer.

3. Recent data reveals a decline in the use of external labour

Data reveals that the new Labor Government is meeting its pre-election commitment to use fewer external consultants than its predecessors. After a decade of growth in outsourcing, the newly elected Labor government has so far fulfilled its election promise to reinvigorate the APS and reduce unnecessary spending.

AusTender data released for 2022-23 shows that, compared to 2021-22, total contract value to the six of Australia's largest consulting firms fell by **almost 50 per cent** from \$1.706 billion in \$866.5 million – a saving of \$840 million.

Similarly, spending on management advisory services at the same six firms fell by almost **36 per cent** between the 2019-20 peak and 2022-23.

This is complemented by a long-term commitment to reducing spending on consultants by \$3 billion over the period to 2026-27.³²

The government has also committed to in effect abolishing the arbitrary ASL cap by hiring over 10,000 new public servants in 2023-24 to 'ensure critical government services are effectively delivered and election commitments are implemented'.³³

While these measures are laudable, further reforms should be considered. Lasting change requires changes to the institutional architecture along with appropriate regulatory safeguards to ensure that APS capability is rebuilt and maintained over the long term, and that consultants are engaged only when it is economical and necessary to do so.

While the Thodey Review acknowledged 'there is no silver bullet' in rebuilding APS capability and that the task will take a 'concerted and coordinated effort' from all involved,³⁴ we believe that the following eight recommendations are readily implementable and would go some way to rebalancing the relationship between government, the APS, and external consultants.

4. Recommendations

This submission proposes eight recommendations the McKell Institute believes the Commonwealth should consider.

- 1. The Commonwealth should consider binding engagement guidelines overseen by the Australian Public Service Commission that should be considered prior to the commissioning of external advice.**

The Commonwealth Procurement Rules provide baseline ‘rules of engagement’, but they are maladapted to the complexities of engaging external policy advisers.³⁵ The Commonwealth Parliament should pass binding guidelines which require that, before external consultants are engaged for *core public service* functions:

- (1) There is a shortage of appropriately skilled in-house staff; and
- (2) There is a demonstrated and acute need to engage external consultants.

If external consultants are engaged for *core public service functions*, secretaries and other senior executives should be required to answer:

- (1) Why there are no appropriately skilled in-house staff; and
- (2) What is being done to ensure that *there will be* appropriately skilled in-house staff.

Unlike under the previous Coalition government, engagement of consultants for policy work should be the exception rather than the rule. Similar non-binding guidelines exist in Queensland,³⁶ and administratively binding guidelines exist in Victoria – though the only obligation imposed is that the relevant agency head must write to the Secretary of the Department of Premier and Cabinet.³⁷

Particularly as the Commonwealth re-emerges from a period of extreme spending and overreliance on external consultants, proposed Commonwealth guidelines should be independently overseen and enforced by the Australian Public Service Commissioner.

2. The Commonwealth should consider making greater contributions to the recently announced APS Capability Reinvestment Fund, and consider statutory enshrinement of the Commonwealth ‘in-house consulting service’.

The October Budget announced a \$25 million ‘APS Capability Reinvestment Fund’ (‘the Fund’). This is not enough. The 2019 Thodey Review made clear that APS policy capability is moribund. \$25 million is a drop in the water given the Commonwealth cut \$840 million on spending at six firms between 2021-22 and 2022-23. A much larger proportion of those savings should be redeployed into investing directly in APS capability.

Only \$10.9 million of the Fund was allocated for the creation of an ‘in-house consulting service within the Department of the Prime Minister and Cabinet that can deliver high-quality strategic consulting services to the APS’.³⁸ Again, within the context of recent savings through cutting spending on external labour, this figure should be greatly increased. To do any less would be to ignore David Thodey’s call to ‘maintain and invest in core in-house capabilities’ over the long term.

Further, the ‘in-house consulting’ service should be more than a mere budget item following the government of the day. For its long-term protection, it should be enshrined in legislation. Rebuilding the APS requires no less than that successive governments of both stripes make conscious long-term commitments and investments in rebuilding in-house capability.

3. The Commonwealth should ensure that the APS Values are contractually embedded for all externally provided policy advisory services

APS work can only be completed effectively in accordance with the APS values. Recent scandals are illustrative of the fact that consulting firms can operate with an ethos vastly different from that of the APS.

While seemingly symbolic, contractually embedding the APS values into relevant external engagements would oblige consultants to act in an impartial, respectful, ethical, and service-focused manner. It may also provide an additional civil avenue for court relief in cases such as the PwC tax scandal, particularly as it remains unclear whether Australian criminal law is sufficient.³⁹

4. The Commonwealth should consider amendments to Freedom of Information laws, designed to limit exemptions from FOI laws that external advisers performing ‘public functions’ are routinely granted.

The *FOI Act* is the legislative centrepiece of the Commonwealth freedom of information regime. It seeks to provide a ‘right of access’ to government documents,⁴⁰ and intends to ‘promote Australia’s representative democracy’ by ‘increasing scrutiny, discussion comment and review of the Government’s activities’.⁴¹ The default position is that all Government information, as a ‘national resource’, should be available to the public on demand.

However, there are several supposedly narrow, well-defined and recognised exceptions to the regime. These include an unconditional exemption for documents containing ‘commercially valuable information’,⁴² and a conditional exemption for business-related documents.⁴³ These are often collectively referred to as ‘commercial-in-confidence’ exemptions.

Executive government agencies engaging consulting firms have historically been able to use and abuse these exemptions to avoid media scrutiny.⁴⁴ Public servants, often performing the exact same work, cannot use the same exceptions. This double-standard obfuscates the relationships of accountability which underpin Australia’s Westminster system of government. As information becomes harder to access, it becomes more difficult to ascertain where decisions are *really* being made and for the electorate to hold their representatives accountable.

Alan Barton has noted, ‘[p]ublicly available information and acceptance by government of the responsibility for accountability are ... the lubricants which enable the democratic system to function successfully over the long term’.⁴⁵ On the use of exemptions, Barton concluded:

[T]he use of [commercial-in-confidence exemptions] **undermines the operation of a democratic government** through imposing a **veil of secrecy** on its activities and how it can prevent “the invisible hand” from working to facilitate efficiency of operations. The “secret state” ... enables ministers and the government to **avoid their accountability responsibilities** to parliament and the electorate. Accountability in public sector operations must be protected from abuse by ministers and governments because it lies at the core of the democratic system of governance and it is essential for the long-term success of the system. **The widespread use of [commercial-in-confidence exemptions] for outsourced activities is incompatible with democracy and with**

efficiency of operations and it should be banned in the public sector in all those situations where it cannot be justified on legal grounds. Information plays an important role in the successful operation of both private and public sector goods markets.⁴⁶

If external consultants are performing core public service functions, their outputs should not be exempt from public view under the veil of ‘commercial-in-confidence’. **Accordingly, the FOI Act should be amended to ensure that the exemptions in ss 47 and 47G do not apply to private firms exercising core public service functions.** The ambit of these ‘core public service functions’ may be difficult to circumscribe and should be a matter for parliamentary deliberation.

5. The Commonwealth should consider implementing daily price caps on individual consultants, and annual caps for department spending, comparable to the model seen in New South Wales.

No external consultant, however good, should be charging \$16,000 per day for policy advice.⁴⁷ The New South Wales ‘Standard Commercial Framework’ outlines applicable daily caps for external consultants.⁴⁸ While the current rate is not publicly available, the relevant cap was \$4,000 per day in 2019. A 2023 Auditor-General report found that the capped rates system had saved the government \$150 million between 2017-18 and 2021-22. With \$1 billion spent on consultants over that period, this equated to a saving of roughly 13 per cent.⁴⁹

A 15 per cent saving on Commonwealth spending at Australia’s six largest external consulting and auditing firms over the same period would have equated to a **saving of \$836.6 million – 33 times larger** than the budgeted APS Capability Reinvestment fund.

This should be complemented by annual caps for department spending on external consultants. Within the context of the above recommendations, this cap could also serve as a quasi-budget in which departments could intentionally seek out external consultants to fill skill gaps and facilitate knowledge transfer between consultants and the APS.

6. The Commonwealth should maintain and proactively publish department-level statistics on the use of external labour and consultants.

The fact that a Commonwealth-wide bespoke audit of employment was required to understand the extent to which external labour and consultants were being used in the public service is striking.

While real-time AusTender data is useful in understanding use of external consultants, it is simply not granular enough to provide a clear picture of what is happening on the ground.

To provide greater transparency and to allow for greater public scrutiny, **external labour data should be actively reported by departments and published by the Department of Finance** each year.

- 7. For highly sensitive external advisory engagements, the Commonwealth should contractually impose fiduciary obligations on consultants for the duration of the engagement.**

Fiduciary obligations are equitable obligations which may be imposed contractually. Generally, fiduciary obligations impose the following:

1. An obligation not to **permit a conflict, or a potential conflict**, between the duties to the client and the fiduciary's personal interest;
2. An obligation not to permit a **conflict of interest between clients** of the fiduciary; and
3. An obligation not to make an **unauthorised profit** at expense of the client.⁵⁰

While these duties can be highly onerous for the party performing them, they ensure that the fiduciary acts *in the best interests* of their client. Such relationships are frequently observed, and often required, between financial advisers and their clients, and solicitors and their clients.⁵¹

Given the potentially disastrous consequences for policymaking if external consultants are allowed to maintain (or even exploit) conflicts of interest, it is difficult to see why such standards should not be imposed on the relationship between governments and external consultants, at least for highly sensitive or consequential engagements.

- 8. The Commonwealth Procurement Rules should require that, during the tender process, consulting firms disclose other engagements which could give rise to the reality or perception of a conflict of interest. This should be complemented by an ongoing disclosure obligation throughout the duration of the contract.**

There are no externally imposed conflict of interest disclosure obligations for external consultants bidding for Commonwealth work. If engaging external consultants, the Commonwealth should have a clear understanding of the risks associated with the engagement before committing significant sums of taxpayer money.

Accordingly, the Commonwealth Procurement Rules should be amended to require that external consultants disclose during the tender process any other current engagements which may give rise to the reality or perception of a conflict of interest. This obligation should extend to all business lines including consulting, tax, and assurance.

If a firm is selected to provide advice, that firm should be subject to ongoing conflict of interest disclosure obligations to the Commonwealth for the duration of the engagement.

Conclusion

External advice can play an important and ongoing role in modern Australian government and public policy more broadly.

However, recent scandals have illustrated that those who perform public work will not always act in the public interest, unless better regulations are in place.

This submission has noted that various consequences on public administration resulting from recent trends in the use of external consulting firms and advice by the Commonwealth.

It contended that the rise in outsourcing has had numerous negative effects on the capacity of the APS, on public administration more broadly, and has come at a considerable cost to taxpayers.

The current government has taken meaningful steps towards bolstering the public service and limiting the amount of outsourcing. However, as this submission has contended, there are still more levers that the government can pull to ensure external advice is used sparingly, ethically, transparently, and affordably.

References

¹ Finance and Public Administration References Committee, Parliament of Australia, *PwC: A calculated breach of trust* (Report, June 2023) 1–13 [1.1]–[1.70].

² Data Source: AusTender <<https://www.tenders.gov.au/>>.

³ 'Scope of Services: Management Advisory Services Panel', *Australian Government Department of Finance* (Web Page, 11 October 2022) <<https://www.finance.gov.au/government/procurement/whole-australian-government-procurement/management-advisory-services-panel/scope-services>>.

⁴ *Budget 2016-17*, 'Budget Paper No. 4: Agency Resourcing' 132.

⁵ Community and Public Sector Union, Submission No 24 to Senate Standing Committees on Finance and Public Administration, *The Current Capability of the Australian Public Service (APS)* (February 2021) 9.

⁶ David Thodey, *Our Public Service, Our Future: Independent Review of the Australian Public Service* (Final Report, 20 September 2019) 185.

⁷ *Budget 2016-17*, 'Budget Paper No. 4: Agency Resourcing' 132.

⁸ Evidence to Finance and Public Administration Legislation Committee, Parliament of Australia, Canberra, 3 March 2020, 89 (Senator Cormann).

⁹ Australian Government, Department of Finance, *The Australian Government's report on the Audit of Employment* (Report, May 2023) 3.

¹⁰ Ibid.

¹¹ See *ibid* 11.

¹² Jonathan Craft and John Halligan, *Advising Governments in the Westminster Tradition: Policy Advisory Systems in Australia, Britain, Canada and New Zealand* (Cambridge University Press, 2020) 185.

¹³ 'Australia's consulting market punching above its weight', *Consultancy.com.au* (online, 23 March 2020) <<https://www.consultancy.com.au/news/1802/australias-consulting-market-punching-above-its-weight>>.

¹⁴ See, eg, Denis Saint-Martin, 'Governments and Management Consultants: Supply, Demand and Effectiveness' in Timothy Clark and Mathias Kipping (eds), *The Oxford Handbook of Management Consulting* (Oxford University Press, 2012) 447.

¹⁵ Senate Standing Committee on Finance and Public Administration, Parliament of Australia, *APS Inc: undermining public sector capability and performance* (Final Report, November 2021) 91 [5.59].

¹⁶ See, eg, Richard Mulgan, 'Politicisation of Senior Appointments in the Australian Public Service' (2008) 57(3) *Australian Journal of Public Administration* 3.

¹⁷ *Freedom of Information Act 1982* (Cth) ss 47, 47G.

¹⁸ Evidence to Senate Standing Committee on Finance and Public Administration, Parliament of Australia, Canberra, 6 August 2021, 8 (Ms Melissa Donnelly).

¹⁹ John Quiggin, 'Dismembering government', *The Monthly* (online, September 2021) <<https://www.themonthly.com.au/issue/2021/september/1630418400/john-quiggin/dismembering-government#mnt>>.

²⁰ *Public Service Act 1999* (Cth) s 13.

²¹ Ibid s 10.

²² See, eg, Bernard Keane, 'Brendan Lyon exposes the rotten world of high-stakes consulting', *The Mandarin* (online, 9 November 2021) <<https://www.themandarin.com.au/174587-brendan-lyon-exposes-the-rotten-world-of-high-stakes-consulting/>>.

²³ Suzannah Brecknell, "'History repeats itself' – ex-Treasury boss Nick Macpherson on why institutional memory matters", *Civil Service World* (online, 30 September 2016) <<https://www.civilserviceworld.com/in-depth/article/history-repeats-itself-extreasury-boss-nick-macpherson-on-why-institutional-memory-matters>>.

²⁴ 'Institutional Memory: we need a more dynamic understanding of the way institutions remember', *ANZSOG* (online, 25 February 2018) <<https://anzsog.edu.au/news/institutional-memory-we-need-a-more-dynamic-understanding-of-the-way-institutions-remember/>>.

²⁵ Laura Tingle, 'Political Amnesia: How We Forgot To Govern', *Quarterly Essay* (Quarterly Essay 60, December 2015) 29.

²⁶ Matti Ylönen and Hanna Kuusela, 'Consultocracy and its discontents: A critical typology and a call for a research agenda' (2018) 32(2) *Governance* 241, 242.

²⁷ David Thodey, *Our Public Service, Our Future: Independent Review of the Australian Public Service* (Final Report, 20 September 2019) 183.

²⁸ Ibid 185.

²⁹ Edmund Tadros and Tom McIlroy, 'Revealed: McKinsey partners charge \$16,000 a day (before discounts)', *Australian Financial Review* (online, 9 August 2019) <<https://www.afr.com/politics/federal/revealed-mckinsey-partners-charge-16-000-a-day-before-discounts-20190808-p52f2a>>.

³⁰ Henry Belot, 'Consulting firm EY worked for gas giant Santos while advising NSW on gas policy', *The Guardian* (online, 9 August 2023) <<https://www.theguardian.com/australia-news/2023/aug/09/ey-worked-for-santos-while-assisting-nsw-policy-that-greenlit-gas-giants-narrabri-project>>.

³¹ James Guthrie, Jane Andrew and Erin Twyford, 'Powerful firms that put the "con" into consulting', *University of Sydney News* (online, 22 August 2023) <<https://www.sydney.edu.au/news-opinion/news/2023/08/22/powerful-firms-that-put-the-con-into-consulting.html>>.

³² Ronald Mizen, 'Big four in firing line for \$1.6b cuts to consultants, lawyers', *Australian Financial Review* (online, 18 July 2023) <<https://www.afr.com/politics/federal/big-four-in-firing-line-for-1-6b-cuts-to-consultants-lawyers-20230718-p5dp37>>.

³³ *Budget 2023-24*, 'Budget Paper No. 4: Agency Resourcing' 153.

³⁴ David Thodey, *Our Public Service, Our Future: Independent Review of the Australian Public Service* (Final Report, 20 September 2019) 187.

³⁵ 'Commonwealth Procurement Rules', *Australian Government Department of Finance* (Web Page, 13 June 2023) <<https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>>.

³⁶ See 'Queensland Government Policy on Contracting-out of Services', *Department of the Premier and Cabinet* (16 January 2016) <https://www.forgov.qld.gov.au/data/assets/pdf_file/0021/187221/contracting-out-of-services-policy_1.pdf>.

³⁷ 'Administrative Guidelines on Engaging Professional Services in the Victorian Public Service', *Department of Premier and Cabinet* (2019/02) <<https://www.vic.gov.au/administrative-guidelines-engaging-professional-services-victorian-public-service>>.

³⁸ *Budget 2023-24*, 'Budget Paper No. 2: Budget Measures' 189.

³⁹ Colin Kruger, 'AFP commences criminal investigation into PwC tax scandal', *The Sydney Morning Herald* (25 May 2023) <<https://www.smh.com.au/business/the-economy/pwc-tax-scandal-referred-to-afp-for-criminal-investigation-20230524-p5db1t.html>>.

⁴⁰ *Freedom of Information Act 1982* (Cth) s 3(1)(b).

⁴¹ *Ibid* s 3(2)(b).

⁴² *Ibid* s 47.

⁴³ *Ibid* s 47G.

⁴⁴ See, eg, Karen Middleton, 'Exclusive: 26.8 million doses of Covid-19 vaccine wasted', *The Saturday Paper* (online, 17 February 2023) <<https://www.thesaturdaypaper.com.au/news/health/2023/02/11/exclusive-268-million-doses-covid-19-vaccine-wasted#hrd>>; Alan Kohler, 'Alan Kohler: The extraordinary delusion and madness of consultants', *The New Daily* (online 10 August 2023) <<https://thenewdaily.com.au/news/politics/australian-politics/2023/08/10/alan-kohler-consultants-royal-commission/>>; Thomas Kelsall, 'Not telling: Unis won't name business case consultants', *InDaily* (online, 7 July 2023) <<https://indaily.com.au/news/2023/07/07/not-telling-unis-wont-name-business-case-consultants/>>; Paige Cockburn, 'Deloitte CEO tells Senate committee integrity of his work is not worth his \$3.5m salary', *ABS News* (online, 17 July 2023) <<https://www.abc.net.au/news/2023-07-17/deloitte-ceo-fronts-senate-committee-into-integrity/102610116>>.

⁴⁵ Allan D Barton, 'Public sector accountability and commercial-in-confidence outsourcing contracts' (2006) 19(2) *Accounting, Auditing & Accountability Journal* 256, 260.

⁴⁶ *Ibid* 268–9 (emphasis added) (citations omitted).

⁴⁷ Tom McIlroy and Edmund Tadros, 'McKinsey daily partner rate of \$16,000 "excessive"', *Australian Financial Review* (online, 9 August 2019) <<https://www.afr.com/politics/federal/mckinsey-daily-partner-rate-of-16-000-excessive-20190808-p52fba>>.

⁴⁸ 'P&MS Scheme standard commercial framework – guidance for buyers', *NSW Government* (Web Page, 28 July 2023) <<https://info.buy.nsw.gov.au/resources/pms-standard-commercial-framework-guidance-for-buyers>>.

⁴⁹ Audit Office of New South Wales, *Performance Audit: NSW government agencies' use of consultants* (Report, 2 March 2023) 4.

⁵⁰ MW Bryan, VJ Vann and S Barkehall Thomas, *Equity and Trusts in Australia* (Cambridge University Press, 3rd ed, 2022) 166 [10.31].

⁵¹ See, eg, *Daly v Sydney Stock Exchange* (1986) 160 CLR 371; *Law Society of New South Wales v Harvey* [1976] 2 NSWLR 15.