Building a better working world

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Committee Secretary

Senate Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fpa.sen@aph.gov.au

Dear Committee Secretary,

EY welcomes the opportunity to provide a submission to the Senate Standing Committee on Finance and Public Administration's inquiry into the management and assurance of integrity by consulting services.

The inquiry is an important opportunity to examine the safeguards and mechanisms in place to protect the interests of the Commonwealth when engaging with external service providers, including consultants.

During the Joint Committee on Parliamentary Accounts and Audit's Inquiry based on Auditor-General's Report No.19 (2017-18), EY shared its public support for greater transparency in government contracting and for enhancing knowledge sharing across Commonwealth companies and entities.

EY believes that greater transparency around these engagements is fundamental to ensuring engagements with external service providers are delivering value to the Commonwealth.

The Committee may also want to consider the recent Independent Review of Services Australia and NDIA Procurement and Contracting, and the Independent Reviewer's Report, for recommendations that strengthen the integrity of the engagement and contracting process for external service providers.

Our submission makes six recommendations to support the more effective procurement and management of service providers to government, and we are confident that these actionable suggestions will enhance the transparency and accountability of this procurement.

While not directly addressed in the Terms of Reference, we also believe this is an important opportunity to strengthen the governance framework the Commonwealth uses when conducting confidential policy consultations with subject matter experts, including consultants.

Our submission makes a further two recommendations to address how the Commonwealth can strengthen the governance frameworks for these confidential consultations. We believe that these actionable suggestions will strengthen public confidence in this process, particularly when the Commonwealth is conducting informal policy consultations in sensitive areas such as taxation.

Please do not hesitate to contact us if we can provide any further assistance to the inquiry.

Regards,

Mark Nixon
EY Oceania Government and Public Sector Consulting Leader

Leigh Walker
EY Oceania Risk Management and Independence Leader

Consulting Services Inquiry Submission

20 April 2023

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Introduction

About EY

EY is a global multidisciplinary professional services firm. Our purpose is to build a better working world for our people, our clients and our communities; and the insights and quality services we deliver help build trust and confidence in the capital markets and our institutions and we employ over 9000 Australians.

We believe a better working world is one where economic growth is sustainable and inclusive. We work continuously to improve the quality of all our services by investing in our people, our clients and innovation for ourselves and across all sectors. We are proud of our work with clients and our engagement with stakeholders across Australia and around the world, using our knowledge, skills and experience to help fulfil our purpose and create positive change.

Our values are the fundamental beliefs of our organisation. They guide our actions and behaviours, influence the ways in which we work with each other, and steer the ways in which we serve our clients and engage with our communities.

These values inform the decisions and actions that each one of us makes every day; decisions that directly affect the way we experience each other, as well as the way our clients and wider communities experience us.

Our values

We are people

- Who demonstrate integrity, respect and teaming.
- Have the energy, enthusiasm and courage to lead.
- who build relationships based on doing the right thing.

Our Global Code of Conduct is a clear set of ethical business conduct standards that build upon our purpose, values and culture to provide the ethical and behavioural framework on which we provide services to our clients and base our decisions every day.

The code is anchored in our values and beliefs and is embedded in our policies and procedures.

Our procedures, training and compliance approach gives us confidence that we are applying the same principles to help us make these decisions throughout our organisation.

Our services

We support a range of organisations across the economy with audit, tax, consulting services, and as commercial advisors through market segments as varied as finance, mining, government, education, retail and telecommunications.

Through the delivery of these specialist services, we help clients improve their service delivery, their management of risk and to build trust and confidence in their operations. In responding to these needs, we draw on our broad network of specialists in areas such as commercial strategy, digital capability, security, cyber and data.

We know that as an organisation, EY can make the biggest contribution to our communities when we use the distinctive services and competencies we have developed to help address society's toughest challenges.

Some of society's toughest challenges are in the delivery of services to citizens. Our global reach, including work with other national governments, and work with private sector clients, means we are uniquely positioned to leverage our expertise to help governments confront these challenges.

EY is regularly engaged by Commonwealth entities and companies to ensure that citizens are able to access best-in-class products and services across Australia.

We are most often called on for the specialist knowledge and the skills of our staff when governments are seeking assistance to address increasingly complex issues. These issues often require different skill sets, technologies and capabilities to those that exist within government agencies and departments, or which are required to meet probity standards on complex transactions (for example, where EY is appointed as an independent Commercial and Financial Advisor for a large government project).

EY takes a collaborative approach to our work with the public sector, transferring skills and expertise that helps to build capability that lasts long beyond the impact of a single project or deliverable.

This capability building extends across borders, with our teams in Australia drawing on experts from EY's offices across the globe to deliver best-in-class capabilities to Commonwealth entities and companies.

Through this we deliver on our promise of Building a Better Working World by ensuring that citizens are able to access best-in-class services across Australia.

Our approach

We are committed to delivering exceptional quality services and maintaining professional integrity at all times.

These fundamental principles are contained in the EY Global Code of Conduct, the EY Values and form a key component of our strategy, performance management systems, client service mindset, policies, training and internal communications.

These fundamental principles:

- Implement the relevant professional standards, such as the APES 110 Code of Ethics for Professional Accountants issued by the Australian Professional and Ethical Standards Board
- Assist compliance with regulatory and relevant legislative requirements
- Provide a Quality Management System framework for the establishment and review of Quality objectives
- Support the continual improvement and effectiveness of the Quality Management System
- Satisfy client and stakeholder expectations

EY was one of the first professional services firms to be certified under the Quality Standard ISO 9001, having obtained it in 1994, and we proudly continue to hold that certification today.

Our policies implement the relevant professional standard, the APES 110 Code of Ethics, and quality standards of our profession, covering:

- Client acceptance and continuance
- Professional independence
- Conflicts of Interest
- Confidentiality, insider trading and access to working papers
- Personnel policies
- Supervision and review
- Quality of working papers
- Technical referral and consultation
- Quality assurance reviews (both internal and external)
- Physical and digital security

EY maintains a comprehensive quality control approach. To drive the effective implementation of key policies our partners and people complete formal declarations and undergo stringent review processes.

As an ongoing measure of quality every EY partner across our global network is subject to regular quality reviews performed by senior executives independent from the engagement subject to review. Our engagement leaders and/or our offices are also subject to regular reviews as required by our ISO certification, either by our internal Quality Review Teams or the ISO9001 external reviewers. These reviews focus on monitoring compliance with policies and procedures.

EY's response to the Terms of Reference

In responding to the Terms of Reference, we offer eight recommendations for consideration, that would potentially improve procurement transparency and the management of Conflicts of Interest.

These eight are list below and are detailed with the relevant Term of Reference.

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Term of Reference A: The management of Conflicts of Interest by consultants

EY is committed to the effective management of Conflicts of Interest while delivering services to our clients, a commitment that is codified in our comprehensive processes, policies and procedures. The management of Conflicts of interest are a core part of our EY professionals' regular training and enforced by our internal client and engagement acceptance systems and processes and periodic quality review processes.

We are regularly asked to document our approach to the management of Conflicts of Interest by clients, and Commonwealth entities and companies will ask for EY to provide declarations as to potential Conflicts of Interest during the tendering process.

The Commonwealth's tendering and contracting requirements are discussed in more detail in our response to Term of Reference B.

Our policies

Our policies and procedures are drawn from the International Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (IESBA).

The Australian equivalent professional standard, APES 110 Code of Ethics for Professional Accountants, is issued by the Accounting Professional and Ethical Standards Board (APESB).

In Australia, our partners as Members of the Chartered Accountants Australia and New Zealand (CAANZ) must adhere to the APES 110 Code of Ethics and a failure to do so could result in disciplinary proceedings.

The APES 110 Code of Ethics establishes five fundamental principles of ethics to be complied with by all members. These fundamental principles are integrity, objectivity, confidentiality, professional competence and due care, and professional behaviour.

The APES 110 Code of Ethics also includes a conceptual framework that sets out the approach to be taken to identify, evaluate, and address threats to compliance with those fundamental principles.

Upholding the fundamental principles and compliance with the specific requirements of the APES 110 Code of Ethics enables EY as an organisation, and EY professionals as individuals, to effectively identify and manage Conflicts of Interest.

Global Code of Conduct and Conflicts of Interest Global Policy

Compliance with the APES 110 Code of Ethics is embedded in the EY Global Code of Conduct. All EY professionals must comply with this Global Code of Conduct regardless of their role and position, and attest annually to their compliance, reinforcing the critical role of compliance in our organisation.

EY's Conflicts of Interest Global Policy provides specific guidance to enable compliance with the Global Code of Conduct. Our policy implements the standards contained in Section 310 (Conflicts of Interest) of the APES 110 Code of Ethics to ensure that EY does not allow a Conflict of Interest to compromise our professional or business judgement. This policy also forms the basis of EY procedures in relation to the identification, documentation, escalation and management of conflicts of interest at EY.

Under the Conflicts of Interest Global Policy, the primary responsibility for identifying and managing Conflicts of Interest sits with our Engagement Leaders.

Engagement Leaders use the requirements of our Conflicts of Interest Global Policy and procedures which enact these standards, to identify and manage transactional, relational, advocacy, competitive and personal Conflicts of Interest.

The Policy sets out our processes, which are drawn from the APES 110 Code of Ethics, to identify and manage Conflicts of Interest to reduce the threat to our objectivity to an acceptable level.

We often decline client engagements due to the existence of conflicts of interest.

Training

At EY, we seek to equip our people with the right tools and skills to anticipate the capabilities they will need in the future and to embody our comprehensive processes, policies and procedures. We offer a three-part approach to personal and professional development: learning opportunities, stimulating work experiences and transformational coaching.

In Oceania, this involved 282,380 hours of total learning in the 2022 Financial Year, over a full week of learning per full-time employee.

This training includes mandatory Conflicts of Interest Web Based Learning for all employees on commencement with EY. Engagement leaders, including partners, associate partners and senior

managers, are also required to complete dedicated conflicts training every two years as part of a comprehensive engagement leaders' course.

Accountability

EY has a performance management framework that connects our people's career, development and performance.

Adherence to EY's comprehensive policies and procedures to maintain our integrity through effectively managing Conflicts of Interest is mandatory for all staff, and there are strict penalties for non-compliance.

Engagement Leaders are responsible for ensuring that they are effectively identifying and managing Conflicts of Interests as they arise during an engagement, and they face serious financial penalties for breaches for non-compliance.

This accountability is built into our annual partner evaluation process, as these specifically include an annual assessment against an approved framework for Quality and Effective Risk Management metrics (Q&ERM) performance evaluation.

Quality, risk and ethical breaches such as inadequate management of a conflict of interest or other unethical behaviour can result in consequences and sanctions to EY partners. Depending on the nature and severity on the breach, consequences include disciplinary actions, performance evaluation downgrades, financial penalties (a percentage of the partner's income), and exit of the partnership. In our most recent Value Realised Report, we disclosed that in the 2022 Financial Year, three per cent of our partners did not meet the high expectations of our quality and risk management framework.

Potential conflicts

The conflicts identified in EY's Conflict of Interest Global Policy may arise in scenarios where we are engaged with Commonwealth entities or companies and EY is:

1. Asked to provide services to a client who is receiving funding (grants or revenue) from a Commonwealth entity engaging EY to provide advice on the funding program.
2. Asked to provide services to a client who is seeking to bid on the Commonwealth entity's procurement project on which EY has been appointed to provide advice.
3. Asked to provide services to a who is seeking to engage in a transaction with a Commonwealth entity on which EY has been appointed to provide advice.

Personal conflicts may arise where an EY professional has:

1. A personal financial interest in the outcome of a Commonwealth contracting process or transaction.
2. Family relationships in the Commonwealth entity or company, or has previously worked for the Commonwealth entity or company, and would be perceived to have confidential information that could be used by that person in service of another client.
3. Been provided with confidential information in relation to a Commonwealth entity or company and is approached by a private sector client to provide services in relation to the area of policy development or regulatory oversight overseen by the Commonwealth entity or company.
4. Where an EY professional has been provided with confidential information in relation to a Commonwealth entity or company and is approached by another EY professional to utilise that information in relation to another client.

While the responsibility for managing Conflicts of Interest to an acceptable level sits with the Engagement Leader, EY's comprehensive processes, policies and procedures help identify and raise potential Conflicts of Interest before they arise so they can be managed appropriately.

Identifying Conflicts of Interest

Engagement Leaders are alerted to a Conflict of Interest through the requirements of our Conflicts of Interest Policy being embedded in our intranet based global client and engagement acceptance system, the Process for Acceptance of Clients and Engagements (PACE).

Our Client and Engagement Acceptance Global Policy establishes a rigorous process for evaluating risk and making decisions to accept or continue working with a client or on specific engagements.

It mandates consultation with designated professionals in cases where there is a higher likelihood of a potential Conflict of Interest. All these requirements are built into PACE to coordinate client and engagement acceptance and continuance activities in line with our policies and professional standards, and ensure a Conflict Check is completed where required.

As PACE is a global tool, it allows EY to identify conflicts that may arise with engagements not only in Australia, but those undertaken by all EY member firms within the Global EY network.

The Engagement Leader must also ensure that conflict checks are updated for new developments during an engagement, including where additional counterparties are identified.

Once a conflict check has been submitted in PACE, our dedicated Conflicts Team will examine EY's dedicated internal database, as well as external data sources to determine whether the services to be provided and/or existing client relationships may give rise to a conflict.

In performing the assessment, our Conflicts Team will consider the nature of the services being provided to the different clients, together with confidential consultations with counterparty Global Client Service Partners, where required, to identify any overlap of the services that could trigger a self-review threat or threat to our objectivity.

Confidential consultations with the counterparty's Global Client Service Partners, via our Conflicts team, are undertaken on a no names, not to be disclosed to their client basis. This ensures that no confidential information is inadvertently transmitted to the counterparty through the Conflict Check process.

EY may also be involved in informal consultations with government for example in respect to tax reform pertinent to certain industries. In these instances, EY may be provided with commercially sensitive confidential information which may impact on existing EY clients. We have addressed this in our response to Terms of Reference F – Any other matters.

Engagement Leaders are also required to assess for personal Conflicts of Interest in the Engagement Team. Individual team members on a client engagement must declare potential conflicts to their Engagement Leader for evaluation, who will then consult with the Conflicts Team and/or Service Line Quality teams where appropriate. This requirement is embedded into EY's Standards of Professional Behaviour policy which requires that EY professionals must at all times avoid situations which do or have the potential to give rise to a conflict of interest.

Put simply, this means avoiding situations where personal interests conflict with those of the firm, those of clients, other staff members, or other people to whom the professional owes an obligation through work or their engagement. This includes conflicts related to financial interests, employment or business relationships with the client or the counterparty, access to confidential information of, or prior work related to the matter, for the counterparty.

Managing Conflicts of Interest

When a Conflict of Interest is identified, the APES 110 Code of Ethics and our Conflicts of Interest Global Policy require appropriate safeguards to be applied to eliminate threats to objectivity or reduce them to an acceptable level in order to undertake a client engagement.

The safeguards implemented are designed to cover both firm and personal conflicts.

The Engagement Leader is responsible for ensuring that safeguards have been appropriately resolved and the resolution documented in PACE prior to commencing or continuing the client work. When a threat of actual or potential conflict cannot be resolved satisfactorily through these safeguards, the engagement team will cease the activity or engagement which is causing the conflict.

This process currently takes place directly between the Commonwealth entity or company and EY, with no public disclosure of the outcome. While EY is confident that this process, and the safeguards from the APES 110 Code of Ethics and our policies to manage these are effective at managing conflicts of interest, the Commonwealth may want to consider measures which can strengthen the public perception of this management.

One measure could be a requirement for the Commonwealth entity or company to establish and maintain a Conflicts of Interest disclosure log, which publicly discloses potential Conflicts of Interest and how the tenderer has managed these Conflicts of Interest.

Appropriate safeguards would be required to protect the confidential information of the Commonwealth, supplier and other private sector entities or individuals involved in this disclosure.

Recommendation 1: Require public disclosure of the management of Conflicts of Interest by Commonwealth entities and companies.

The typical conflict management safeguards identified in the APES 110 Code of Ethics and implemented by EY are explained in further detail below:

Disclosure and Consent Letter

In circumstances where a conflict is identified in relation to the provision of a service to one client that could pose a conflict with a service provided to another client, Disclosure and Consent letters are used to obtain specific consent from both parties to the conflict. The purpose of the Disclosure and Consent Letter is to set out the nature of the conflict and seek consent around the safeguards that are being implemented, enabling us to continue to act for both parties.

For personal conflicts, it is the responsibility of the Engagement Leader to determine whether the potential Conflicts of Interest of a team member pose a threat to the individual's objectivity. In most cases, individual team members are excluded from the engagement where a personal Conflict of Interest has been identified. Alternatively, the Engagement Leader may consider disclosure to the client and seek their consent via a Disclosure and Consent letter.

Team Separation

Separation of engagement teams is a core safeguard identified within the APES 110 Code of Ethics to manage a Conflict of Interest and comply with the fundamental principle of confidentiality as per Subsection R114 of the APES 110 Code of Ethics.

Team separation requires that information barriers are implemented, including measures to prevent the exchange of confidential and sensitive information between separate client teams. The Engagement Leader is responsible for ensuring compliance with team separation protocols, which include, among other things, physical and electronic restrictions on access to confidential

information and the obligation of team members not to discuss engagement details with any individuals outside the engagement team without the prior express consent of all clients involved.

The following are examples of typical measures included in team separation procedures:

- Discussion – discussions and telephone calls regarding the engagement are held in secure locations.
- Restricted access to documentation – electronic information is stored on a restricted access file/folder.
- Confidential project room – in certain circumstances, engagement teams are required to perform all work from a project room.

For larger projects, engagement teams are required to prepare a memorandum setting out the specific separation requirements, such as specifying the restricted drives, project name and project rooms where required. All team members are required to sign the memorandum to evidence that they understand the protocols and confirm compliance.

Exclusivity agreements

Recognising that certain engagements have a higher level of sensitivity and risk profile given the nature of the work involved, EY works closely with all our clients to understand any specific requirements with respect to conflicts and confidentiality.

For large Commonwealth infrastructure projects, it is not uncommon for Commonwealth clients to request exclusivity such that if EY acts for the Commonwealth for a particular project, then we are unable to provide services to any counterparties in relation to that project. If we agree to the exclusivity arrangement, our conflicts system would be immediately updated and should another engagement team submit a conflict check to provide services to a counterparty to the specified project, that team will be informed to decline the counterparty work.

Term of Reference B: Measures to prevent Conflicts of Interest, breach of contract or any other unethical behaviour by consultants

It is our experience that the Commonwealth is a well-informed, professional and appropriate user of the private sector to supplement the skills and capabilities of public servants, and applies this sophistication to manage Conflicts of Interest and prevent breaches of contract or unethical behaviour by external service providers.

The Commonwealth Procurement Rules, issued by the Department of Finance, are the foundation of the Commonwealth procurement framework, which govern the engagement of private sector providers by Commonwealth entities or companies.

The management of measures to prevent Conflicts of Interest, breaches of contracts and other unethical behaviour are the responsibility of individual entities and their procurement and contracting frameworks.

Measures to prevent Conflicts of Interest

During the tendering process, EY is routinely asked to provide details about our approach to managing Conflicts of Interest to the project sponsor. Tendering entities will ask for EY to explain in detail our processes and procedures for identifying, managing and communicating any actual or perceived Conflicts of Interest during an engagement.

This is a common and accepted requirement that has been in place for many years, at all levels of the public service. Depending on the scope, nature and size of the project, the Commonwealth may appoint a probity advisor to work with tenderers during the process.

During the tendering process, Commonwealth employees are subject to their own Conflict of Interest requirements, with each entity issuing its own policies and procedures to define, identify and manage potential situations which could give rise to a Conflict of Interest.

When engaging suppliers, Commonwealth entities and companies may seek a commitment through statutory declarations relating to the management and disclosure of professional and personal Conflicts of Interest that could arise through the engagement, which is monitored through a probity plan if we are engaged. The declaration regarding our personnel will often extend to the declaration of interests of spouses, or other close relatives. EY may also be required to continue making this declaration throughout an engagement, especially where EY is involved in supporting a tendering process or where the engagement extends over multiple years.

The primary responsibility within a Commonwealth entity or company for the assurance of service provider's management of Conflicts of Interest is through the appointment of a Probity Advisor, appointed by the Commonwealth as part of the probity plan for the project. It is common for EY and other service providers to be subject to probity checks which assess our implementation of measures to manage and prevent Conflicts of Interest that EY has agreed too contractually.

It is EY's experience that these frameworks are effective in protecting the interests of the Commonwealth from inadequate management of Conflicts of Interest, both during the tendering processes and the execution of projects.

Measures to prevent breach of contract

The primary measure to prevent a breach of contract by the Commonwealth is the strength of the contract itself and enforcement provisions available to the Commonwealth as a contracting entity.

As an example, the Department of Finance administers the Management Advisory Services (MAS), Panel, which all non-corporate Commonwealth entities are required to use when procuring consultancy services, has a Panel Head Agreement which specifies:

- Uncapped liability for the consultancy for any breach of confidentiality, privacy or security obligations, including data security and unauthorised access to confidential information.
- Providers are required to provide a warranty that all Conflicts of Interest that exist or are likely to arise have been disclosed to the Commonwealth entity.

Under the MAS Panel Head Agreement, a breach of either of these requirements provides the Commonwealth the right to immediately terminate the contract and seek damages.

The Commonwealth commonly uses contracting powers unavailable to the private sector to prevent breaches of contract. For example, the MAS Panel Head Agreement includes a requirement for EY professionals to abide by the Protective Security Framework (PSF) as required by the Agency.

Under the PSF, consequences for a breach are both personal and criminal.

The Commonwealth will often use these unique contracting powers in regard to confidentiality deeds signed by EY and our professionals.

Commonwealth confidentiality deeds often contain references to Part 5.6 of the Criminal Code Act 1995 (Cth), which sets out an array of offences relating to the misuse of Commonwealth information. These provisions apply to service providers such as EY (including its officers and employees) that have contracted with the Commonwealth.

Under section 122.4 it is an offence to disclose information provided by the Commonwealth without authorisation. This provision applies where a person is under a duty not to disclose the information, for example, where an EY employee has signed a confidentiality deed with the Commonwealth. The penalty for this offence is two years' imprisonment, but the sentence may be increased to up to 10 years if there are aggravating factors.

In our experience, the civil and criminal remedy measures employed by the Commonwealth are effective at preventing a breach of contract. In any event, EY takes its contractual obligations seriously and has rigorous systems and processes in place irrespective of the threat of criminal sanctions.

Measures to prevent other unethical behaviour by consultants

The prevention of other unethical behaviour by external service providers sits with individuals and their employing organisations.

At EY, our comprehensive processes, procedures and enforcement of these are very effective at preventing unethical behaviour by our professionals. Our sophisticated learning and development program keeps them up to date on their responsibilities and we regularly test compliance with these. Where we identify an issue or concern, we follow up swiftly and over time to make sure this is resolved.

In the 2022 Financial Year, EY publicly disclosed in our Value Realised report that from 64 misconduct and disciplinary complaints across Oceania, we identified 55 breaches of our policies, and seven breaches of our values by EY professionals.

In response a range of disciplinary action was undertaken including:

- Informal management conversations
- Facilitated conversations
- Verbal warning
- Written warning
- Financial sanctions
- Withholding of promotion
- Termination of employment

Term of Reference C: Enforcement measures taken in response to integrity breaches, such as the inadequate management of Conflicts of Interest, breach of contract or any other unethical behaviour by consultants

We always abide by our contractual requirements, as breaches of civil contracts provide for serious financial penalties, including uncapped liability for breaches, and note that Commonwealth contracts can also include criminal penalties as a remedy for specific contractual breaches.

EY's approach to enforcement of the management of Conflicts of Interest and disciplinary actions for unethical behaviour are described in our response to Term of References A and B.

We believe it is inappropriate to make any further general comment in this submission on the enforcement measures that the Commonwealth takes against private sector providers.

Term of Reference D: the management of risks to public sector integrity arising from the engagement of consultants

The majority of work that EY undertakes with Commonwealth entities and companies is won through a rigorous competitive tender process. We believe that this is an effective procurement method for engaging external service providers, ensuring that these engagements deliver value for money for the Commonwealth.

However, risks to public sector integrity are highest during this procurement phase. To manage this risk more effectively, we believe that the Committee may want to consider how the Commonwealth could provide greater transparency around the tender and procurement process.

The Committee may want to consider the recent Independent Review of Services Australia and NDIA Procurement and Contracting, and the Independent Reviewer's Report, for recommendations that strengthen the integrity of the engagement and contracting process. As this review highlights, greater transparency around the tender process and reporting of contracts awarded would prevent the perception of a loss of public sector integrity.

For example, there is often limited visibility of major upcoming tenders, which can lead to a perception of conflict when the market finds out about a contract opportunity after it have been awarded, which could be avoided by strengthening existing requirements for all RFTs to listed on AusTender as soon as they are released to market.

Recommendation 2: Provide greater transparency around the tender and procurement process.

Commonwealth entities and companies delegate spending authority to individuals over specific areas of procurement. These individuals with delegate authority have the responsibility for selecting potential tenderers from an approved panel or other contracting vehicle, and the power to make a purchase decision/s with these providers.

The risk to public sector integrity sits at this delegate level and we believe that each contracting entity should be able to track and report on spend by Delegate. This will enable the contracting entity to determine whether there is an ongoing preference for a provider that needs to be reviewed.

Instances where contracts are repeatedly awarded to a specific provider are not necessarily indicative of improper conduct. Engaging a trusted provider can be the prudent thing to do when they have specific skills, capabilities and domain knowledge, however, tracking this will provide another mechanism to review, manage and mitigate this risk.

The ability to track spend by individual Delegate would provide the contracting entity the ability to monitor provider concentration.

Recommendation 3: Direct contracting entities to track provider spend by each Delegate and report internally on this spend.

Further measures to strengthen the protection against risks to public sector integrity could be the removal of sole source procurement, with appropriate approvals to allow sole source approval in exceptional circumstances. It is also worth considering whether significant procurements that meet a set of risk-based criteria should be required to be reviewed by an independent panel to assess the merits of the tender and provide a recommendation about the provider.

Recommendation 4: Require significant procurements that meet a set of risk-based criteria to be reviewed by an independent panel.

Term of Reference E: the transparency of work undertaken by consultants, and the accountability of consultants for this work

When EY is engaged by a Commonwealth entity or company, we are contracted to, and accountable for our work to that entity or company.

Enhancing the transparency of private sector contracting by the Commonwealth

AusTender is the key source of information for Commonwealth contracting and provides transparent access to most Commonwealth procurement data.

EY believes that AusTender has significantly improved in the past three years, with the data published becoming increasingly accurate.

However, greater transparency over expected procurement schedules would enhance the accountability and transparency of private sector contracting by the Commonwealth.

Further to recommendation 2, EY believes that the Committee may want to consider strengthening requirements under the Commonwealth Procurement Rules for entities and companies to publish short term strategic procurement outlooks and annual procurement plans on AusTender.

This will allow for the market to prepare for upcoming tenders and mitigate the perceived threat of a Conflict of Interest arising when an entity frequently uses preferred suppliers or provides significant extensions to work without going to Tender.

This will also minimise the use of sole source procurement on large deals and support Commonwealth entities and companies to become more disciplined in their procurement processes.

Recommendation 5: Require contracting entities to adhere to requirements under the Commonwealth Procurement Rules to publish short term strategic procurement outlooks and annual procurement plans

The Committee may also want to consider examining how the Commonwealth could improve confidence in the use of external resources and increase the transparency of these arrangements through developing a set of consistent spending groups, or codes, for tracking government spending.

As it stands, the descriptions of services being provided under awarded contracts are very limited, so it is difficult for third parties to determine what services are being procured and by whom. While AusTender provides a significant amount of detail in, this detail is hard to find and unwieldy to use.

This set of consistent codes would give greater detail on the specific skills and capabilities provided by service providers, and would greatly enhance transparency around the use of service providers by the Commonwealth.

Consistent codes would give greater transparency and clarity around all Commonwealth procurement, as they do internally for EY through our Service Offering Reference Tool (SORT), which classifies and standardises all engagement codes.

The implementation of these codes would also provide greater post-procurement analysis of these data sets, and reporting on categories of spend by entity and supplier, across the Commonwealth.

Recommendation 6: Develop a consistent set of codes to identify the type of services provided by consultants and require the use of these in AusTender reporting

Term of Reference F: Any other matters

EY, or individual EY partners, are often approached to provide informal advice under a confidentiality agreement to the Commonwealth on policy development. We are aware that the Committee is interested in the provision of this advice as it pertains to the development of Australia's tax policy.

We believe that the Commonwealth engaging with subject matter experts is an important and valuable aspect of policy development, as it assists policymakers in assessing the impacts of policy before it is legislated.

EY is called upon to provide this informal consultation advice as our professionals are experts on a range of subject matters and are also able to provide valuable global perspectives from our international experience.

The Commonwealth has historically relied primarily on confidentiality agreements and the integrity of the individuals they are consulting with in fulfilling their confidentiality obligations.

This is primarily because these consultations are not contracted engagements between the Commonwealth and the consultant.

EY expects that all our professionals who are engaged by the Commonwealth in this manner abide at all times by our Global Code of Conduct and associated Conflicts of Interest Global Policy, particularly as it pertains to the management of confidential information.

However, in light of the recent Tax Practitioners Board (TPB)'s action and heightened scrutiny of this practice, EY has conducted internal checks and identified no instances of non-compliance.

We are confident that EY has acted appropriately regarding these consultations historically.

While we are confident there are no breaches of confidentiality in relation to our consultations with regulators and the government, we are taking the opportunity to review and refresh our processes to further support our position that our governance in this space more than meets all ethical requirements.

Strengthening our processes

Our existing tax practice policies and processes will be enhanced by requiring additional procedures to be followed when engaging informally (that is in situations where we are not contracted to provide the advice) with the Commonwealth on tax policy development:

- Establishing a central point of contact where all requests (formal and informal) to consult with the Commonwealth on proposed changes to tax legislation or regulation are captured.
- Ensuring all formal tax policy consultations where a confidentiality agreement has been signed is captured in our PACE system as a confidential service, making this subject to our normal engagement acceptance protocols and procedures for Government and Public Sector engagements which require EY Global Tax Policy Leader approval.
- Maintaining a register where a confidentiality agreement has been signed with the Commonwealth in relation to tax policy development consultation, with periodic reminders to those that have signed them of their obligations regarding confidentiality and conflicts.

As a result of these changes, any non-reporting and compliance issues would therefore be caught under our existing Quality and Effective Risk Management performance management process.

We believe that these measures will further strengthen the integrity of these consultations by the Commonwealth and enhance confidence in EY's integrity in the public sector.

Strengthening the consultation framework

While we are confident that EY has acted appropriately in our consultations with the Commonwealth, we believe there are opportunities to strengthen public confidence in the consultation process.

Historically, the Commonwealth has engaged with individual partners and subject matters within EY, rather than approaching EY to identify and connect with an appropriate expert.

To further improve how we can effectively monitor compliance, we have asked for Commonwealth tax policy consultations with sensitive departments to be notified to a central contact point, enabling central tracking of the confidential information and monitoring of compliance with confidentiality agreements and undertakings.

The Committee may want to consider requiring the Commonwealth to notify employers of subject matter experts when obtaining this advice in the future.

Recommendation 7: Require Commonwealth entities and companies consulting with private sector subject matter experts to notify a central contact point at the employer.

Another way that we believe the Commonwealth could increase the public's confidence in the consultation process would be to use existing deterrents to unethical behaviour more widely.

The Committee may wish to consider whether the Commonwealth could use the existing security clearance framework to manage the sharing of sensitive information with third parties, by sharing this information under the requirements of the Protective Security Policy Framework (PSPF).

Under the PSPF requirements, even if a conflict has not been identified, sharing information about classified resources would mean that when classified information is leaked or confidentiality is breached, the consequences under the framework are personal and criminal. The same approach could also be applied to other sensitive Commonwealth resources.

This serves as a far more powerful deterrent to unethical behaviour and is less ambiguous than the current framework.

Recommendation 8: Require sensitive policy development information to be shared under the Protective Security Policy Framework or similar mechanism.