



Submission to the inquiry into the current capability of the Australian Public Service (APS)

CPSU CENTRAL SUBMISSION

Community and Public Sector Union (PSU Group)

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Introduction

The COVID-19 pandemic, and before that the bushfires, demonstrated that Australian society could not function properly without a functioning public service. Public sector workers across all levels have performed extraordinary feats through bushfires, floods and the pandemic. They've supported the community throughout emergencies, worked on vaccines and public health campaigns, delivered billions of dollars in relief and support payments, processed newly created claims, supported the thousands who found themselves out of work and much else.

On top of the work it does directly for the community, the public service is also an important part of the economy, especially in rural and regional areas. Public service jobs can be a crucial source of dependable jobs for people in rural and regional areas, women, and young people. The APS needs to be both an employer of choice and to create quality permanent jobs across Australia, underpinned by fair industrial arrangements.

The Australian Public Service (APS) includes a wide variety of work: delivering services, compliance, regulation, administration, policy, research, science, information, and heritage and culture. But despite that variety, it has some core characteristics that make it possible to do that work.

The APS is a knowledge-based organisation. Its institutional memory and the experience and knowledge of its staff, accumulated over decades, are vital. It is – by legislation – a career-based organisation, where employment should be secure. It has an ethical foundation of service to the community, integrity and diversity. It has a commitment to impartiality and universal access to services, and an obligation to frankness and to transparency. Only if these institutional and ethical foundations are strong, can the APS do what it needs to do – solve the problems we can't solve alone, help the country face the big challenges, and support the community day-to-day through all stages of life.

As a knowledge organisation, its most valuable assets are its people. But years of budget cuts, staffing cuts and caps, efficiency dividends and the failure to invest in the public sector have fractured its foundations. This now impedes the ability of the APS to deliver what the community needs.

Over time, insecure work arrangements in many different forms have grown. The Coalition Government is increasingly outsourcing whole functions to private companies (such as call centres), employing people as contractors rather than as staff (especially in areas such as Information and Communications Technology [ICT]), employing people as casuals (for example in large agencies such as Services Australia) and using labour hire to fill long-term and essential roles.

These arrangements are the direct results of policy decisions by the Coalition Government, which have privileged the knowledge and skills of private companies over those of the public service and prioritised the business interests of big companies over the long-term interests of the APS, and in turn, the nation.

In aggregate, these arrangements are the result of an ideological commitment to shaping government to become as close as possible to a business entity, despite its radically different obligations and purpose. This prejudice extends to industrial

arrangements, with the Coalition Government increasingly forcing agencies towards bargaining and workplace practices that are one-sided, unnecessarily restrictive, work against innovation and a staff voice in organisations, and that exacerbate employment insecurity.

Collectively these arrangements over time privatise the Commonwealth, increasingly passing responsibility and accountability for service delivery, policy and thinking, and ultimately regulation and integrity, to profit-making entities. It undermines accountability and transparency in government and reduces the influence of citizens on the work of government. It has a negative impact on service outcomes.

The Coalition Government's decision to pursue an Average Staffing Level (ASL) cap in the 2015-16 Budget is a case in point. The ASL cap is an absolute limit on the number of people who can be employed in Commonwealth Government agencies. It's not a limit on how much work is done, or how much money is spent, or even how many people can do work on behalf of the government – it's only a limit on secure employment.

The policy makes government appear smaller, but at the expense of everything that makes government valuable to communities. Agencies are still required to deliver what the government wants and the community needs. But to do its work, the public service needs knowledge, experience, institutional foundations and a sense of shared values and ethics: the very things that are eroded by privatisation.

This loss of experience, as well as short-term employment, restrictive industrial arrangements, and ICT constantly subjected to under-investment, have together caused enormous problems for the capability of the APS, and its ability to face today's challenges and prepare for what comes next, including:

- Outsourcing knowledge and policy.
- Compromising service delivery to the detriment of those in need of government services
- Eliminating good jobs and harming the communities that rely on them.
- Abandoning the government's role as custodian of a career public service and of the institutions and norms that scaffold our democracy.
- Undermining the ICT systems that form the foundation both of services to the community and the work of APS staff.
- Disregarding its own legal and regulatory obligations.

The advent of the ASL cap is by no means the first or only decision that has undermined the capability of the public service. Since December 2013, the Coalition Government has cut over 12,000 jobs from the public service and radically increased spending on outsourced workers, contractors and labour hire. Data on insecure work in the Commonwealth is hard to come by, but the CPSU's conservative estimate is that there are 30,000 people employed across the Commonwealth in insecure arrangements.¹

The ASL cap is only a recent move in the longer-term degradation of the APS, but it has been a tipping point in public debate. There is an astonishing degree of unanimity and frankness about its effects. Senior public servants, usually extremely circumspect about

¹ This estimate is based on publicly available data on labour hire numbers provided to Senate Estimates and from FOI requests, ICT contractors and outsourced service providers

government policy, have gone on the record in Parliamentary committees stating that the ASL cap has forced them to employ labour hire.

In response, the Government has denied that the ASL cap is driving the increase of labour hire and has insisted that these types of arrangements are used only for short term or for specialist skills.²

This submission presents evidence to the contrary from just under 6,000 public servants who say that labour hire and insecure work are growing, are being used for core and long-term work, are causing an erosion of skills and capacity and are making service worse for the community. Our survey also finds that the government's restrictive industrial approach is affecting its ability to attract and retain experienced staff and that years of under-investment in ICT mean that systems are not fit-for-purpose.

The Government under the *Public Service Act (1999)*, the *Financial Management and Accountability Act (1997)* and the *Public Governance, Performance and Accountability Act (2013)* has obligations to provide for a career public service, to make appointments to the public service according to merit, and to spend public money in a responsible and proper way. The evidence we have from 6,000 staff is that the Government has not only failed to meet these obligations but specifically made policy decisions to prevent agencies from meeting them. The Government is not using labour hire and contract staff only for short term roles, or to acquire specialist knowledge. Rather, labour hire and other insecure work arrangements are explicitly being used by agencies to get their work done without falling foul of the ASL cap, in a manner which is not transparent and does not represent value for money.

Public servants have performed extraordinary feats through the past year of bushfires, floods and pandemic. But individual workers can't hold up the system through sheer commitment and force of will. If there is one lesson that the Coalition Government could learn from the pandemic, it's that the country can't function without a functioning public service – which is what the public deserves and expects.

Recommendations

Rebuild the APS workforce to improve APS capability and capacity

The APS is a knowledge-based organisation and its most valuable assets are its people. However, years of budget cuts, efficiency dividends and staffing caps have reduced the size and increased the rates of insecure employment in the APS workforce, thereby eroding capability and capacity. This must be reversed by:

² Sarah Basford Canales (2021, 19 January). "Stealthy Privatisation" of Public Sector Causes Concern. The Canberra Times. Retrieved from <https://www.canberratimes.com.au/story/7087674/stealthy-privatisation-of-public-sector-causes-concern/>

- Removing the ASL cap to free up agency budgets, enabling agencies to employ additional staff on a permanent basis and to convert current insecure jobs to permanent employment.
- Abolishing the efficiency dividend, and increasing the number of permanent public sector staff in recognition of the increased workload demands on the APS and the increased complexity of the operating environment.
- Implementing a service wide 'same work, same pay' policy to ensure externally engaged staff are not paid less than APS staff doing the same work and remove any incentive to use labour hire to undercut pay and conditions.
- Identifying public sector work that has been outsourced or contracted out and should now be brought back in-house.
- Identifying skills gaps in agencies that lead to the regular or repeat use of consultants or contractors for the same work, and then developing a plan to develop those skills in-house.
- Requiring consultant and contractor engagement to include mandatory provision of skills transfer to APS staff.
- Capping expenditure on consultants and contractors and reinvesting the savings into building APS staff numbers, capability, and capacity.
- Harnessing the above, and an increased investment in training, to provide APS staff with genuine opportunity to develop their skills and careers.

Address the failures in reportage and transparency of spending on external suppliers

There are substantial holes in the collection and reportage of information on the use of labour hire providers, contractors, and consultants.

This undermines trust in government, and limits the ability of the APSC, other central agencies, and individual agencies, to properly monitor and manage workforce needs.

This must be addressed by:

- Requiring the APSC to collect and publish agency and service wide data on the extent of contractors, consultants and labour hire in their APS Employment Database.
- Requiring the Department of Finance to collect and publish regular data on service wide expenditure on contractors, consultants and labour hire, including by agency
- Requiring the Department of Finance to amend service wide guidelines for the engagement of consultants and the contracting out of services, taking account of the approaches of the New South Wales, the Queensland and Western Australian Governments, to cap their cost and limit their use to genuine need.
- Requiring labour hire providers to disclose de-aggregated pay rates and conditions.
- Requiring agencies to undertake a cost-comparison analysis prior to the engagement of external staff, factoring in both the financial cost and longer-term impacts on agency capacity and capability.

Rebuild in-house ICT capacity

Decades of outsourcing and contracting out has left the APS overly reliant on external vendors and contractors – creating critical issues with capability, cost, and user experience. This must be addressed by:

- A genuine commitment by government, backed by funding, to substantial ongoing investment in ICT systems, staff skills and a properly funded ICT workforce plan.
- Committing to provide the level of funding needed, as recommended in the Independent Review of the APS, to overcome the gap with the private sector and ensure ICT systems at the standard of leading private sector companies.
- Returning externally contracted ICT work and workers back into the APS, particularly where specific skill shortages have already been identified.
- Stopping the ‘outsource first’ mentality, and instead utilising and building the expertise and knowledge of APS staff in the development and delivery of ICT systems.
- Making the APS an employer of choice for ICT and digital workers through providing distinct career pathways, structured learning and development programs, and appropriate classification and remuneration scales embedded in enterprise agreements.

Revise the Government’s Workplace Bargaining Policy

The current APS bargaining arrangements undermine the quality of the employment offer the APS can make to existing and prospective employees, while also creating barriers to staff mobility and career progression. The erosion of workplace consultative rights has hampered the ability of staff to provide their insights into decision making and planning.

Pay and conditions differentials also work against APS mobility, further complicate machinery of government changes and are inequitable.

The Coalition Government’s Workplace Bargaining Policy and their failure to address the problems of pay and conditions disparity across the service both have negative impacts on APS capability, and should be addressed through:

- The Commonwealth acting as a model employer, negotiating fairly with its employees and their representatives for fair wages and employment conditions. This must involve good faith bargaining at an APS wide level on core terms and conditions, including pay and a pay equity mechanism, should be introduced, with agreements continuing to be made at the Agency level.
- Revising the Government’s Workplace Bargaining Policy to remove the cap on public sector wage increases and enable agencies to genuinely bargain, in good faith, without restrictions on enhancing employment conditions.
- Improving workers’ rights to consultation and enshrining those rights in enterprise agreements, to ensure the best outcomes for workplace decisions and implementation strategies of government policy.

Section One: Labour hire

Overview

In the 2015/16 budget the Coalition Government introduced a policy known as the ASL cap, which set a limit on the number of people who can be employed by government agencies. The limit was set at the 2006-2007 Average Staffing Levels.

This policy decision created a staffing cap that is below the actual funding level of the agency. While agencies have the funding, including new program funding, to hire additional APS staff, the cap will not allow them to. This forces agencies to hire contractors and use labour hire to do work that would normally be performed by permanent APS employees

In the six years since 2015, the ASL cap policy has driven the widespread and growing use of labour hire to replace public servants.

But neither the Coalition government nor some central agencies like to talk about it.

If pressed the Government will say labour hire is for short term use and is cost effective. The Department of Finance says it does not have figures on the total costs or staff numbers involved. The APSC excludes labour hire from its reportage on the APS staff and the capability of the public service. 'Nothing to see here' seems to be the story.

But there is most definitely something to see here.

The practical effect of the ASL cap is to privatise the APS by stealth and undermine job security transferring secure permanent jobs into precarious ones, promoting insecure forms of employment

CPSU analysis of AusTender data and Senate Estimates evidence shows that since 2015 the Coalition government's ASL cap policy has diverted more than \$7.7 billion from public services to private hands and put thousands and thousands of workers into insecure work.

The ASL cap also undermines the work of the public service through the disruption it causes from the high staff turnover, reduced staff retention and additional training workloads it generates.

Neither Government Ministers nor the central agencies tasked with managing the finances and staffing of the public service, can or will report on what this staggering spending means for workers, clients, or APS capability and capacity.

This Senate inquiry is therefore timely and important.

This section of the CPSU submission provides evidence on the widespread use of labour hire and the substantial negative impacts it has on workers and clients, causing real and growing damage to the capability and capacity of the public service, while costing taxpayers more and bringing the transparency, accountability and integrity of the Coalition Government's management of the APS into question.

1. The ASL cap drives the use of labour hire

The practical effect of the ASL cap is to force agencies to use labour hire or contractors to do work that would normally be performed by APS employees.

The Government has sought to deny this link for some time. For example, the former Finance Minister, Mathias Cormann, claimed that evidence provided by the ACQSC that the staffing cap was a driver of labour hire staff was “just not true.”³

However, Minister Cormann’s denials have been regularly contradicted by agencies:

- In its submission to the APS Review, the Department of Infrastructure stated that *“the cap also creates capability challenges by increasing the use of labour-hire contractors.”*⁴
- In Senate Estimates, the then Department of Human Services responded to questions about why Serco was being engaged, stating that *“we currently recruited all the way up to our ASL cap”* and that they were *“fully staffed”*.⁵
- The Productivity Commission identified a link between the staffing cap and encouraging outsourcing, stating that *“the rationale for the cap on directly employed staff appears to be to encourage the NDIA to enter into community partnerships.”*⁶

The ASL cap does not just drive the use of labour hire for new work or to fill vacancies. CPSU is also aware of cases of existing APS employees being moved onto labour hire contracts because of the constraints of the ASL cap. There are several such examples:

- The Commonwealth Director of Public Prosecutions being forced to convert APS employees to labour hire – at increased cost to the CDPD while also paying the labour hire employees less.⁷
- Despite having the funds to keep 30 non-ongoing staff, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) was forced to do a closed tender with Hays and convert staff to labour hire to keep them beyond 1 July 2017.

The Australian Institute of Health and Welfare moved a cohort of staff from being employed on rolling 12-month term APS employment contracts to labour hire to avoid exceeding their ASL cap.

In addition to the above evidence the CPSU is also regularly told by management in a range of other agencies that the ASL cap is the reason for the use of labour hire.

3 Senate of Australia. (2020, 21 October). Senate Estimates. Finance and Public Administration Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F94db35a9-7228-4717-90af-82337e1f352a%2F0006;query=Id%3A%22committees%2Festimate%2F94db35a9-7228-4717-90af-82337e1f352a%2F0000%22>

4 Department of Infrastructure, Regional Development and Cities (2018). Submission to the Australian Public Service Review 2018. Retrieved from <https://www.apsreview.gov.au/your-ideas/submissions/department-infrastructure>

5 Parliament of Australia. (2017, 25 October). 2017-2018 Supplementary budget estimates - Social Services and Human Services. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ca/2017-18_Supplementary_Budget_estimates

6 Productivity Commission (2017). National Disability Insurance Scheme (NDIS) Costs, Study Report, Canberra. Retrieved from <http://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs2.pdf>

7 Noel Towell (2017, 14 August). Federal government to dump prosecutors for labour-hire lawyers. Sydney Morning Herald. Retrieved from <https://www.smh.com.au/public-service/federal-government-to-dump-prosecutors-for-labourhire-lawyers-20170814-gxvo9i.html>

In short there is ample evidence that the ASL cap is a key driver of the increasing use of labour hire.

The next issue to consider is how widespread the use of labour hire has become.

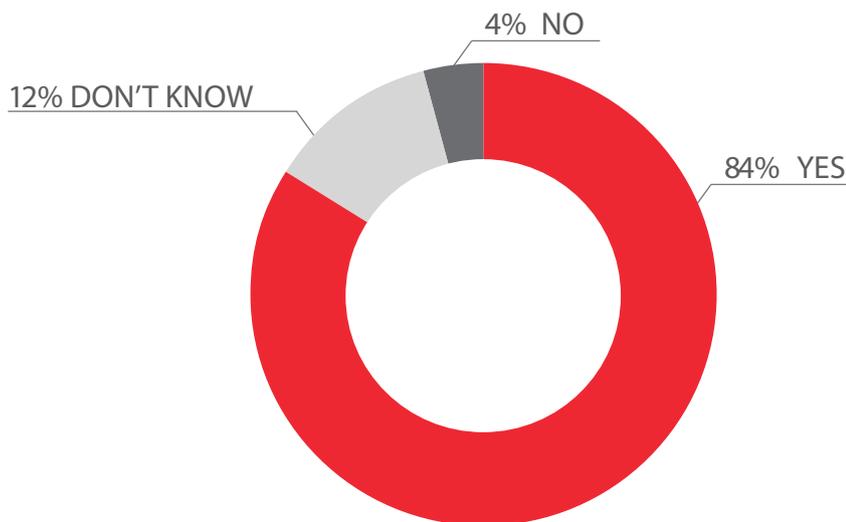
2. Labour hire use is now widespread, and increasing

As a result of the ASL cap the use of labour hire in the public service is now widespread across the entire Commonwealth public service.

In February 2021 a CPSU survey with 6,000 respondents produced clear evidence about the extent of labour hire use.

The survey found that four in five (84%) members reported that their agency is using labour hire.

DOES YOUR AGENCY USE LABOUR HIRE?

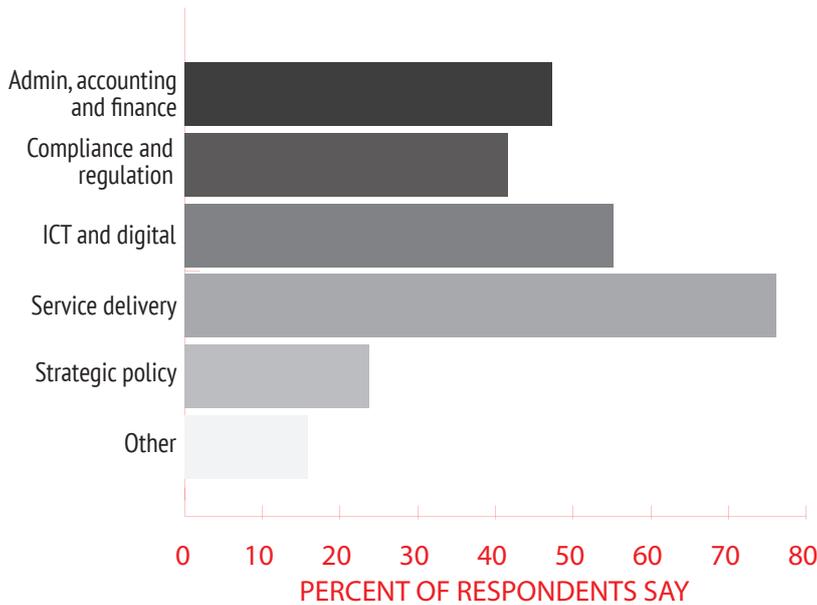


Source: CPSU Survey - APS Capability Senate Inquiry: Q5.

The survey also revealed that labour hire is being used for a wide range of work types. Members who stated their agency used labour hire were asked in what roles were labour being used. The three most common responses were:

- Service delivery (76.1%)
- ICT and digital (55.1%)
- Administration, accounting and finance (47.2%)

IN WHAT ROLES IS LABOUR HIRE BEING USED?



Source: CPSU Survey - APS Capability Senate Inquiry: Q6.

The survey findings are supported by CPSU analysis of temporary personnel service contracts registered on AusTender. That analysis found that since 1 July 2015:

- Nearly 32,000 separate contracts for temporary staff were registered on AusTender.
- 91 departments and commonwealth entities had used temporary employment contracts.
- The total expenditure was \$7,766,032,979.26.

The full list of agencies using labour hire is at Appendix A.

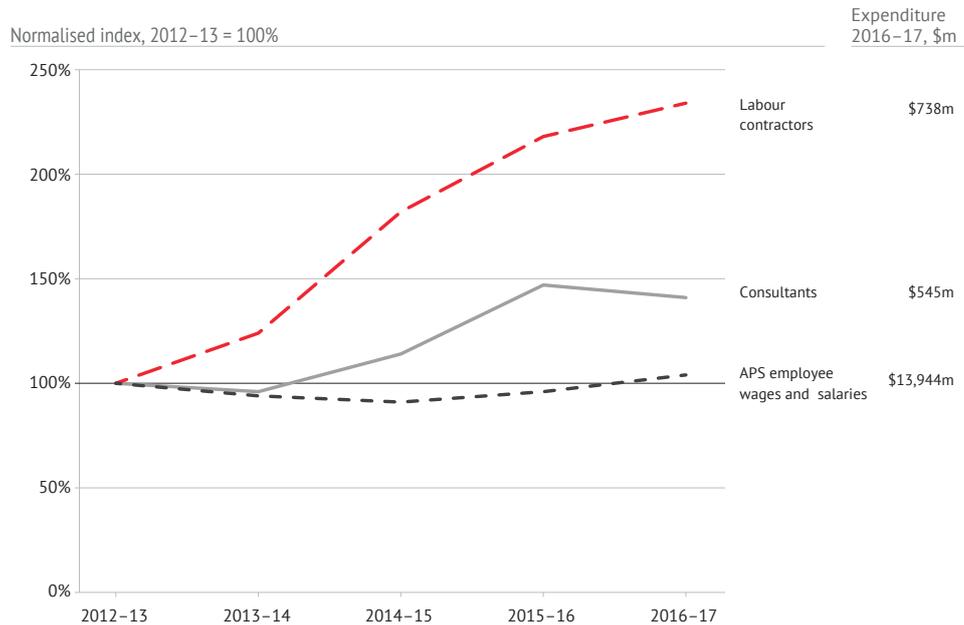
While the use of labour hire is already widespread across many agencies, the numbers of APS jobs being converted into insecure labour hire continues to increase.

Labour hire use is increasing

The previous Finance Minister, Senator Cormann, has claimed that there has been no increase in spending on labour contractors and consultants.

However, this claim is contradicted by the findings of the Independent Review of the Australian Public Service (APS Review), also known as the Thodey Review, which found that labour contractor and consultancy spending have increased significantly, while spending on APS wages and salaries have remained largely flat.⁸

PERCENTAGE CHANGE IN SPEND ON EMPLOYEES, LABOUR CONTRACTORS AND CONSULTANCY CONTRACT NOTICES



Source: Thodey Review, p.186

Decisions made by government in the 2020-21 Federal Budget will see a further increase in spending on labour hire – Services Australia and the Department of Veterans’ Affairs (DVA) received substantial funding increases that were earmarked for spending on external suppliers and not on increased ASL.⁹

How many jobs are filled by labour hire in the public service?

CPSU estimates, based on available AusTender data, Senate Estimates evidence, and workplace research, that there are at least 20,000 APS positions filled on a labour hire basis.¹⁰

However, complete and detailed data is not available, as government has not been collecting such information.¹¹ The CPSU previously raised concern about this lack of basic transparency in our submission to the Joint Committee on Public Accounts and Audit inquiry into Australian Government Contract Reporting based on Auditor-General’s report No. 19 (2017-18) (attached at Appendix B).

Some agencies have provided data in response to Senate Estimates questions, including:

- In the NDIA 26.6% of the total staff by headcount are labour hire or contractors.

- In the Department of Health the estimated number of labour hire contractors at 30 June 2020 equates to 21% of total headcount.¹²
- In the Disability Royal Commission 71.6% of staff are engaged as contractors, labour hire and secondees.
- In the Department of Veterans' Affairs labour hire and contractor use now accounts for more than 40% of the workforce.
- In the Aged Care Quality and Safety Commission:
 - 28% of Quality Assessment and Monitoring Group staff are labour hire or contract staff.
 - 20% of Complaints Resolution Group staff are labour hire or contract staff.
 - 20% of Provider Approvals and Compliance Group staff are labour hire or contract staff.
 - 52% of Corporate Services Group staff are labour hire or contract staff.

In Services Australia, over 12,000 or nearly three in ten staff (28.3%) doing work are labour hire, contractors, consultants or work for outsourced service providers.¹³

SERVICES AUSTRALIA APS AND NON-APS STAFFING HEADCOUNT

Categories	Headcount as at 29 February (pre-COVID)	Headcount as at 28 April 2020 (peak demand)	Change between 29 February 2020 and 28 April 2020	Mobilisation data Staff increases due to peak demand	Headcount as at 30 Sept. 2020
APS ongoing headcount	27,554	27,672	118	–	27,141
APS non-ongoing headcount	484	541	57	1,546	1,005
APS irregular/intermittent headcount	2,209	3,694	1,485	–	3,484
Total APS headcount ^a	30,247	31,907	1,660	3,414 ^b	31,630
APS secondee/APS 2000	123	2,309	2,186	2,185	297
Non-APS labour hire	1,462	4,933	3,471	3,125	2,621
Non-APS contractor/consultant	3,153	3,431	278	–	3,613
Total end of period headcount APS secondees and non-APS	4,738	10,673	5,935	–	6,531
Total end of period headcount APS and non-APS	34,985	42,580	7,595	12,373 ^c	38,161
Non-APS outsourced - Service Delivery Partners (not included in workforce total)	3,703	6,006	2,303	2,103	5,950

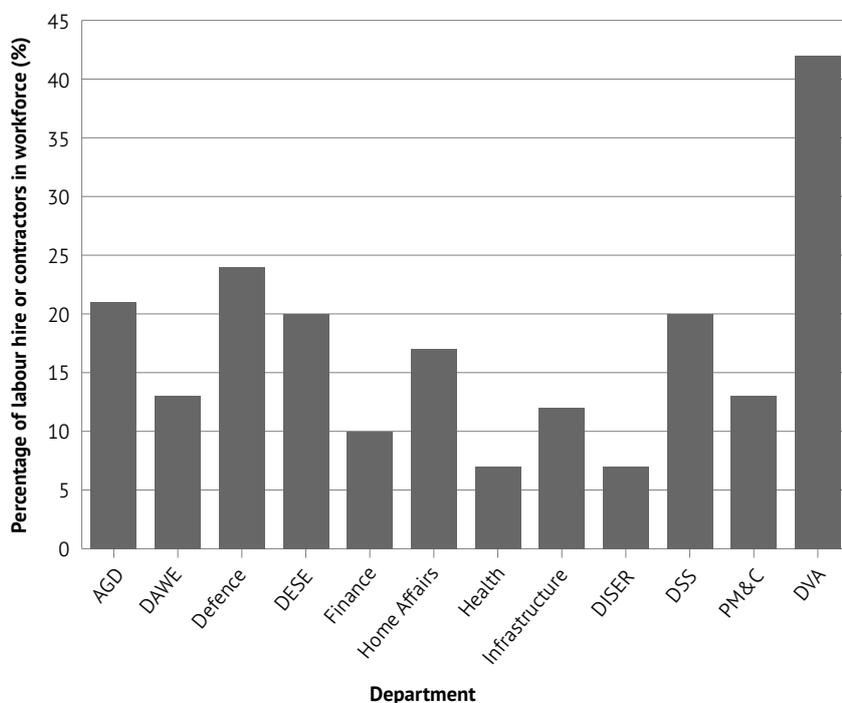
Notes: ^a Excluding secondees. ^b Additional internal mobilisation. ^c Includes 2103 Service Delivery Partners.

12 Senate of Australia. (2020, 26 October). Senate Estimates. Community Affairs Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fcd29d668-14ab-48d0-897e-6cd47be467a4%2F0002;query=Id%3A%22committees%2Festimate%2Fcd29d668-14ab-48d0-897e-6cd47be467a4%2F0000%22>

13 Senate Standing Committee on Community Affairs Legislation Committee, Answers to questions on notice from the Social Services portfolio, Question SQ20-000258, Budget Estimates 2020 - 2021 - 29 October 2020

Based on analysis of publicly available information, it has recently been estimated that nearly one in five of the total workforce of APS agencies may be labour hire and contractors, with some agencies double that.¹⁴

LABOUR HIRE AND CONTRACTOR WORKFORCE PERCENTAGE WITHIN DEPARTMENTS



Source: [canberratimes.com.au/story/7087674/stealthy-privatisation-of-public-sector-causes-concern/](https://www.canberratimes.com.au/story/7087674/stealthy-privatisation-of-public-sector-causes-concern/)

Having established that the ASL cap is driving the use of labour hire, and that this has now become widespread, and continuing to increase across the public service, the next issue is to look at what work is being done by labour hire.

3. Labour hire is being used for core public sector work

A key issue here is not just the incidence of labour hire use but what it is being used for. This matters a great deal.

The APS was established as a career-based service, in recognition that to deliver on its mandate requires a service with expertise, corporate knowledge, experience, institutional foundations and a sense of shared values and ethics. The question before us is to what extent is the ASL cap and labour hire undermining the very basis of a career-based service.

¹⁴ Sarah Basford Canales (2021, 19 January). "Stealthy Privatisation" of Public Sector Causes Concern. The Canberra Times. Retrieved from <https://www.canberratimes.com.au/story/7087674/stealthy-privatisation-of-public-sector-causes-concern/>

The Coalition Government’s position on this is clearly stated – it says that labour hire and contractor use is limited to short term roles or for specialist skills, and this provides the best value for money.

Senator Cormann as Finance Minister has argued that the use of contractors and consultants have been a “longstanding feature of public administration,”¹⁵ and explained that “where the need for additional support is temporary, or where there are particular specialist skills required or whatever, it is more efficient to rely on contractors.”¹⁶

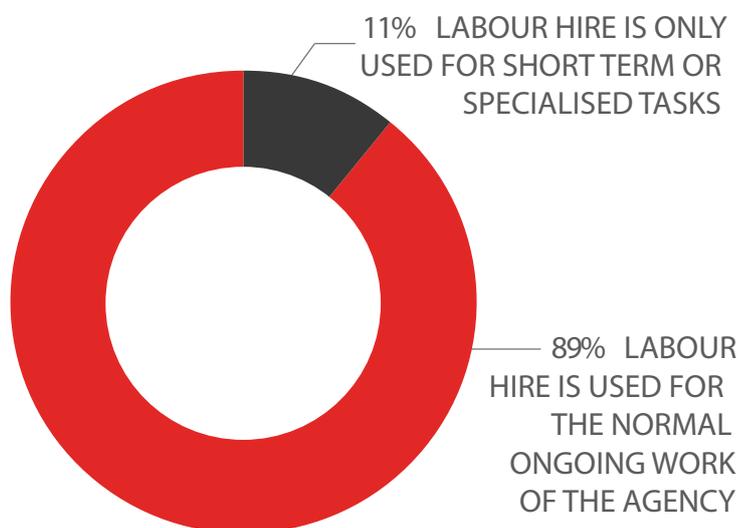
More recently, new Finance Minister Simon Birmingham has claimed, that “external expertise has been utilised for defined periods, to address more time limited requirements.”¹⁷

However the Government’s assertions are contradicted by evidence from CPSU members and increasingly from Departments and Agencies.

The CPSU survey posed the question “The current Government says labour hire is used for short term work or specialised roles. What is the experience in your agency?”

The result was stark. Eighty-eight per cent of respondents said that labour hire is being used for the normal ongoing work of the agency.

THE CURRENT GOVERNMENT SAYS LABOUR HIRE IS USED FOR SHORT-TERM WORK OR SPECIALISED ROLES. WHAT IS THE EXPERIENCE IN YOUR AGENCY?



Source: CPSU Survey - APS Capability Senate Inquiry: Q7.

The survey results indicate that APS staff are well aware of the gap between the Government’s rhetoric and what is actually happening in workplaces. This is reinforced by the comments from respondents.

Many members stated that the use of labour hire was widespread and normalised in their agency, one member even commenting that “We have a slogan in our team “APS employees are temporary and contractors are permanent””.

Other comments included:

In my previous team, out of 14 workers, only two were employees of the agency. The rest were labour hire. Most had been there 5+ years. It clearly was not short term! It was important work too as it was supporting and resolving issues with the ato.gov.au website. This is work that is clearly ongoing and will not be going anywhere in the near future. – ATO member

Labour hire is used very broadly to do a great deal of the work. The hire company makes money and the worker gets paid less than the APS employee for doing the same work. – Services Australia member

Labour hire is very regularly used for ongoing positions. My labour hire teammates do the same job as I do. All have been hired for 5+ years in the same role. – Services Australia member

Labour hire used extensively for full time regular staff. We have gone through 10 Labour hire staff for the same role in the last 3 years. I've been responsible for training them while doing my regular job then picking up the slack when they move on. – NDIA member

Our agency is between 1/3 - 1/2 labour hire. Some have been with the agency for years. They are not in specialised roles, they are doing everyday processing work. That statement from the Government is in total opposition to what I see in my agency every day. – DVA member

We often use labor hire staff for ongoing Service Delivery roles because of the ASL cap. There is high turnover of labor hire staff, because these staff only do labor hire work until they land a job that has sick leave and other paid leave. Then we get the next staff member in and start training them again. Note we could easily use casual APS employees to fill a labor hire need. Prior to the ASL cap I used to fill these roles with non -ongoing APS staff. – AEC member

There are labour hire staff in the office that have been here for more than 2 years, doing the same job. – DVA member

Our department has had the same labour hire staff for more than 9 years – ATO member

There is also clear evidence from Agencies that contradicts the Government's position.

In its response to a Senate Estimates Question on Notice, the ACQSC confirmed that labour hire was used for core APS work stating that “People employed by the Commission under labour hire arrangements are engaged to perform work comparable to APS employees in all functional areas of the Commission.”¹⁸

Similarly, DVA, in evidence to Senate Estimates in October 2020, made it abundantly clear that labour staff are recruited and trained for the express purpose of performing the on-going work of the Department, and that these labour hire staff can stay with the agency for extended periods of employment.

The situation in the NDIA is particularly worthy of examination in this Inquiry. An FOI document released in October 2020 revealed that the NDIA has 21 SES and over 200 Executive Level staff engaged through labour hire arrangements – this is more than 50% of the SES and more than 30% of the Executive Level staff.¹⁹ This is extraordinary. While the Government says labour hire is for short term or niche skills, here we see the very leadership of a critically important APS agency engaged through labour hire. It makes a mockery of the Government’s rhetoric.

The above evidence makes it clear that contractors and labour hire are being used for core work across a range of job families, not just short-term or specialised roles as claimed by the Government.

Having established that the ASL cap is driving the widespread and increasing use of labour hire, and that it is being used for the core work the public service, the next issue is to consider how labour hire costs compare to APS employment.

4. Labour Hire costs the agency more than APS employment

The Government claims that using external providers costs less. For example in the 2020 Federal Budget Finance Minister Cormann said that ““When temporary contractors and consultants are used judiciously, the APS can avoid the ongoing costs that result from recruiting additional permanent public servants,”²⁰

While the full and exact costs of using contractors and labour hire is unknown due to a lack of data and transparency, the data that is available suggests the Government’s claim is false.

On contractors, the Department of Infrastructure and Regional Development suggests it costs 40% more than permanent staff.²¹

18 Senate Standing Committee on Community Affairs, Answers to questions on notice from the Health portfolio, Question SQ20-000717, Budget Estimates 2020 - 2021 – 27 October 2020

19 FOI 20/21-0161, NDIA information on number of staff, EL2 and above employed through the labour hire rates of 18 September. Retrieved from https://www.aph.gov.au/-/media/Estimates/ca/bud2021/Tabled_doc/27_FOI_20210161_NDIA_on_number_of_staff_EL2_and_above_employed_through_labour_hire_as_at_18_Septembe.pdf?la=en&hash=CAD301582984FF05E227D118577CEFF52A1D57FD

20 Matthew Elmas (2020, 8October) Public service outsourcing in the spotlight as government tightens the reins. Retrieved from <https://www.themandarin.com.au/141834-public-service-outsourcing/>

21 Department of Infrastructure, Regional Development and Cities (2018). Submission to the Australian Public Service Review. Retrieved from <https://uploadstorage.blob.core.windows.net/submission-uploads/fil03f37a05e11f3cd92959e.pdf>

The Australian Bureau of Statistics (ABS) also stated non-ICT contractors cost *“approximately 125-150% of internal staff, this excludes recruitment fee.”*²²

Central agencies are well aware that the reliance on contractors cost more, PM&C previously stating that *“through removing ASL caps, agencies may have greater flexibility to recruit specialist staff at a reduced cost.”*²³

In relation to labour hire, agencies have been telling government for some time that labour hire costs more.

As early as 2017 the CDPP told the Senate that it cost 23% to 28% more to engage people through labour hire than to directly employ them, while the labour hire employees are paid 3% less.²⁴

In 2018, AIATSIS revealed there was a 25% premium to use labour hire, reducing the number of funded additional positions by 14%.²⁵

And now, recent responses to 2020-21 Budget Senate Estimates Questions on Notice show significant mark ups are built into the cost of labour hire based on the maximum and minimum fees paid to labour hire firms.

Agency	Contracts with labour hire firms in 2019-20	Mark-up
ACQSC ²⁶		On average a margin of 13% is paid to a labour hire company for the provision of labour services. The total cost of a labour hire worker entails an average mark up of 26% above the total cost of an APS employee.
Australian Building and Construction Commission ²⁷	\$159,241.48	12%
TEQSA ²⁸	\$2,837,187.04	Between 12% and 16%.
DVA ²⁹	The DVA does not maintain centralised records on these matters in a form that could be easily reported	The DVA preferred providers negotiated fee (called a ‘margin’) for non-professionals is 12%

22 Australian Bureau of Statistics (2018). Australian Government Contract Reporting – Inquiry based on Auditor-General’s report No. 19 (2017-18) Submission 25 – Supplementary Submission. Retrieved from <https://www.aph.gov.au/DocumentStore.ashx?id=90a39e57-a638-46cb-be00-e9cb9753a461&subId=563837>

23 Department of Prime Minister and Cabinet (2018). Australian Government Contract Reporting - Inquiry based on Auditor-General’s report No. 19 (2017-18) - Submission 18

24 Senate of Australia. (2017, 18 August). Senate Estimates. Legal and Constitutional Affairs Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F3ee2a9e9-d718-457a-bb19-af1a1fcea8f0%2F0007;query=Id%3A%22committees%2Festimate%2F3ee2a9e9-d718-457a-bb19-af1a1fcea8f0%2F0000%22>

25 Australian Institute of Aboriginal and Torres Strait Islander Studies (2018). Submission to the Australian Public Service Review

26 Senate Standing Committee on Community Affairs, Answers to questions on notice from the Health portfolio, Question SQ20-000717, Budget Estimates 2020 - 2021 – 27 October 2020

27 Senate Standing Committee on Standing Committees on Legal and Constitutional Affairs, Answers to questions on notice from the Attorney General’s portfolio, Question LCC-BE20-121, Budget Estimates 2020 - 2021 – 28 October 2020

28 Senate Standing Committee on Standing Committees on Education and Employment, Answers to questions on notice from the Social Services portfolio, Question 124, Budget Estimates 2020 - 2021 – 28 October 2020

29 Senate Standing Committee on Foreign Affairs, Defence and Trade, Answers to questions on notice from the Social Services portfolio, Question 24, Budget Estimates 2020 - 2021 – 26 October 2020

Agency	Contracts with labour hire firms in 2019-20	Mark-up
AWM ³⁰	\$4,895,983	As a percentage mark-up on the cost of the contractor, the maximum and minimum fees paid to labour hire firms in 2019-20: 8% to 14.5%
Future Fund Management Agency ³¹		Minimum 2%, maximum 25%.
Australian Competition & Consumer Commission (ACCC) ³²	\$6,374,705	Mark-up on costs vary considerably between Panels, and from supplier to supplier, generally in a range between 10, and 40%.

However, the agencies that have reported on the labour hire fees they pay are a small minority. The majority of agencies have not reported. This is no surprise as agencies are not even collecting basic information:

- The Department of Education, Skills and Employment told Senate Estimates that “It is not the department’s standard practice to collect information about the margin charged by labour hire firms.”³³
- The NDIA says it procures contractor services through various arrangements and “does not keep a register of each percentage mark up. To obtain this level of detail would be a significant diversion of resources.” This was the response across all DSS portfolio agencies.

Given the large sums of public money being spent, and the legislated requirement on agencies around financial management, CPSU submits it is a failure of basic transparency and public accountability that many agencies do not even know how much of a mark-up exists.

This raises questions as to whether value for money is a consideration at all for agencies, and if not, why not.

The lack of reportage on costs is even more problematic when it comes to whether agencies are comparing the cost of labour hire to APS employment.

Senate Estimates Questions were put to agencies about whether they had done a cost comparison between directly engaged APS employees and the use of labour hire. The large majority of agencies had not done so.

This again raises questions as to why a basic requirement for prudent financial management – comparing cost options – is not being performed. One conclusion that would be open to this Inquiry to find is that agencies are not doing this work because

30 Standing Committee on Foreign Affairs, Defence and Trade, Budget Estimates 2020–21, Question on Notice, Question 109 – 26 October 2020.

31 Senate Finance and Public Administration Legislation Committee, Budget Estimates 2020–21, Question on Notice, Question F017 - 21-22 October 2020

32 Question on notice no. 226 Portfolio question number: BET226 Budget estimates Economics Committee, Treasury Portfolio

33 Standing Committees on Education and Employment, Answers to Questions on Notice, Budget Estimates 2020 – 2021, Question No. SQ20-001843 - 29 October 2020.

there is no point to doing it given the Government's policy requirements. Another could be that Coalition Government has not undertaken this analysis because it knows it would reveal the falsehoods behind this failed policy.

However, some agencies have compared costs. And in every case it costs more to engage staff as labour hire or contractors compared with hiring staff as APS employees.³⁴

Agency	Answer to Question on Notice
Asbestos Safety and Eradication Agency (ASEA)	In the second quarter of 2019-20, the ASEA conducted a short internal review of costs for engaging contractors versus hiring staff as employees. The review found efficiency gains in engaging staff as ongoing or non-ongoing APS employees over labour hire contractors and a saving of approximately 30% on budgetary costs to the agency. For example, a labour hire contractor at APS6 level costs approximately \$150,000 per annum as opposed to approximately \$105,000 per annum for an ongoing or non-ongoing APS employee.
Australian Institute of Marine Science ³⁵	AIMS remunerates those engaged through labour hire arrangement consistent with the rates of pay identified in our Enterprise Agreement. Therefore, when including the labour hire providers fees, it cost more than engaging directly as AIMS employees.
ACCC ³⁶	Variance of base salary to total costs is 37.4% (non-ongoing specified term) vs 49.1% (cheapest labour hire firm analysed), or alternatively \$150,237 vs \$163,721
ASIC ³⁷	ASIC has conducted analysis on the cost to engage permanent or temporary employees versus contractors. This review is ongoing and on a role by role basis. Initial reviews suggest the average cost to hire a contractor over a six-month contract is approximately \$132,000 (based on a daily rate of \$1,000) versus the cost to hire an employee on EL2, Step 10 for 6 months which is \$94,443 including Super.
ACQSC ³⁸	On average a margin of 13% is paid to a labour hire company for the provision of labour services. The total cost of a labour hire worker entails an average mark up of 26% above the total cost of an APS employee

Based on the evidence provided by agencies, it is clear that outsourcing costs more than directly engaging APS employees. All the evidence available directly contradicts the Government's claims that the use of labour hire is efficient.

CPSU submits that this Inquiry should make a finding that labour hire costs more than APS employees.

34 Standing Committee on Foreign Affairs, Defence and Trade, Budget Estimates 2020–21, Question on Notice, Question 33 – 29 October 2020.

35 Question on notice no. 227 Portfolio question number: BI-228 Budget estimates Economics Committee, Industry, Science, Energy and Resources Portfolio

36 Question on notice no. 226 Portfolio question number: BET226 Budget estimates Economics Committee, Treasury Portfolio

37 Question on notice no. 226 Portfolio question number: BET226 Budget estimates Economics Committee, Treasury Portfolio

38 Senate Standing Committee on Community Affairs, Answers to questions on notice from the Health portfolio, Question SQ20-000717, Budget Estimates 2020 - 2021 – 27 October 2020

Higher labour costs to agencies does not mean higher pay for labour hire workers.

It is important to note that the higher costs of labour hire use compared to APS employment does not mean that most labour hire employees are paid more than their APS counterparts. Some labour hire employees are paid less, such as the CDPP example, while others are paid with some notional reference to the relevant APS enterprise agreement in their host agency. However, even in those cases labour hire employees can end up paid less by virtue of being a casual – who are not paid for public holidays, sick or annual leave, or Christmas shutdowns - or paid at a lower classification rate than is appropriate for the work they are doing.

A former labour-hire employee at the NDIS told the CPSU that:

In my office..., Planners, who despite doing the same job, were paid differently. When negotiations for contracts happened, we found out that other staff were being paid up to \$10 more per hour...Pay between staff performing exactly the same role is often disparate and many labour-hire agencies prohibit their employees from discussing their pay, making it difficult to ask for parity.

CPSU is currently working with labour hire workers on detailed assessments of pay and conditions outcomes. CPSU hopes to provide that analysis to this Inquiry in due course.

5. The workforce and budget implications of additional labour hire costs

All of the evidence seen by CPSU is that labour hire costs agencies more than employing staff as APS employees.

This has a substantial, and entirely predictable outcome – agencies can employ fewer staff for their available budget.

And fewer staff means a reduced capacity to perform the work of the agency and meet the needs of the community. It is not a coincidence that agencies with very high service delivery pressures and high workloads on staff are also agencies with high levels of labour hire use.

This is an astonishing situation – the Coalition Government is effectively directing the public service to spend more to get less, while consigning tens of thousands of workers to the pressures and risks of insecure work and reducing services to the community.

The benefits to agencies, workers and clients of redirecting funds spent on labour hire into directly engaged APS jobs would be substantial. Every dollar redirected would create more secure jobs and better services for Australians, For example;

Better aged care regulation: The ACQSC is struggling to meet the demands of regulating the aged care sector. A CPSU submission to the Aged Care Royal Commission identifies serious resource shortfalls. The ACQSC itself has also acknowledged to the Royal Commission that resource pressures are a factor. The workforce and budget impacts of labour hire directly contribute to these pressures:

- The ACQSC had 201 labour hire staff and 532 APS employees as at 30 October 2020.³⁹.
- More than 26% of the agency is labour hire or contractors.
- A 26% labour hire premium means that ACQSC could afford an additional 52 staff (a 7% increase) if all were directly engaged – or to put it the other way, **that the Government mandated use of labour hire inflicts a 7% staff cut on this agency, while also inflicting further costs and damage to capability caused by high staff turnover and the loss of corporate knowledge.**

Better services for Veterans: DVA has a substantial and growing backlog of claims to be processed, and resource pressures affecting Veteran’s access to services and support.

- DVA had 1,246 labour hire and contractors and 1,615 APS employees in 2020.
- 42% of the Department’s staff, including more than 50% of claims processing staff, are now contractors or supplied by labour hire providers.
- In October’s Budget Estimates, DVA stated that Labour Hire companies charge a 12% margin or negotiated fee. DVA was unable to provide a comparison of the total cost of employing APS staff versus labour hire. The CPSU estimate that the real cost of using labour hire is at least 50% more.
- Redirecting a labour hire premium of between 25-50% into APS employment would allow DVA to employ between 200 to 400 additional staff – **or to put it the other way, the Government’s mandated use of labour hire inflicts a 7-14% staffing cut on this agency, while also inflicting further costs and damage to capability caused by high staff turnover and the loss of corporate knowledge.**

These examples of the benefits to the community of redirecting labour hire premiums into APS employment can be applied across the entire public service:

In 2020, AusTender shows that \$2.1 billion was spent by agencies on temporary personnel contracts – delivering huge sums to labour hire firms for work that could have been done better and cheaper by APS employees.

Based on available data, if that spending was redirected to APS employment this could have delivered an additional 5,874 APS staff, on top of converting 13,706 insecure labour roles into secure jobs, for Services Australia, DVA and the National Disability Insurance Agency without spending more.⁴⁰ The capability and capacity benefits to the service would be substantial.

Having established that the ASL cap drives labour hire use, that labour hire is widespread and being used for the ongoing work of the public sector, and that it costs more than APS employment, the net issue is to look at how those factors come together to damage capability and capacity.

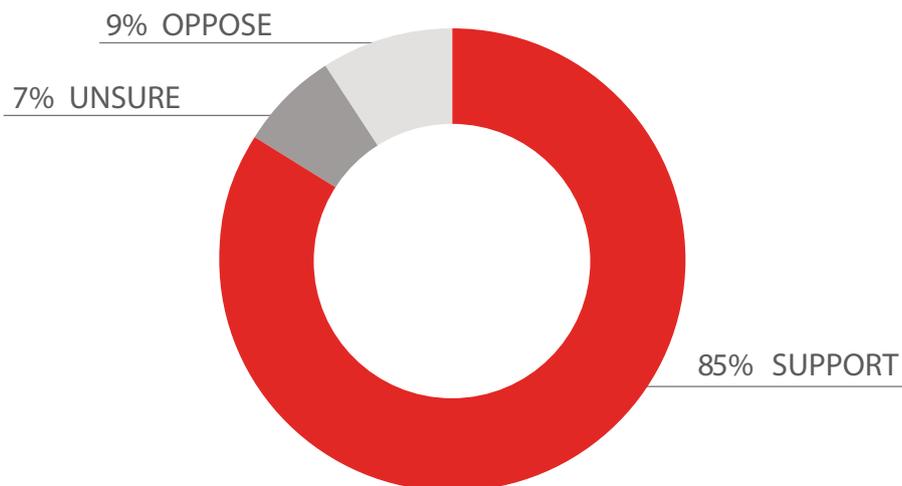
³⁹ Question on notice no. 359 Portfolio question number: SQ20-000717 Budget estimates Community Affairs Committee, Health Portfolio

⁴⁰ Based on ASEA assumption of \$105,000 for an APS employee and \$150,000 for a labour hire contractor and total published contracts in the 2020 calendar year of \$2,055,970,817

6. How labour hire impacts on APS capability

The normalised use of labour hire has impacted on the operation of the APS, eroding its capability. Over four in five (84.6%) of the 6,000 public servants surveyed by the CPSU believe the increased use of external suppliers instead of APS staff is hollowing out the skills and capability of the APS.

THE INCREASED USE OF EXTERNAL SUPPLIERS INSTEAD OF APS STAFF IS HOLLOWING OUT THE SKILLS AND CAPABILITY OF THE APS



Source: CPSU Survey - APS Capability Senate Inquiry. Q1

The extensive use of labour hire encourages the loss of policy knowledge and skills, sabotages service delivery and has led to the Government's abandonment of its role as the custodian of a career public service. As a CPSU member explained, "the work of the APS is broad, complex and important. It is learnt over years. Short term contracts undermine the ability [of] the APS to build and maintain services".

Members have warned the growth of insecure work has affected the skill base of agencies. The skills and corporate knowledge needed to work in the APS are substantial and the extensive use of labour hire makes it far harder to maintain. Members commented that significant investment is made in staff who then leave for more secure jobs.

There are areas in DVA that require quite a bit of training. It's demoralising to see months of training leave with a contractor, because they have gone somewhere else for a permanent position or a longer contract, sometimes to another Government Department. – DVA member

The training gaps are becoming quite obvious. The idea that you can replace the knowledge held by experienced APS staff by labour hire staff following 'blueprint' instructions will end up costing our customers, and the taxpayer a damn sight more than what it was ever worth. – Services Australia member

Enormous resources and funds are going into the recruiting, onboarding and training of staff who would be suited to APS careers but leave because of the uncertainty. – Services Australia member

As a longtime APS staff member I now find it is a constant cycle of training & quality checking. We no sooner have staff all trained up and then they leave because they have secured fulltime employment. – Services Australia member

In the ACQSC, our members warned the long-term regulatory capability is not being retained as contracted staff, many of whom are developing good skills, either do not last their full contract or are “head hunted” into permanent positions by aged care providers.⁴¹

Attempts to maintain quality service delivery are sabotaged by this increased turnover, having implications as recruiting and training staff to be fully effective in their roles can take months.⁴² Corporate knowledge is lost and there is a constant cycle of having to train new staff.

Members in the NDIA have explained that the insecurity and turnover associated with use of labour hire not only affects the individual worker but the entire team and NDIS participants because additional workloads and the lack of consistency affects performance and outcomes.⁴³ NDIA members commented that:

I have trained 8 people in the last 18 months who have all left before they were skilled enough to be useful. We still don't have these positions filled and are about to do it all again. I am facing burn out due to the increased workload and the extra work of training staff who ultimately do not contribute to the team.

We have had entire teams made entirely of contractors quit and all that skill and knowledge is lost in an instant. I have had to pick up the work of 3 additional people with no notice, these positions (still going to labour hire) have not been filled almost 12 months later, 4 labour hire coming and going in the meantime.

Replacing ongoing APS with IIE/labour hire has resulted in a workforce that does not look at the current job with any commitment as it's just a filler. This means knowledge attained is lost, so we are constantly in a cycle of training new staff, instead of having a foundation staff base to develop. This will also lead to a shortfall in suitable staff to progress through the APS 5 and APS 6 roles.

From SES to APS 5 employees, the constant change equals too many employees too often don't understand enough about the Programmes for effective decision making, value adding to the extent experienced people would reasonably expect.

41 CPSU (2020). Submission to Royal Commission into Aged Care Quality and Safety

42 Senate Standing Committee on Foreign Affairs, Defence and Trade, Answers to Questions on Notice, Portfolio Question number 37 from the Veterans' Affairs portfolio, Additional Estimates 2019 - 2020 – 4 March 2020. Retrieved from <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-CommitteeId5-EstimatesRoundId8-PortfolioId7-QuestionNumber299>

43 CPSU (2020) Submission to inquiry into NDIS Planning

Use of contractors/labour hire, IIE's does not encourage those staff to gain the necessary skills or experience to do their jobs properly. Short term fixes undermine the gaining of experience. When staff retire/ resign, they are not replaced.

The erosion of policy knowledge and skills through labour hire has an impact. For example, in Services Australia, multiple problems associated with the use of privatised labour have been reported by members. These include the creation of reverse workflows, double handling, a dramatic rise in errors, increasing complaints, unnecessary appeals, declining customer satisfaction, and trust and reputational damage to the agency resulting from poorly trained and equipped outsourced workers.

In the National Disability Insurance Agency the high use of labour hire – currently at about 26% of the workforce⁴⁴ - has led to high staff turnover and much training and re-training. This causes hardship for those working under these conditions and impacts negatively on organisational capability. The experience for participants, far too often, is deficient plans and significant delays when requesting reviews. This ultimately affects the ability of NDIS participants to have true choice and control through every step of the NDIS process.

The extent of labour hire means many struggle to see a long-term career in the public service as the service is further undermined by the creation of a two-tiered workforce, facilitated by the Government's actions. Members in the NDISQC have spoken to the CPSU about how the increasing use of labour hire affects the culture of an agency, creating a divide and an 'us' and 'them' culture.⁴⁵

Having a permanent APS workforce with secure jobs creates the foundation for a more skilled workforce that can deliver outcomes faster and better. Corporate knowledge is retained and there is an incentive to invest in skills, resulting in a better understanding of needs and more effective services. The current workforce model of increasing reliance on labour hire works in direct opposition to this and affects service delivery capacity. Conversion of the existing labour hire workforce to permanent APS staff should be a priority to strengthen capability and capacity.

Capability cannot be built with a short-term fix. More training, more experience, and more time on the job make staff more effective. Retaining that knowledge and skills through a career-based APS with job security is essential.

Case study: Department of Veterans' Affairs

The DVA is a case study in the damage being done by labour hire.

DVA's operating environment is highly stressed:

Increasing Demand for Veteran Services

- In 2012 the department estimated it would have fewer than 250,000 clients in 2020 and that figure would decline. In actuality, the Department has more than 320,000 clients.
- There has also been an increase in MRCA initial liability (126%) and permanent impairment (97%) claims from 2017-18 to 2018-19.

Mental health crisis among Veterans

- With 67 suspected suicides in the past 12 months, including 25 since the release of the inquiry into alleged war crimes in Afghanistan in November 2020.⁴⁶

Current Backlog of Claims in MRCA Initial Liability

- DVA have said that it takes on average 178 days to process an MRCA Initial Liability claim and that there is a backlog of 14,381 claims on hand as of 30 September 2020.
- CPSU members have said that the current backlog, of at least 25,000 claims in MRCA Initial Liability.

In this environment, where services to clients has life or death consequences, DVA needs more staff, and staff with experience to meet the client needs.

However the DVA workforce is now highly casualised and privatised – with 42% of the Department's staff, including more than 50% of claims processing staff, now supplied by labour hire providers.

This casualisation and privatisation is deeply damaging the workforce capacity and capability. CPSU members report that decline in permanent APS staffing levels and an explosion in labour hire and contract staffing arrangements has led to unsustainable caseloads, high staff turnover, poor job security and increasing concerns about the impact on clients from longer processing times.

More than 50% of our staff is labour hire. They are all seeking permanent employment and job security. They get fully trained then leave. This has left a gaping hole in our knowledge and stress of extra work on permanent employees.

The constant ebb and flow of contracted staff wastes time in managing contracts and in the constant round of orientation, classroom and on the job training and intensive management required of new starters. The people doing all of this are the same people who could otherwise be doing the work. At the end of all this effort, contracts finish and its back to square one. Still not enough people to do way too much work and intellectual capital and corporate

knowledge lost. The importance of APS staff is consistently undervalued and underestimated.

A direct line can be drawn between the casualisation and privatisation of DVA and the increased waiting times and reduced services for veterans

- In 2020, DVA spent \$82m on the labour hire services of at least 46 different providers.
- CPSU estimates that in DVA labour hire and contractor engagement can cost as much as 50% more than employing permanent staff.
- This means that DVA can employ fewer staff for their staffing budget, and
- Every staff member fewer means longer wait times and reduced services for clients.

And too often in veterans' affairs longer wait times for claims and support can have deadly consequences.

The experience in DVA is repeated across the public service – the Government mandating that agencies hand staffing budgets to private providers is wasting precious funds while undermining services and policy capability, all while consigning tens of thousands of workers to the pressures and risks of insecure work.

The next question to consider is whether agencies can avoid this situation.

7. Can agencies get an exemption from the ASL cap?

It is clear that the ASL cap is damaging to the public service – wasting budgets, reducing capacity and eroding capability. Agencies are increasingly outspoken about the damage this government policy is doing.

The Government says however that if agencies want an exemption from the ASL they just have to apply. Senator Cormann as Finance minister has said:

If there is a good case as to why additional ASL are required and the explanation is provided that the opportunity for reprioritisation of existing resources has been exhausted, that absolutely can and would be considered by the government.⁴⁷

47 Senate of Australia. (2019, 22 October). Senate Estimates. Finance and Public Administration Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fba6fe245-10f5-462a-956b-2e624ab1f117%2F0007;query=id%3A%22committees%2Festimate%2Fba6fe245-10f5-462a-956b-2e624ab1f117%2F0000%22>

There is no limit to the capacity of the government to make decisions to provide additional resources, as long as we have been satisfied that a genuine effort has been made to reprioritise existing resources and as long as there is a case that that is in the public's and indeed in the country's interests.⁴⁸

He had also stated:

At Expenditure Review Committee level, every portfolio has the opportunity to come into the ERC and say, 'For this particular measure, we want to seek an exemption from the ASL offset rule,' and indeed I provide exemptions. If that is justifiable, then the exemption will be granted. If there are other, more efficient ways of achieving the government's priorities, then that is, of course, entirely appropriate.⁴⁹

However, the evidence to date is that very few exemptions are granted. The only information provided by the Government was that 20 ASL offset exemptions were approved in the 2018-19 MYEFO and 2019-20 Budget contexts.⁵⁰ The Government has not revealed which agencies these exemptions apply to nor the extent of the exemptions.

Because the exemptions process is part of the budget preparations there is limited reportage or visibility about the matter. DVA is a rare exception - The Secretary of DVA has confirmed that a request for additional ASL was made but it only prevented a reduction in ASL.⁵¹

CPSU is also aware of a number of agencies that have unsuccessfully applied for an exemption, or who say they see no point in the process.

The very low number of publicly reported exemptions to date, and the sheer numbers of labour hire workers engaged at a greater cost than direct employment calls into question whether this exemptions process is genuine. CPSU understands that some agencies have not bothered applying for an exemption as they understood they would be unsuccessful.

The impact goes beyond APS agencies, for example, affecting CSIRO, even though it receives external funding from partners outside of government. As part of a Consultative Council meeting with CSIRO Executive in December 2018, the application of the staffing cap was raised with Dr Larry Marshall. According to CSIRO Executive, the Department

48 Senate of Australia. (2019, 22 October). Senate Estimates. Finance and Public Administration Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fba6fe245-10f5-462a-956b-2e624ab1f117%2F0007;query=id%3A%22committees%2Festimate%2Fba6fe245-10f5-462a-956b-2e624ab1f117%2F0000%22>

49 Senate of Australia. (2020, 3 March). Senate Estimates. Finance and Public Administration Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=id%3A%22committees%2Festimate%2F436266e6-b623-460b-a6b4-9411f0b0114b%2F0005%22>

50 Senate Finance and Public Administration Committee, Answers to Questions on Notice, Portfolio Question number F015 from the Finance portfolio, Supplementary Budget Estimates 2019 – 2020 – 22 October 2019. Retrieved from <https://www.aph.gov.au/api/qon/downloadestimatesquestions/EstimatesQuestion-Committeeld1-EstimatesRoundld7-Portfoliold2-QuestionNumber15>

51 Foreign Affairs, Defence and Trade Legislation Committee (2020, 26 October). Senate Estimates - Defence Portfolio: Department of Veterans' Affairs. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=id%3A%22committees%2Festimate%2Fa88fc5bc-6674-4e3f-9482-6478aa9974f4%2F0006%22;src1=sm1>

of Finance have provided informal, verbal advice that the cap will apply strictly to the organisation.⁵²

Agencies such as DVA, AAT, AEC, NDIA, CSIRO, ATO and Services Australia should be directly asked by the Committee about the exemptions process.

The evidence above shows that the use of labour hire and contractors is not value for money, and that agencies are aware of this, but that they have little or no option to avoid this. This raises a questions about whether this situation meets the obligations of the public service to spend public monies in a responsible and proper way.

8. Labour hire costs and the financial management obligations of agencies and Ministers

The *Financial Management and Accountability Act 1997* (Cth) (FMA Act) provides a framework for the proper management of public property and public money, by Commonwealth ministers, their delegates and the Chief Executives of Commonwealth government agencies.

Part 7 of the FMA Act specifically relates to the duties of Chief Executives and includes a requirement that Chief Executives “manage the affairs of the Agency in a way that promotes proper use of the Commonwealth resources for which the Chief Executive is responsible” (at section 44). “Proper use” in this context means the “efficient, effective, economical and ethical use that is not inconsistent with the policies of the Commonwealth”. Chief Executives are required to keep both the Finance minister and the minister responsible for their agency informed in relation to their agency’s operations (s 44A). Chief Executives are also required to comply with all other relevant laws and regulations.

The *Public Governance and Performance Accountability Act 2013* (Cth) (PGPA Act) commits all Commonwealth government agencies to promote the proper use and management of public resources (at s 15(1)(a)), where here again “proper use” means use which is “efficient, effective, economical and ethical”.

The obligations under the PGPA Act do not just fall to Chief Executives. Under s 71 of the PGPA Act, Ministers must not approve the expenditure of public money unless satisfied, after making “reasonable enquiries”, that the expenditure of the money would be a proper use of that money. This is consistent with the objective of the PGPA Act to ensure that the Commonwealth and its entities “use and manage public resources properly” (at s 5(c)(iii)).

It is clear that all Ministers have a responsibility under this legislative framework to ensure that the public monies allocated to agencies are being properly used: that is, that they are being used as efficiently, effectively, economically and ethically as possible.

It is equally clear that in respect to agencies’ employment arrangements, the responsibility extends to a requirement to ensure that agencies have appropriately budgeted for expenditure in this area.

52 CSIRO Staff Association (2019, 27 February). Staff Association questions CSIRO staffing cap. Retrieved from <https://cpsu-csiro.org.au/2019/02/27/staff-associationquestions-csiro-staffing-cap/>

CPSU submits that for agencies using labour hire companies to supply workers, the proper application of this legislative framework requires those agencies to undertake a cost analysis of the labour hire company engagement, to ensure that it “efficient, effective, economical and ethical”. That is, that it is a proper use of Commonwealth resources. We further submit that the obligation extends to Ministers to ensure such expenditure is a proper use of public monies. And we argue that there is no clear evidence these obligations are met. Community expectations clearly demand that these obligations be met.

9. Legal issues and potential liabilities arising from the use of casual Labour Hire

The way labour hire is being used in the public service gives rise to three important legal issues.

Issue 1: Characterisation of Employment Relationship

The labour hire contracts for workers in the APS typically characterise the employment relationship as “casual”.

However, there are serious questions to be considered about whether this characterisation of the employment relationship between the worker and the labour hire provider as ‘casual’ is correct, and then further questions about the role of the Commonwealth in this situation.

In short, the CPSU has evidence that the characterisation of many labour hire contracts as casual is false, and that this has implications for the workers affected, the labour hire providers and the Commonwealth.

‘Casual work’ has a specific meaning

The *Public Service Act 1999* (Cth) legislates requirements for all aspects of APS employment, from recruitment to termination. Under s 22 of the Public Service Act, APS employees are to be engaged either on an ongoing basis, for a specified period, or for work that is “intermittent and irregular” (i.e. casual). This definition of casual work is consistent with its characterisation in two recent Federal Court cases concerning casual employment (namely, *Workpac v Skene* [2018] FCAFC 131 and *Workpac v Rossato* [2020] FCAFC 84) in which a casual employment was characterised as employment which involves no firm advance commitment to continuing and indefinite work according to an agreed pattern of work (see *Rossato* at [31]). A similar definition is proposed in the Fair Work (Supporting Australia’s Jobs and Economic Recovery) Bill currently before Parliament

In relation to labour hire however the CPSU has seen labour hire contracts which contain clauses such as this:

Your contract of employment consists of this Letter of Offer and the attached terms:

Commencement date: DD/MM/YYYY

End date (anticipated): DD/MM/YYYY

Type and hours of employment: Casual (full-time hours)

Usual business hours: 8.30am – 5pm

Probationary period: 3 months

Notice period to terminate employment: One week

Contracts such as this clearly do not provide for an employment relationship that is “intermittent or irregular”, or involves no firm advance commitment of ongoing work, or does not envisage employment continuing according to an agreed pattern of work.

Instead, these contracts clearly set out an employment relationship which is ongoing and in which the employee will work regular, systematic hours.

Contracts such as the example above reflect the reality in the workplace, described to us both by our members who are APS employees and those who are labour hire employees – that so called casual labour hire workers perform the same work, working the same full-time hours, Monday to Friday, alongside APS employees who are engaged on an ongoing basis. The reality of the labour hire arrangement is often that it is only nominally casual.

The other reality is that the APS leadership thoroughly understand and expect that these “casual labour hire workers” are in fact required to turn up every day, every week, exactly as if they were an APS employee.

And indeed Department Secretaries, as well as the APSC, are well aware that these ‘casual’ workers can be required year after year. For example, the Secretary of DVA recently told Senate Estimates that “*We have a number of our labour hire people who might have been with us for two or 2½ years.*”⁵³

This has implications for the APS leadership.

The Public Service Act sets clear, legislated standards for employment with the APS to which all APS agencies must adhere.

Those standards include a requirement that APS agency heads uphold the APS Employment Principles (s 12), which include a requirement to “*make fair employment decisions with a fair system of review*” and to “*recognize that the usual basis of engagement is as an ongoing APS employee*” (s 10A(1)(a) and (b)).

The current practice of engaging labour hire employees to work in the APS alongside ongoing APS employees but in nominally “casual” roles is not consistent with either of these standards. It fails to provide a fair system for engaging employees in that it involves employees in the same role being engaged on two separate bases. It clearly does not prioritise ongoing employment as the preferred basis for engagement.

53 Foreign Affairs, Defence and Trade Legislation Committee (2020, 26 October). Senate Estimates - Defence Portfolio: Department of Veterans' Affairs. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2Fa88fc5bc-6674-4e3f-9482-6478aa9974f4%2F0006%22;src1=sm1>

The situation is simply this – there are thousands and thousands of workers employed as casuals, and thereby denied access to job security and the rights, protections and benefits of permanent employment, when in fact there is nothing at all casual about their employment. The APS agencies relying on the services of these workers are abundantly aware that this is occurring, and it could be argued that the agencies enter into contracts with labour hire providers knowing that those contracts will enable the legal fiction that the labour hire workers are casuals.

Further, engaging these employees on this basis means that these employees – who are only nominally casual – may have a number of different claims available to them on the basis that they are not genuinely casual but are in reality fixed term or ongoing employees. Those claims include payment of certain entitlements, or access to unfair dismissal in the event that their employment is terminated in a way that is harsh, unjust and unreasonable.

The employee may have the capacity to join their host APS agency as a respondent in any such claim through the accessorial liability provision at s 550 of the Fair Work Act.

These arrangements therefore are not free of risk for the APS agencies that “host” labour hire employees who are in nominally casual employment arrangements.

Issue 2: Offsetting Entitlements

In an effort to mitigate the risks associated with misclassifying fixed term or ongoing employees as casuals, recent labour hire contracts sighted by the CPSU commonly contain clauses which provide that, in the event that the employee is found by a court to be other than a casual employee, the employee agrees that any claim to entitlements such as annual leave will be offset by their 25% casual loading. For example, the clause may provide that, if the employee’s employment *“is deemed or found to be other than on a casual basis, (labour hire company) may set off against all amounts or entitlements owing to me...the difference between the amount(s) paid to me in my hourly rate together with any casual loading and the amount(s) that would have been payable to me if I had been paid at the minimum hourly rate required by law”*.

The difficulty that the inclusion of these clauses creates is that their legality is unclear. In the recent Federal Court case of *Workpac v Rossato*, the Court found that entitlements could not be set off in this particular way (see *Rossato* at [263]). These clauses may therefore be unenforceable, creating an area of liability for the labour hire employer (and potentially their host APS agency if it is joined in a claim against the labour hire employer pursuant to s 550 of the Fair Work Act).

Issue 3: Restraints

A further issue, and one with direct implications for the APS leadership, arises from the use of restraint clauses in labour hire employment contracts.

Contracts sighted by the CPSU commonly contain clauses which seek to restrain the ability of labour hire employees to apply for (or accept an offer of) direct employment by the APS. An example of this type of clause is set out below (emphasis added):

Restraint

Definition of Restricted Period

- (a) For the purpose of this clause, the “restricted period” means:
- (i) twelve months, but if a court decides this period is unenforceable, then;
 - (ii) nine months, but if a court decides this period is unenforceable, then;
 - (iii) six months, but if a court decides this period is unenforceable, then;
 - (iv) three months.

During and after your employment

- (b) During the term of your employment with the Business, you must not (on your account or jointly with or on behalf of any person, firm or company and whether directly or indirectly) engage in any competition with the Business.
- (c) You undertake to the Business that you will not, during the course of your employment with the Business, and for the restricted period after the termination of your employment with the business, directly or indirectly:
- (i) solicit or encourage any person who is an employee of the Business to leave their employment;
 - (ii) solicit, approach or accept any approach from any person or entity who was, during the 12 months immediately preceding the termination of your employment, **a client (or a related party of a client), of, or a referrer of clients to, the Business**, with a view to establishing a relationship with or securing the custom of that person or entity in a capacity which is the same or substantially similar to the relationship that person or entity has with the Business;
 - (iii) become a contractor or employee of the Client;
 - (iv) become a contractor or employee of a client of the Business;
 - (v) assist any person to do any of the acts referred to in clauses 12(c)(1) or 12(c)(ii); or
 - (vi) do or say anything harmful to the reputation of the Business.

In this example, the “business” is the labour hire employer and the “client” is the APS agency.

Clauses of this type raise a number of concerns, including concerns in relation to their interaction with the Public Service Act.

Section 20 of the Public Service Act provides that agency heads have all the “rights, duties and powers” of an employer in respect of the APS employees in their agencies.

In exercising those “rights, duties and powers”, agency heads must comply with the APS Employment Principles (s 12) which include the principle that employment decisions are to be made on the basis of merit (s 10A(1)).

For a recruitment process to be merit-based within the meaning of the Public Service Act, it must be open to all members of the community and be based on an assessment of the candidates’ suitability to perform the duties required of the relevant role.

The restraint clauses that commonly appear in labour hire contracts for employees working in the APS impede the capacity of agency heads to comply with the merit principle in s 10A of the Public Service Act, as required by s 12. By restricting certain individuals from even applying for roles within the APS, the restraint clauses mean that APS roles are no longer truly open to all members of the community, as required by s 10A(2). A whole cohort of individuals, who are experienced in APS work, are no longer eligible to apply for ongoing APS roles.

A further issue arises in relation to the enforceability of these clauses. Clauses restricting an employee from engaging in employment with a competitor of their current employer are subject to laws that govern restraint of trade. At common law, a restraint of trade clause is only enforceable to the extent that it is reasonable in relation to the interests of the parties, and the public. These common law principles are reflected in the Restraint of Trade Act 1976 (NSW) and the Australian Competition and Consumer Act 2010 (Cth), both of which make restrictions on the ability of an employee to change employment illegal and unenforceable, unless the employer can demonstrate that the restriction is reasonable, taking into account the interests of both parties (employer and employee) and the public interest. There is a real issue as to whether the restraint of trade clauses that appear in labour hire contracts commonly used to engage workers for the APS are legal and enforceable, given the extent of the restrictions that they impose. The example clause imposes a restriction of up to twelve months, on becoming a direct employee of the host APS agency or any related party (i.e. the APS). It is unlikely to be enforceable. While the issue of enforceability is unresolved, it is a source of potential liability for the labour hire employers supplying employees to the APS.

It is also an issue of real concern to labour hire employees in the APS. Many labour hire employees do not know that these restraint clauses are not enforceable, and decide on that basis not to pursue opportunities for ongoing employment in the APS when they become available. This not only denies the APS the opportunity to engage the most experienced and qualified employees, but also denies the employee the opportunity of a pathway to secure, ongoing employment.

There is also a further issue as to whether part of the intent of these clauses is to enable or trigger the payment of fees to the labour hire company from the Commonwealth if a labour hire employee takes a job with the APS. This may be a question for the Inquiry Committee to raise with the APSC, the Department of Finance and agencies.

Section Two: Consultants

The privatisation of the Australian Public Service extends beyond the use of labour hire to the extensive use of consultants. Too often, the community's money is spent on expensive consultants, not because the work is impossible to do in-house, but because there is a tacit preference for privatised rather than public policy advice - or a lack of awareness of the skills and capacities of existing staff.

Spending on consultants has dramatically increased since the election of the Coalition Government in 2013. Analysis of AusTender data by the ANAO has shown a significant growth in the use of consultants since 2013 with consultancy contracts reported in 2018-19 totaling \$647.0 million, up from \$365.9 million in 2013-14.⁵⁴

This growth has coincided with staff cuts that began in 2013 and the imposition of the ASL cap in the 2015-16 Budget.

Who benefits from the growing spend in consultancies?

The biggest beneficiaries have been the big four consulting firms. An ANAO analysis showed that the big four were by far the largest suppliers by value of contracts for the largest six advisory and consultation categories over the period 2012-13 to 2016-17. KPMG had 539, PwC had 367, Ernst and Young had 303 and Deloitte had 364. The next largest was Microsoft at 95.⁵⁵

The extent of consultant concentration is worse in Australia than overseas. Stuart Kells, co-author of a book titled 'The Big Four' has described the dominance of the Big Four in Australia as "proportionally larger to anywhere else" in the world.⁵⁶ Such a level of concentration is not in the public interest.

Prior to COVID-19, the consultancy industry itself had grown at almost three times Australia's economic growth rate, in part because of consultancy contracts with the public sector.⁵⁷ Deloitte revealed it made \$116m from government contracts in 2018, up from \$41 million in 2013 or 179%.⁵⁸

54 Australian National Audit Office (2020, 11 March). Australian Government Procurement Contract Reporting Update. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019>

55 Auditor-General (2017, 6 December). Australian Government Procurement Contract Reporting. Australian National Audit Office. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

56 Consultancy.com.au (2019, 12 February). Big Four accounting and consulting firms booming in Australia. Retrieved from <https://www.consultancy.com.au/news/737/big-four-accounting-and-consulting-firms-booming-in-australia>

57 Consultancy.com.au (2019, 8 August). Australia's management consulting industry books record growth. Retrieved from <https://www.consultancy.com.au/news/986/australias-management-consulting-industry-books-record-growth>

58 Sally Whyte (2018, 27 September). Deloitte's government business grows by 179 in five years. Sydney Morning Herald. Retrieved from <https://www.smh.com.au/politics/federal/deloitte-s-government-business-grows-by-179-per-cent-in-five-years-20180927-p506i8.html>

An estimated 18% of the consulting market consisted of public sector expenditure⁵⁹ and the big four all enjoyed expansion of over 20% between 2016 and 2018.⁶⁰ This is of little surprise as an analysis of Ernst and Young's revenues also showed margins are almost 50% for consulting work.⁶¹

The significant growth in public sector spending on consultants has been confirmed by the big four themselves. Evidence was provided to the *Joint Committee of Public Accounts and Audit* (JCPAA) inquiry into Australian Government Contract Reporting about staffing growth in the big four's Canberra offices between 2013 and 2018:

- Deloitte had 305 FTE working on projects for the Commonwealth and its Canberra office also increased staffing from 66 FTE in 2009 to 262 FTE in 2018 or 297%.⁶²
- Ernst and Young had 349 staff working on Commonwealth projects and between July 2011 and July 2018, their Canberra office more than doubled from 125 to 310 staff.⁶³
- KPMG revealed it had approximately 500 staff in Canberra.⁶⁴
- PwC informed the JCPAA that its Canberra office grew from 232 to 341 or 47% between 2013 and 2018.⁶⁵

Consultants are being used for core APS work

The Coalition Government says the use of consultants is intended to increase APS capability, with Finance Minister Simon Birmingham recently stating that:

"It is always the government's expectation that workforce decisions provide the best outcomes for taxpayers and that's why we adopt flexible approaches to resourcing that strike the right balance between a core workforce of permanent public servants and the use of external expertise for additional temporary support which also strengthens the overall capability of the APS."

However, this is not a view supported by evidence from the workplace or by expert independent opinion.

In the recent CPSU survey public servants have challenged the reason for hiring consultants, stating consultants are being used to do core public sector work that should be done by APS employees, eroding agency capability.

59 Consultancy.com.au (2019, 8 August). Australia's management consulting industry books record growth. Retrieved from <https://www.consultancy.com.au/news/10/australian-government-underestimated-consulting-spend-by-billions>

60 Consultancy.com.au (2019, 8 August). Australia's management consulting industry books record growth. Retrieved from <https://www.consultancy.com.au/news/986/australias-management-consulting-industry-books-record-growth>

61 Consultancy.com.au (2019, 12 February). Big Four accounting and consulting firms booming in Australia. Retrieved from <https://www.consultancy.com.au/news/737/big-four-accounting-and-consulting-firms-booming-in-australia>

62 Sally Whyte (2018, 27 September). Deloitte's government business grows by 179 per cent in five years. Sydney Morning Herald. Retrieved from <https://www.smh.com.au/politics/federal/deloitte-s-government-business-grows-by-179-per-cent-in-five-years-20180927-p506i8.html>

63 Ernst and Young (2018). EY responses to questions on notice from the Inquiry into Australian Government Contract Reporting.

64 KPMG (2018). Inquiry into Australian Government Procurement Contract Reporting, KPMG responses to Questions on Notice arising from public hearing on 17 August 2018.

65 PricewaterhouseCoopers (2018). Additional information: Australian Government contract Reporting - Inquiry based on Auditor-General's report No.19 (2017-18).

In their responses to our survey, many stated that consultants were being used to do more strategic, complex work that APS employees should be doing. Agency staff were relegated to providing administrative support instead of having opportunities to develop their skills and expertise that would strengthen APS capability.

I've seen it firsthand both working as a consultant and working in the public sector. Some agencies can barely do their job because work they would normally do in-house has been given to consultants - institutional knowledge has been lost. – Productivity Commission member

Consultants from PwC (and others) are brought in and set up frameworks, leaving ongoing staff to implement. I feel this has diminished my day-to-day work to more administrative, lower skill 'tasks' rather than strategic and executive functions. Support for this claim is found in the fact that I was not permitted to hire staff when my APS 4 and APS 5 staff resigned, yet their work is still expected to be produced. – Defence Housing Australia member

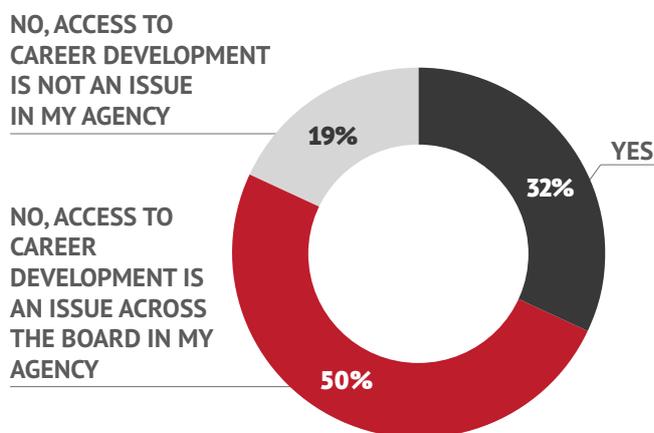
There are no opportunities to develop skills, if the team doesn't have the skill, we pay huge service fees to PwC. They come in and we learn nothing, there are little promotion opportunities. I feel second class, the department views consultants as better than permanent staff. – DVA member

I have seen this firsthand in my Director job. We're carving out the most strategic work for consultants and delegating less complex work to ongoing staff - this does not build skills for the future. We have no succession plans in place for critical contractors and we are wasting taxpayer funds on expensive contractors rather than investing in Executive coaches or more micro-credentialing. Further - most of the contractors have increased flexibility to work from laptops/office/home - perceived to have broader benefits than ongoing staff. – ATO member

The specialised skills such as project management is consistently filled by consultants which leaves those APS Staff with these valuable skills to just attending administrative support. It is a poor use of capability. – Department of Health member

It is no surprise that only one in five (18.8%) respondents to our survey said access to career development is not an issue in their agency. Half (50.3%) disagree or strongly disagree that their agency provides skills and career development opportunities sufficient to maintain a highly skilled workforce.

ARE THERE SPECIFIC SKILLS / OCCUPATIONAL GROUPS WHERE ACCESS TO CAREER DEVELOPMENT IS A SPECIFIC PROBLEM?



Source: CPSU Survey - APS Capability Senate Inquiry. Q4

The result is an increasing reliance on consultants to do core work. As one member explained, “increasingly, consultants hold the history and knowledge about policy development and reform - creating a longer-term dependency even if the APS capacity were sufficient - we don’t own our own history.”

There is consensus that the use of consultants is affecting capability

The CPSU is not alone in its assessment that the extensive use of consultants is inappropriate and has eroded the capability of the APS. The APS Review highlighted capability issues, with the ASL cap and outsourcing core work cited as reasons for declining capability across the APS.⁶⁶ The APS Review identified a range of skills shortages including in research and policy.⁶⁷ Overwhelmingly (87.2%), members agreed with the APS Review’s assessment that the reliance on contractors and consultants undermines APS capability.

Former Treasury Secretary Ken Henry and the then Secretary of Prime Minister and Cabinet Martin Parkinson have both also warned that the abilities and corporate memory of the public service have been dangerously degraded. Henry has stated “*many departments have lost the capacity to develop policy; but not just that, they have lost their memory.*” Parkinson has stated the erosion of public service independence and the lack of experience to draw on have led to a “*decline in the quality of advice and an erosion of capability.*”⁶⁸

68 Laura Tingle (2015, December). Political amnesia: How we forgot to government. Quarterly Essay. p.29

Comments from former Secretary of the Department of Prime Minister and Cabinet Terry Moran echo this, Moran stating the domestic policy bureaucracy has been “*eroded and corrupted*” and there is a “*learned institutional stupidity*”. He noted the answer to any problem is the same: market mechanisms and outsourcing.⁶⁹

Former APS Commissioner Andrew Podger has noted that problems have existed for some time. Ahead of the Game: Blueprint for the Reform of Australian Government Administration (Moran Review) in 2010 identified the loss of capability as an issue that was confirmed in a series of subsequent Capability Reviews.⁷⁰ Podger identified root causes as both the resourcing and the failure of governments to recognise the importance of a professional, impartial, non-partisan Australian Public Service.⁷¹

There has been a failure to transfer skills

A key issue with the growth of consultants is the failure to transfer skills and knowledge to the APS. Among all contracts awarded under the consultancy category, the ‘need for specialised or professional skills’ has consistently been the reason reported as relating to the majority of the total contract value each year with a significant increase since 2013-14.⁷² It has been a steady growth in spending on consultancy, in line with the imposition of the Average Staffing Level cap. The amount is likely to be even greater given issues with the accuracy of the ‘consultancy flag’ in AusTender.⁷³ This suggests there have been no or limited skills transfer requirements on consultants to build up internal capability.

69 David Donaldson (2018, 17 July). Commonwealth ‘all thumbs’ on social policy, says former top public servant. The Mandarin. Retrieved from <https://www.themandarin.com.au/95918-commonwealth-all-thumbs-on-social-policy-says-former-top-public-servant/>

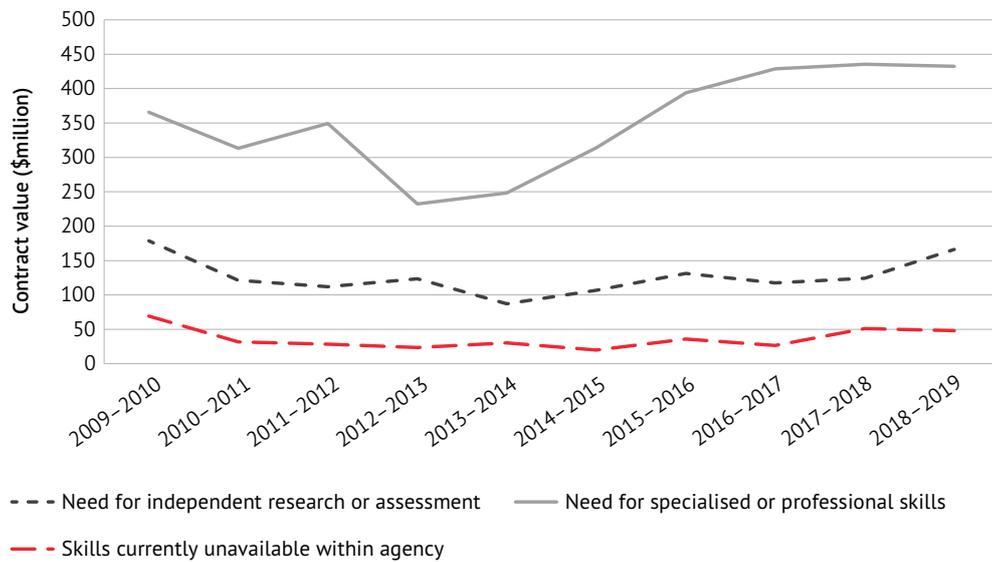
70 Professor Andrew Podger AO (2019, 10 September). Protecting and nurturing the role and capability of the Australian Public Service. Parliamentary Library. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/6916420/upload_binary/6916420.pdf;fileType=application%2Fpdf#search=%22library/prspub/6916420%22

71 Professor Andrew Podger AO (2019, 10 September). Protecting and nurturing the role and capability of the Australian Public Service. Parliamentary Library. Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/6916420/upload_binary/6916420.pdf;fileType=application%2Fpdf#search=%22library/prspub/6916420%22

72 Australian National Audit Office (2020, 11 March). Australian Government Procurement Contract Reporting Update. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019>

73 Auditor-General (2017, 6 December). Australian Government Procurement Contract Reporting. Australian National Audit Office. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

TOTAL CONTRACT VALUE BY CONSULTANCY REASONS AND FINANCIAL PUBLISH YEAR



Source: ANAO analysis of AusTender data. Auditor-General Report No. 27 2019-20, p.44

Many members did, however, cite experiences where consultants were engaged who did not have any specialist skills, had limited knowledge, or relied on APS employees to provide subject matter expertise. It raises questions as to why they are being used.

There is over reliance in the APS on the use of external consultants. The APS engages with companies that do not have the resources or expertise to undertake the work. If the Government developed a stronger public service and used the technical experts ‘in-house’ then greater programs and policies would be reduced for a lesser cost. The use of ‘The Big 4’ is unnecessary, and the APS has become overly reliant in the mythical belief that all that these external consultants say and do is golden. – DVA member

Finding a workable balance between specialised knowledge and Departmental procedures is paramount. Consultants often do not have the full picture of the workings of the Department and the impact their recommendations will have on the workforce. There are not enough Department staff to ensure there is the time and the specialist skills to undertake projects. Also sending 21 year olds from Ernst and Young to conduct national audits is laughable. – Home Affairs member

Use of consultants is disingenuous: they come in record our answers, put them in docs and report back our answers. The APS has the skill set to do the work. – Services Australia member

Home Affairs uses consultants, such as EY, a lot. There never seems to be any evaluation of all this consulting, despite the buckets of money that the Department splashes around to the consultants. Very few of the consultant reports ever seem to be implemented. From my observations, very little of what they charge all the money for is work that staff within the Department could not do. Staff training is largely online and generally useless. Proper career-development training, that was nationally accredited, might lead to better value for taxpayers, through using internal staff with the skills to do the work, rather than buying extravagant and largely cosmetic value consultants. – Home Affairs member

The workforce in ICT is all consultants, ones that often don't have the expertise they say they do. I often manage staff who are more junior than me, but who are costing the agency 3 times what it costs them to hire me! – AEC member

Better data is needed to reduce the use of consultants

There is a lack of centralised data about the number of consultants working for the APS, with the inconsistent collection of expenditure related data, and few if any insights on whether consultants have actually met objectives.

This lack of data has allowed the current Government to turn a blind eye to the impact of the perverse incentives caused by the ASL cap. Instead, it has sought to shift the responsibility onto agencies. When asked, the former Finance Minister stated that an agency head who hired more expensive outsourced staff would “*essentially procure services in a way that is not value for money would be breaching their obligations.*”⁷⁴ Evidence from Senate Estimates cited earlier in this submission shows that these breaches are well-documented. In contrast, some state governments are acting to prevent price gouging by external providers, for example NSW placed a maximum daily price cap on consultants,⁷⁵ Queensland has a contracting-out of services policy,⁷⁶ and Western Australia has a cost schedule for the use of consultants.⁷⁷

In-house capacity needs to be rebuilt, with less reliance on consultants, to protect the public interest. The accountability, transparency and evaluative measurements concerning the use of consultancy services must be redressed. With better data, the APS can identify whether consultants are genuinely needed to amend guidelines to cap spending, and where they are required, mandate plans to transfer skills to build internal capability and bring work back in-house.

74 Senate of Australia. (2020, 22 October). Senate Estimates. Finance and Public Administration Legislation Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F652e8b78-c099-4484-9dc4-04340c446ad4%2F0002%22;src1=sm1>

75 Edmund Tadros. (2019, 3 September). Revealed: The Maximum Rates NSW Will Pay for Consultants. Australian Financial Review. Retrieved from <https://www.afr.com/companies/professional-services/revealed-the-maximum-rates-nsw-will-pay-for-consultants-20190829-p52luq>

76 Queensland Government (2018, 13 August). Contracting-out of Services Policy. Retrieved from <https://www.forgov.qld.gov.au/documents/policy/contracting-out-services-policy>

77 WA Government (2019, 10 October). Cost planning guidelines for consultants. Retrieved from <https://www.wa.gov.au/government/publications/cost-planning-guidelines-consultants>

Contract Call or Contact Centres

In recent years, there has been a rapid escalation in the use of contracted providers to undertake telephony based work for Commonwealth agencies. Particularly in Services Australia, this has been expanded to include processing work. This is either work that is still also being done within APS agencies or was previously undertaken in-house. It is all core APS work.

And, once again, while we do not know the full extent of the expenditure and staff numbers involved, from what we can determine the expenditure on these privatised centres is staggering.

Prior to COVID-19, more than \$400m had been spent on privatising Services Australia call centres, with Stellar Asia Pacific the largest beneficiary with a \$135m contract, followed by Concentrix Services (\$132m), Datacom Connect (\$120m) and Serco Citizen Services (\$36m).⁷⁸

Services Australia is far from the only agency with large outsourcing contracts. The ATO submission to the JCPAA inquiry revealed the annual spend for outsourced services was \$216.31m in 2016-17, up from \$75.45m in 2012-13.⁷⁹ The ATO has previously stated that work undertaken under the outsourced contact centre services contracts is equivalent to the APS1, 2 and 3 levels across telephony, processing, debt, social media and webchat workloads. Approximately 70% of all inbound calls to the ATO are now answered by private providers.

The extent to which there is a reliance on labour hire, outsourcing and contracting is partially evidenced by the total spend by the ATO on contracts as reported in the ATOs 'Entity reports for complying with the Senate Order on Procurement Contracts and use of Confidentiality Provisions 2020 Calendar Year', available on AusTender. This report outlined \$2 billion in estimated combined contract value of services clearly linked to labour requirements in the ATO.⁸⁰

TABLE 1 -

Category	Contract Count	Total Contract Value
Computer programmers	29	\$15,114,048.40
Computer services (excluding information services, printing and software)	79	\$1,116,652,077.95
Management advisory services	63	\$88,721,103.21
Temporary personal services	1077	\$927,633,494.26
Estimated total contingent labour costs	1,248	\$2,133,006,675.42

Between the four largest providers of outsourced labour – Stellar, Datacom, Probe and Serco - the ATO will have spent a combined \$552,221,130.03 or just over half a billion dollars between November 2017 and June 2021.

And the ATO and Services Australia are not the only agencies using privately operated call centres. Others include Immigration and the Department of Health.

These arrangements, as with labour hire, only serve to further undermine APS capability and drive down the employment conditions of those doing the work. Investing this money on direct APS employment would lead to improvements for both staff and the public with better services and productivity that come from improved retention, more experienced staff and more secure jobs with a career path.

CPSU members working at the Modbury Datacom centre in Northern Adelaide have told us on a number of occasions that they know they are doing the same work as someone in the APS for up to \$10,000 a year less and feel strongly that this work should be in the APS. They are processing claims and taking phone calls on behalf of Services Australia.

This is a calculated decision of the Coalition Government to simply transfer money and job security from the pockets of potential APS workers into the coffers of large multinationals. Many of those multinationals pay little or no tax in Australia and some of them have been involved in disturbing public policy failures overseas.

There needs to be a substantial shift back to core government work – answering questions, providing citizens with advice and support about government services and entitlements and processing claims – being all done in-house.

Section Three: Decades of under investment and outsourcing in ICT has resulted in substandard ICT

The community perspective

The community expects government digital services to perform at or above the standard of leading private sector companies, however community satisfaction has been declining. It fell from 71% to 59% in the two years to 2018. Over half (55%) said they found it difficult to navigate online government resources and services. There are implications for trust with 85% saying the quality of government service delivery directly influences their trust and confidence in government.⁸¹

There is public awareness of ICT problems, from the 2016 Census and issues with accessing MyGov, but it goes far beyond public facing service delivery problems to affect the everyday work that APS staff do.

Problems for staff from ICT systems

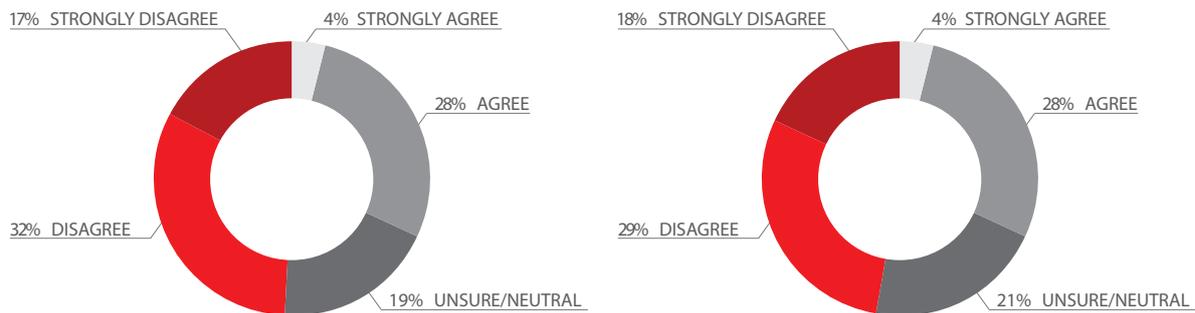
High quality ICT systems are essential for APS employees to do their day-to-day jobs but many report having substandard tools. Of the 6,000 public servants surveyed by the CPSU:

81 Boston Consulting Group (2020, February). The Trust Imperative: Why customer experience in government matters. Retrieved from <https://www.bcg.com/en-au/industries/public-sector/the-trust-imperative>

- Half (49.1%) disagree or strongly disagree their agency provides quality systems and tools that they need to do their job
- Less than a third (31.3%) agree or strongly agree their agency has invested in up to date technology for staff and clients.

MY AGENCY ...

PROVIDES QUALITY SYSTEMS AND TOOLS THAT I NEED TO DO MY JOB	HAS INVESTED IN UP-TO-DATE TECHNOLOGY FOR STAFF AND CLIENTS
--	--



Source: CPSU Survey - APS Capability Senate Inquiry, Q10

Substandard ICT was clearly identified as a problem by the APS Review, which found that the APS lags behind the private sector when it comes to ICT investment, spending 12% more on running old systems than the private sector.⁸²

That lack of investment sees too many APS staff forced to work with outdated tools equipment:

- 44% of all the government’s major applications are over a decade old.
- 53% of the government’s desktops and laptops are past the end of their planned useful life.⁸³

The Review estimated that at least \$1 billion of investment would be needed to overcome the gap with the private sector.⁸⁴

This is not a new problem. Since 2008, the CPSU has made countless submissions to inquiries and reviews highlighting issues with ICT and its impact on the work and satisfaction of APS employees, most notably to the Digital Delivery of Government

82 Department of Prime Minister and Cabinet (2019, 13 December). 'Our Public Service, Our Future. Independent Review of the Australian Public Service.' Commonwealth of Australia. Retrieved from <https://pmc.gov.au/resource-centre/government/independent-review-australian-public-service>.

83 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

84 Department of Prime Minister and Cabinet (2019, 13 December). 'Our Public Service, Our Future. Independent Review of the Australian Public Service.' Commonwealth of Australia. Retrieved from <https://pmc.gov.au/resource-centre/government/independent-review-australian-public-service>

Services (attached at Appendix C). The impact has been felt across a range of agencies such as the Department of Human Services, ABS, Defence, DVA, ATO, NDIA and the Department of Parliamentary Services.⁸⁵

Common themes from these submissions were inadequate access to IT support with limitations on the range and timeliness of IT support, a lack of consultation, poor planning and management of projects, inadequate provisions for user input to system and application design and functionality, and regular failures to allow for proper user testing.

These ICT issues have an impact on core work of staff and staff satisfaction. For example, NDISQC members spoke about how the IT system does not assist with caseload management as it was clunky, time consuming and had poor linkages between the various systems, not allowing for cross referencing or tracking which limits analytics. It has implications for the Commission's ability to investigate and prevent incidents.⁸⁶

A recent survey of ACQSC members found system problems with IT integration including with systems freezing, problems with remote login, MS Teams and Outlook and calls dropping out.⁸⁷

Problems with ICT transformation and modernisation

The Efficiency Dividend that ripped \$1.9 billion from the APS announced in the 2016-17 Budget included the creation of a Public Service Modernisation Fund to sugar coat a significant and blunt cut to the public sector.⁸⁸

Savings were harvested up front with no detail provided in Budget papers at the time. Subsequently, there has been limited public detail provided on the outcome of initiatives funded by the Public Service Modernisation Fund, many of which had a focus on ICT, such as the creation of Shared and Common Services Hubs.⁸⁹

The experience of DVA provides a good example of the problems with ICT Shared and Common Services funded by the Modernisation Fund. On the 17 December 2015, a shared services arrangement was announced, co-locating DVA's IT infrastructure within the Department of Human Services, stating it would improve processing and interactions.⁹⁰ In 2019-2020, DVA spent \$36.620 million on its shared services arrangement and \$9.174 million on Information technology and communication.

85 CPSU submissions that raised concern about ICT issues included: the ICT Review (Gershon); Commonwealth pre-Budget submissions; National Commission of Audit; Defence First Principles Review; Senate inquiry into the 2016 Census, digital services, taxpayer engagement with the tax system, the Department of Parliamentary Services, Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative, NDIS Quality and Safeguards Commission; ANAO audit of the Operation of Grants Hubs, Medicare electronic claims; Productivity Commission inquiries into NDIS Costs, Human Rights and Compensation and Rehabilitation for Veterans.

86 CPSU (2020). Submission to Inquiry into the NDIS Quality and Safeguards Commission

87 CPSU (2020 October) Results from Aged Care Quality and Safety Commission Restructure Survey

88 Commonwealth of Australia (2016, May). 2016-17 Budget, Budget Paper No.2. Retrieved from https://archive.budget.gov.au/2016-17/bp2/BP2_consolidated.pdf

89 Philip Hamilton and Simon Speldewinde (2017, 14 November). 'The Public Service Modernisation Fund: a quick guide'. Parliamentary Library. Retrieved from https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1718/Quick_Guides/Publicservice

90 Minister for Veterans' Affairs (2015, 17 December). Move to improve Veterans' Affairs systems. Retrieved from http://minister.dva.gov.au/media_releases/2015/dec/va140.htm

The CPSU surveyed DVA staff about the shared services arrangement. Only 34% of respondents said the project delivered improvements, while 45% said there were no improvements. Responses indicated that the transfer of ICT functions have caused problems for staff as the agency no longer has control over its own ICT systems, for example many cited there now being no internal ICT helpdesk to get assistance with everyday minor problems which can now take days to resolve.

We have transferred our ICT functions from in-house to Services Australia (SA). The service provided is inadequate - we don't even have an IT helpdesk we can call to get instant help with small problems, which then take several days to resolve, resulting in lost productivity. IT processes are geared to the needs of the service provider (SA) and not to the customer (our agency). Convoluted online forms must be filled out for the simplest of requests.

Shared Services has degraded our IT systems and services to our staff and our clients. SvA get to bully smaller agencies with "this is what you get, like it or not". They don't have the expertise on our payments and legislation to build us what we need. Everyday IT issues are also a nightmare as you can no longer speak to a person to work out minor IT issues, you raise a 'ticket' which may or may not be resolved. The time taken for SvA to work on those tickets is ridiculous - you may as well just pack up for the day and hope it resolves itself overnight, because if it's hindering your work there is very little chance it will be addressed the day you raise it.

As my agency is small, we have had to enter into a shared services arrangement with SvA to have this done. The service provided by SvA to my agency is a CUSTOMER, is terrible. Overtime, over budget and giving us a much worse system than what we started with. The huge impacts of this terrible product will start flowing through to the clients we serve soon

Services Australia has taken control all Dev and maintenance of our systems. Since this time we have lost control of the responsiveness to issues, cost and priorities. We are hamstrung by their internal processes – all of which do nothing to support those other agencies they are meant to be supporting. The MOU is a joke! It is costing us a fortune and giving us nothing. They are a tick on us and bleeding us dry. But we can't remove them due to a WOG strategy. Which doesn't work. It costs more and takes longer. Taxpayers should be outraged.

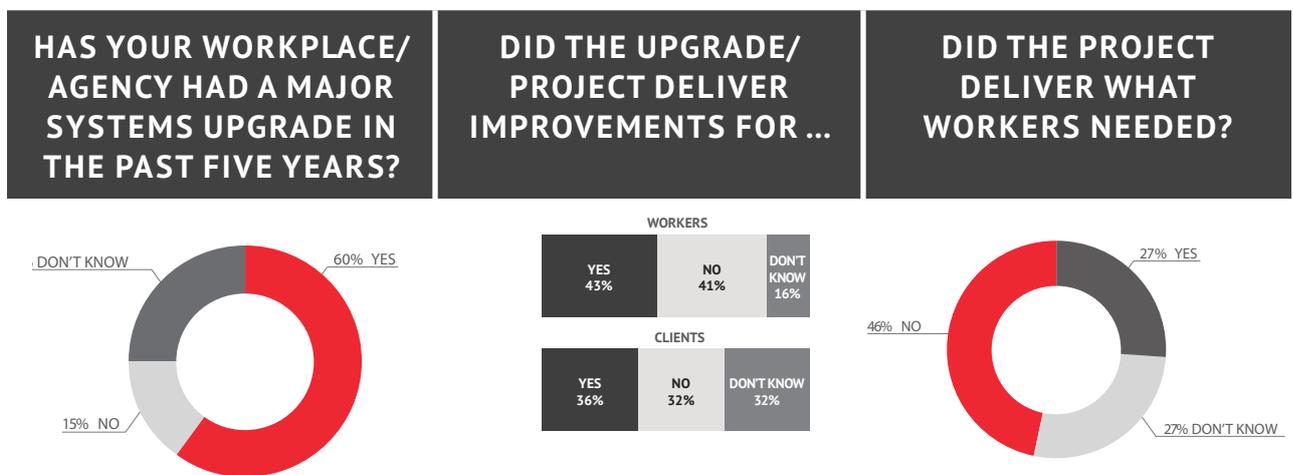
It is also unclear whether some other initiatives funded by the Fund, while beneficial to the operation of agencies, had ongoing costs that no additional ongoing funding was provided for. An example may be the digitisation of material by the National Library. Digitisation is not a one-off cost as storage is an ongoing cost that has not received funding, eating into existing agency budgets.⁹¹

91 CPSU (2018). Submission to inquiry into Canberra's national institutions

A lack of skills and knowledge hamstrings ICT system upgrades

The results of ICT projects such as DVA shared services, funded by the Modernisation Fund, that do not deliver for staff come as no surprise. Members were asked about their experience of major ICT upgrades and projects in their agency and the response was far from positive for the three in five (60.2%) who experienced one in the last five years:

- Only one in four (26.4%) stated that it delivered what employees needed.
- Only a third (36.5%) said it delivered improvements for clients
- Less than one in five (17.4%) said employees needs and views were considered when developing and implementing the upgrade or project.



Source: CPSU Survey - APS Capability Senate Inquiry, Q12, Q15, Q18

Half (51.9%) agree or strongly agree that increased costs, delays and failure is due to issues with the APS management of contracts and projects. Many commented that a lack of ICT skills and knowledge was a major factor in problems with management:

Lack of ICT skills and appreciation of the issues in APS management. A few managers do have these skills but they are too 'thin on the ground'. – ABS member

Decisions around systems and technology are being driven by ministers/senior executives who hire consultants rather than relying on the significant inhouse expertise. this is costing the a lot more money and makes it harder/slower for delivery staff to deliver to customers – Services Australia

People outside of IT or without the technical project management skills keep being given responsibility for managing the delivery of these projects. They select smooth talking vendors who over talk what they can deliver. APS staff don't share their experiences with other agencies because they don't like to broadcast their failure to deliver. They AEC has failed to deliver multiple ICT

projects and dumped vendors wasting thousands of money because the people managing the project don't understand the software. – AEC member

The frustration was summed up by one member:

We have a major leadership problem. We ICT workers know which problems need technological fixes, we have the expertise and technology to fix them but are constantly held back by lack of leadership and vision at the senior levels of APS and by government. Not to mention the waste of money on consultants and outsourcing that we have to contend with. If the billions of monies wasted on failed outsourcing and consults over the years had been spent on ICT in the APS I can only imagine what amazing things we could have done. – Home Affairs member

The lack of ICT knowledge by those overseeing contracts was also a point affirmed by the Report of the ICT Procurement Taskforce. It identified that the capability and capacity issues identified included a lack of technical ICT capability and market nous required to articulate the requirements sought and assess the potential solutions on offer, decision-making resting with individuals without technical expertise, and the inability to adapt as technology or circumstances change.⁹²

There is a need to invest in ICT skills and knowledge amongst APS staff. The lack of investment was reinforced by recent survey results from members that found:

- Over half (56.3%) say their agency does not provide skills and development opportunities to keep the APS workforce at the forefront of ICT skills development.

One member in the ATO who previously worked in the private sector commented about how the APS is failing to maintain the current skills of its in-house ICT workers.

When in the private sector I received regular training both in-house and externally. In the APS I have received very little. I have had no professional development since starting in my agency 3 years ago. I have asked to attend several courses and my requests have all being denied.

The lack of ICT skills and knowledge has been a well-known issue for a long time. In 2013, the APS found that 47% of agencies reported having skills shortages in ICT procurement, while 69% of agencies reported having an overall ICT skills shortage.⁹³ Similar findings were in the 2015 APS Census where the majority of survey respondents indicated they know their agencies need to make greater progress but feel under-equipped to meet the challenges of digital transformation.⁹⁴ While many used digital technologies in the workplace, they felt there was a lack of any formal digital skills training.⁹⁵

92 Digital Transformation Agency (2017, May). Report of the ICT Procurement Taskforce. Retrieved from <https://www.dta.gov.au/help-and-advice/ict-procurement/ict-procurement-taskforce-report>

93 Digital Transformation Agency (2017, May). Report of the ICT Procurement Taskforce. Retrieved from <https://www.dta.gov.au/help-and-advice/ict-procurement/ict-procurement-taskforce-report>

94 Australian Public Service Commission (2015, 23 October). Digital Transformation in the APS. Retrieved from <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

95 Australian Public Service Commission (2015, 23 October). Digital Transformation in the APS. Retrieved from <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

Overreliance on ICT contractors has deskilled the APS

The use of contractors and consultants has played a huge role in the lack of investment and the deskilling of the APS. Outsourcing as a driver of deskilling is not a new nor novel finding. The 2008 Gershon Report recommended a reduction in the use of external contractors in favour of building internal APS capacity. The most recent report was the 2017 ICT Procurement Taskforce report. It found that:

- 1 in 3 APS ICT workers are now contractors.
- The share of external ICT personnel has grown over the past five years and spend on internal ICT personnel has fallen accordingly, and
- That external providers continue to cost substantially more than APS employees.

Since 2011-12, there has been a significant shift away from permanent APS staff to the use of contractors. The proportion of external ICT full time equivalents (FTE) grew from 23% to 30%, while the proportion of internal FTE decreased from 77% to 70%.⁹⁶ Between 2011-12 and 2015-16, the number of ICT FTE has been cut by government from 17,758 to 15,808 or 11.3% to 10.4% of total entities FTE.⁹⁷

The increased cost of these ICT contractors is well known. The 'Government's Use of Information and Communication Technology' (Gershon Report) found that the extensive use of ICT contractors had been significantly more expensive than engaging in-house employees. At that time, an ICT contractor cost an agency \$186,000 per annum, \$94,000 more than the average Financial Management and Accountability Act (FMA Act) agency ICT employee.⁹⁸ More recent figures from the 2015-16 ICT Trends report revealing that, on average, labour cost of contractors is \$213,906, nearly double the cost of an APS employee at \$131,530.⁹⁹ The ABS has also stated that ICT contractors cost approximately double that of APS ICT staff.¹⁰⁰

Three in five (59.5%) agree or strongly agree that increasing ICT costs, as well as delays and failures in ICT projects is because of an overreliance on contractors and consultants. Members commented that:

There is an over reliance on vendors and the unjustified trust given to them when selecting products that form the technology stack. – Services Australia member

96 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

97 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

98 Sir Peter Gershon CBE FREng (2008, August). Review of the Australian Government's Use of Information and Communication Technology, Department of Finance and Deregulation. Retrieved from <http://www.finance.gov.au/publications/ICT-Review/chapter3.html>

99 Department of Finance. (2016) Australian Government ICT Trends Report 2015-16. Commonwealth of Australia. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

100 Australian Bureau of Statistics (2018). Australian Government Contract Reporting – Inquiry based on Auditor-General's report No. 19 (2017-18) Submission 25 – Supplementary Submission. Retrieved from <https://www.aph.gov.au/DocumentStore.ashx?id=90a39e57-a638-46cb-be00-e9cb9753a461&subId=563837>

Many IT contractors are now effectively permanent. We have to pretend that they aren't, but they are. There are no permanent staff with the skills to do what they do and we seemingly have no ability to hire new permanent staff. Every permanent position lost is replaced by a contractor. – ATO member

Contractors have priority over training and full-time staff are not considered for any roles. Staff have been told not to apply for EOIs because they will be rejected due to maintaining the staff to contractor ratio, even when staff have no work to do. – Services Australia member

The culture of privatisation and the dogmatic belief that the private sector can do the job cheaper than public servants is patently false. Junior developers cost more than an EL2 under service provider contracts, and they are constantly “rolled off” so that there is no corporate memory or skills/knowledge transfer leaving the APS staff left behind to pick up the pieces and clean up the issues with little to know support when the service provider has moved on and pocketed their profits. – ATO member

The public service should be at the cutting edge of systems development and technology - given the chance it could be. Our focus on the public good, rather than profits, means we could create ethical systems and platforms that would benefit everyone in the community. The obsession with external consultants and outsourcing is holding us back from being innovative, makes us beholden to private companies and frankly is just old fashioned and lacking in vision. – Home Affairs member

There is broad agreement that we need to reduce ICT outsourcing

The CPSU has been far from the only voice raising concern about the outsourcing of ICT. Former Digital Transformation Office CEO, the late Paul Shetler went on the public record to say that “over the last 40 years, as we’ve outsourced technology, there’s been a progressive deskilling of the public service. The reliance on consultants is remarkable and the amount spent on them is eye watering. That’s just not necessary if we re-skill the public service...”¹⁰¹

The over reliance on external advice carries substantial risks for agencies. Paul Shetler noted, “Too frequently, we actually ask vendors to tell us what they think we should buy.”¹⁰² The failure of the 2016 Census was a case in point where the hosting was contracted out to IBM.¹⁰³ The Australian Computer Society’s submission to the APS

101 Paul Shetler. (2016, 3 December) My 16 Months of Digital Transformation in Australia. The Mandarin. Retrieved from <https://www.themandarin.com.au/73275-paul-shetler-16-months-digital-transformation-australia/>

102 Paul Shetler. (2016, 3 December) My 16 Months of Digital Transformation in Australia. The Mandarin. Retrieved from <https://www.themandarin.com.au/73275-paul-shetler-16-months-digital-transformation-australia/>

103 Gareth Hutchens (2016, 23 September). Australian Bureau of Statistics Lays Blame for Census Bungle on IBM. Guardian Australia. Retrieved from <http://www.theguardian.com/australia-news/2016/sep/23/australian-bureau-of-statistics-lays-blame-for-census-bungle-on-ibm>

Review also warned that it was not possible to outsource risk and accountability. It urged ongoing investment in in-house skills to take ownership of the product and service roadmap because APS employees had insights into the needs of citizens. It urged there to be “Recognition that the risk assessment, risk management, and technology governance accountabilities cannot be outsourced.”¹⁰⁴

We need to rebuild in-house ICT capability

The Commonwealth Government has an explicit goal that by 2025 Australia will be one of the top three digital governments in world.¹⁰⁵ Reaching this goal will require significantly more investment and a change in thinking about digital transformation.

There is an urgent need to rebuild in-house ICT and digital capacity. Most recently, ABS Statistician David Gruen, who became head of the new data profession, has stated there is a need to build “native capability” and have key skills in-house.¹⁰⁶ COVID-19 has shown the importance of digital capacity for the delivery of and the basic functioning of public services Australians rely on. Up to date ICT infrastructure is not an addendum but core to the functioning of the APS. COVID-19 showed the importance of digital infrastructure as up to 56% of APS employees worked from home.¹⁰⁷

There is international evidence that bringing ICT back in-house rebuilds capacity and delivers savings. The Institute for Government cited several British Government departments, local authorities and public bodies bringing ICT partially or wholly back in-house in the last five years including:

- Birmingham, Britain’s second largest city, insourcing ICT services which involved the transition of 350 employees and brought £55m of ICT spend under direct council management.¹⁰⁸
- the HRMC taking back responsibility for parts of the management of the IT infrastructure that underpins tax collection
- The Department for Work and Pensions (DWP) replacing a number of outsourced digital contracts in 2016.
- The Ministry of Justice deciding to bring technology management in-house in 2018
- The Department of Health and Social Care (DHSC) bringing work on the NHS Spine platform in-house in 2014, and moved the Secondary Uses Service and the Care Identity Service IT systems from BT to HSCIC in 2015.

104 Australian Computer Society Inc. ACT (2018, 24 August). Submission to the Independent Review of the Australian Public Service. Retrieved from <https://www.apsreview.gov.au/your-ideas/submissions/australian-computer-society>

105 Stephen Easton (2018, 12 June). Australia will be one of the top three digital governments in the world. The Mandarin. Retrieved from <https://www.themandarin.com.au/94179-australia-will-be-one-of-the-top-three-digital-governments-in-world/>

106 Elliot Williams (2020, 17 September). New APS Data Strategy Could Mean Less Reliance on Contractors. The Canberra Times. Retrieved from <https://www.canberratimes.com.au/story/6927847/new-aps-data-strategy-could-mean-less-reliance-on-contractors/>

107 Australian Public Service Commission (2020). State of the Service Report 2019-20. Retrieved from <https://www.apsc.gov.au/state-service-report-2019-20>

108 Birmingham City Council (2019, 1 August) Statement on Capita Contract. Retrieved from https://www.birmingham.gov.uk/news/article/460/statement_on_capita_contract

- The Driver and Vehicle Licensing Agency (DVLA) bringing the majority of its IT functions in-house between 2014 and 2017, including online services for viewing and renewing driving licences, which had been outsourced for more than 20 years.

This is not a trend limited to government, with Lloyds Bank and TSB having both insourced large parts of their IT operation in the United Kingdom in the last two years.¹⁰⁹

Members commented that when given the opportunity, APS in-house capability can often deliver quality outcomes for the public without the cost and problems associated with outsourcing.

Where APS staff have been allowed to build the systems for our clients and staff in-house, we have been able to do it to a high quality. We know our clients and users and what they need. Where management has outsourced the building of systems to private companies it has continually failed and cost the taxpayer billions. More often than not these failed systems have had to be decommissioned or fixed by the public servants with expertise in ICT. – Home Affairs member

I developed several medium-scale solutions based on existing platforms using only open-source technologies, all of which provided real benefits to staff and clients - without costing a cent extra in vendor licensing or other fees. I did this essentially solo with support from a handful of people. I'm not even close to the best developer we have - we're wasting talent on begging vendors to the work for us. – ATO member

However, too often APS ICT staff are not given the opportunity to build new platforms. The situation in Home Affairs is a case in point.

Home Affairs visa system case study

The Department of Home Affairs, in partnership with Digital Transformation office, recently released a request for tender for the build of a new permissions capability platform. CPSU members have raised concerns about this process and questioned whether the Department gave consideration to allocating this work to public servants.

This new tender is the latest in a series of expensive and failed attempts by the Department to engage external contractors to build a visa platform:

Generic Visa platform

- In 2006 the Department attempted to outsource the development of a new visa processing platform from 2006.

¹⁰⁹ Scott Carey (2018, 6 November). Lloyds Banking Group to create 2,000 new digital roles. Computer World. Retrieved from <http://www2.computerworld.com.au/article/649302/lloyds-bank-create-2-000-new-digital-roles/>

Hasan Chowdhury (2019, 28 March). TSB brings IT in-house after botched upgrade hits millions of customers. The Telegraph. Retrieved from <https://www.telegraph.co.uk/technology/2019/03/28/tsb-brings-in-house-botched-upgrade-hit-millions-customers/>

- This platform was called the Generic Visa Platform (GVP). It was built by IBM as part of the \$520m Systems for People program.
- When it was ready, almost five years later and at a cost CPSU understands to be around \$450m, it was in operation for less than 12 months before the decision was taken to decommission it on the grounds that GVP was not fit for purpose.

Global Digital platform

- In 2016 the Government announced a new tender process to design and develop a global digital visa platform.
- This endeavour also resulted in substantial expenditure. In response to questions on notice from Senate Estimates the Department of Home Affairs revealed it had spent nearly AU\$65 million on external contracts¹¹⁰:
- AU\$24 million was spent on the co-design and development of business requirements;
- U\$32 million on the GDP request for tender processes, probity, legal, and assurance;
- AU\$18 million on departmental IT readiness; and
- AU\$17 million on development of Business Rules.
- on the proposed Global Digital Platform (GDP) before deciding it was best to be shuttered.
- In total the project cost around \$92m before it too was terminated.

And while this spending on external providers was being racked up, it was in fact public service ICT staff who designed, developed, implemented and now maintain the visa system.

The history and evidence suggest that there is capability and capacity to undertake this project in-house, having our highly skilled public servants bring their extensive knowledge of both technical and regulatory requirements to build the initial platform and any future projects to scale the platform up to the wider APS. However, CPSU members feel that there was no consideration of this option was ever given, and that the decision to outsource was made without any input or advice from the staff who have shown their ability to design and run a successful visa system.

Our members have worked hard in their spare time outside of work to put together a proposal for this work to be done in-house. A copy of the proposal is attached at Appendix D. **The CPSU members involved in this project would appreciate an opportunity to discuss the issue with the Committee.**

Capability to manage contracts

While not everything can be done in-house, the lack of internal ICT has implications for contracting. It is difficult to manage a contract when there is limited in-house knowledge or experience of what is being managed. Having the internal ICT capability

110 Asha Barbaschow Canberra spent AU\$92 million on the now-binned visa privatisation project. Retrieved from <https://www.zdnet.com/article/canberra-spent-au92-million-on-the-now-binned-visa-privatisation-project/>

to assure and monitor is important and can lead to significant cost reductions, as seen in NSW.¹¹¹

There are no shortcuts to building in-house capacity, but it is necessary for effective government. Paul Shetler, former head of the Digital Transformation Office, noted that: *“Government is one of the last industries that thinks it can outsource wholesale.”*¹¹² Core business should be insourced. Dealing with your end users and understanding your end users is your core business.¹¹³ He lamed that ‘Instead of providing digital training to public servants, too often we’ve (the APS) outsourced IT to large international technology vendors and consultants.’ He noted that ‘Outsourcing makes the government seem smaller, but it is expensive and it contributes further to deskilling the public service.’¹¹⁴

The Government must invest in ICT

The APS Review estimated \$250 to \$300 million a year is needed over the next four years to lift digital skills and capabilities and that at least \$100 million a year in dedicated funding will be required to kick-start digital transformation and deliver uplifts in APS-wide capability.¹¹⁵

To take full advantage, it requires the APS to build its internal capacity and reduce its reliance on external contractors and vendors. Placing a cap on agency expenditure on ICT consultants and contractors must be a central strategy to achieve that goal and it can help generate savings to reinvest in improving digital skills and in-house ICT capacity.

111 Justin Hendry (2021, 12 February). NSW govt IT cost overruns fall by 90 percent in four years. iNews. Retrieved from <https://www.itnews.com.au/news/nsw-govt-it-cost-overruns-fall-by-90-percent-in-four-years-560956>

112 Australian Public Service Commission (2015, 23 October). Digital transformation in the APS. Retrieved from <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

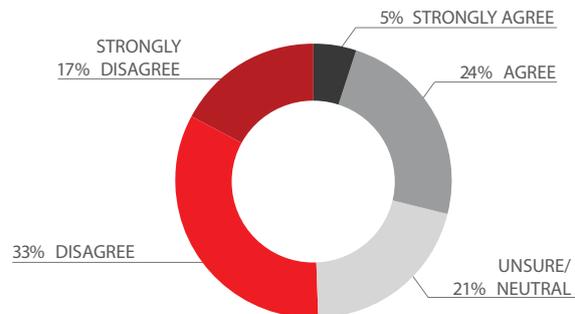
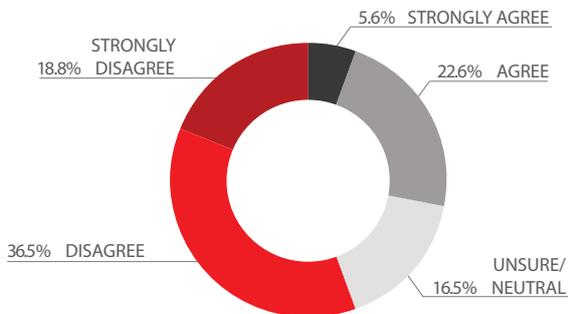
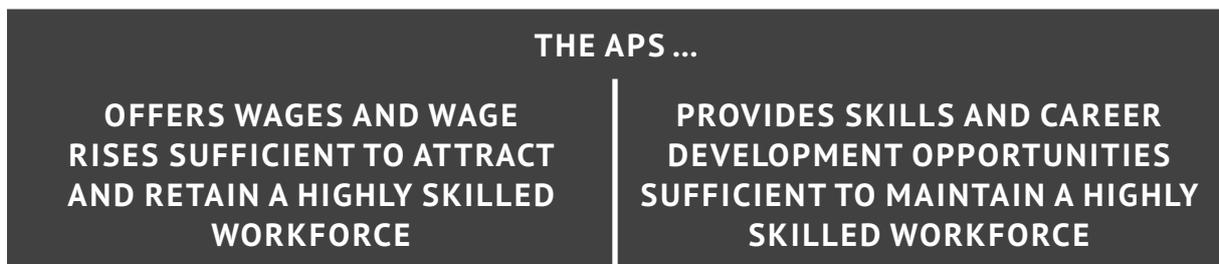
113 Stephen Easton (2017, 2 August) Paul Shetler: forget high tech fantasies if you can’t answer the phones. The Mandarin. Retrieved from <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

114 Paul Shetler (2018, 14 March) Digital delivery of government services. Senate Finance and Public Administration References Committee. Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F07f04377-dc1a-42d9-82ae-a74955dcd0ea%2F0004;query=Id%3A%22committees%2Fcommsen%2F07f04377-dc1a-42d9-82ae-a74955dcd0ea%2F0000%22>

115 Department of Prime Minister and Cabinet (2019, 13 December). ‘Our Public Service, Our Future. Independent Review of the Australian Public Service.’ Commonwealth of Australia. Retrieved from <https://pmc.gov.au/resource-centre/government/independent-review-australian-public-service>.

Section Four: The Government’s bargaining approach has impacted on the APS’s ability to attract and retain skilled staff

The Government’s bargaining approach has made it more difficult to retain and attract skilled workers with implications for capability and capacity. CPSU survey results find that nearly three in five (56.7%) do not think the APS offers wages and wage rises sufficient to attract and retain a highly skilled workforce. The Government’s bargaining policy now caps wage increases to the private sector Wage Price Index, restricts content in agreements and bans any enhancements to conditions. This is despite the fact that that APS employees are already paid significantly less than their equivalents in the private sector. The policy’s application extends beyond the Australian Public Service to entities including key scientific research organisations CSIRO and ANSTO.



Source: CPSU Survey - APS Capability Senate Inquiry. Q3

It has an impact on the ability of agencies to attract and retain staff. It is little surprise that the APSC has reported agencies have skill shortages, particularly in data, digital, ICT and STEM roles.¹¹⁶

116 Australian Public Service Commission (2020). State of the Service Report 2019-20. Retrieved from <https://www.apsc.gov.au/state-service-report-2019-20>

The Government's bargaining policy currently prevents agencies from including tailored arrangements such as specialist pay structures in enterprise agreements, however these arrangements are a significant component to attracting and building critical capabilities. The link between the bargaining policy and skill shortages has been drawn by the ASIC Capability Review, which stated that "*The Government's Workplace Bargaining policy does not allow ASIC to lift salary bands to meet the market.*"¹¹⁷

Members repeatedly raised uncompetitive pay and conditions as one of the major factors impacting on ICT capability and capacity. The low pay rates compared to the private sector and lack of career progression except into managerial roles were common themes. Comments included that:

Pay rates for key technical staff does not match industry. Gaining good skilled technical talent in APS roles is not broadly realistic with current pay rates and talent shortages across Australia. Consideration should be given to a special pay category for this. – DVA member

We are having trouble attracting staff due to the pay we are able to offer in a competitive environment, particularly in IT Security. We have had several recruitments where we were unable to fill positions due to no suitable applicants applying. – Geoscience Australia

APS salaries and conditions can't compete with the market, especially for skilled technical people who do not want to move into management for salary progression (which is the only option). The APS is also no longer perceived as a secure employer and opportunities are limited for reskilling in the ICT arena in the APS. – ACIC member

Bargaining also affects capability and capacity

The bargaining policy has also encouraged casualisation, outsourcing and the use of labour hire. The prevention of job security clauses in bargaining has enabled the creation of a two-tiered workforce. The Government's approach prevents casual conversion clauses from being included in enterprise agreements, as an example. It has resulted in situations where casuals and non-ongoing staff in the Australian Taxation Office, for example, are excluded from conditions.¹¹⁸

The bargaining policy and its previous iterations removed consultation and delegate rights from enterprise agreements. The removing of pre-decision and post-decision consultation provisions run contrary to building and maintaining constructive and productive workplace relations within APS agencies where staff are involved to help determine the best outcomes. The ability to have a say before a decision is made is materially different to consultation after the fact. It can affect agency innovation and adaptation.

117 ASIC Capability Review Panel (2015). Fit for the Future: A Capability Review of ASIC. Retrieved from <https://treasury.gov.au/sites/default/files/2019-03/ASIC-Capability-Review-Final-Report.pdf>

118 Attachment D, ATO Enterprise Agreement 2017

For example, in the past, delegate involvement in the Reinventing the ATO change process deepened staff engagement in the change process and is assisting in identifying changes, sometimes quite small, that have significant productivity benefits. Furthermore, constraints on delegate rights means it is hard to do that now. It results in situations like robodebt where decisions were rolled out without staff getting any opportunity for proper, genuine consultation, leading to massive failures.¹¹⁹

The situation becomes worse when labour hire gets to a certain portion of the workforce. Job insecurity means workers may not identify problems in agency processes, undermining frank and fearless advice within the APS.

There is also an impact on training as there is a lack, or differential standard, of training for labour hire and other non-ongoing staff. It can lead to double handling and a reduced capacity for the organisation. Many examples were provided for the National Disability Insurance Agency and Services Australia.

APS wide pay and conditions

The move away from a common set of pay and conditions in the APS that has been a consequence of enterprise bargaining in the Commonwealth has had a significant impact on APS capability.

The pay differentials across the APS are significant. At 30 June 2019 the top EL 2 rate was \$190,230 in the Department of Defence, and \$120,411 for Aboriginal Hostels Ltd. At APS 3 the top rate was \$75,717 for Meat Inspectors, and \$57,136 for Aboriginal Hostels. Limited. There are also differences across agencies in standard working hours, leave entitlements and many other core conditions. As both the Moran (2010) and Thodey (2019) reviews found, the complexities and inconsistencies of this system discourage mobility and reduce the sense of a unified APS with a strong career structure.¹²⁰

The APS Review also referred to the problems this system creates for Machinery of Government (MoG) changes, citing an ANAO audit that found “aligning enterprise agreements after a MoG change cost those agencies audited between \$500,000 and \$1million.”¹²¹ The experience of the CPSU in dealing with the industrial complexities of these is that they are messy, cause a great deal of anxiety and often result in an overall reduction in conditions for the staff affected.

These disparities are also inequitable. The agencies with the highest levels of Aboriginal and Torres Strait Islander employees are at or near the bottom of the pay scale at all levels.

119 CPSU (2017). Submission to inquiry into the Design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative

120 p255, Commonwealth of Australia (2019), Our public service, our future. Independent Review of the Australian Public Service. Retrieved from <https://pmc.gov.au/sites/default/files/publications/independent-review-aps.pdf>

121 Ibid, p256

It is worth noting that one of three APS Review recommendations rejected outright by the Coalition Government was number 33, which recommended that the APS: *“Move toward common core conditions and pay scales over time to reduce complexity, improve efficiency and enable the APS to be a united high-performing organisation”*¹²²

There are clear benefits to agency based bargaining around aspects of employment and working arrangements that are unique to an individual agencies. For example, it makes sense to negotiate around the allowances for Border Force Officers working in the National Marine Unit or rostering arrangements across Services Australia smart centres at the agency level. However, differentials in pay and conditions work against APS mobility, further complicate MoG changes and are inequitable. They are another example of where the Coalition Government has failed to act on the recommendations coming from a review they commissioned that would contribute to improved capability in the APS.

Conclusion

Six thousand public servants have contradicted the Coalition Government’s claims that it is looking after the long-term future of the public service. They have said that workers have been brought in under labour hire contracts – often under exploitative conditions – to do core work of the public sector, at great cost to the community and to workers themselves. They have explained that the very real skills and talents of labour hire, casual and outsourced staff, who do good and important work under difficult circumstances, are not realised. They have told us that ICT systems are poorly-equipped both to offer digital services to citizens, and to allow public servants to get their work done every day. And they have shown how the Coalition Government’s restrictive approach to its own workforce has hampered productivity, sapped morale and made it harder to recruit and retain the staff we need.

It is difficult to find any source outside the Coalition Government itself who believes that these arrangements work well either for the public service or for the public itself. In fact, there is near unanimity that insecure employment arrangements and resource cuts are impeding the APS from doing its core business: serving the Australian community.

In addition to eroding APS capacity, the Coalition Government’s approach is exceptionally expensive. Despite the Government’s obligations to ensure value for money, they are spending billions on expensive consultancies that don’t deliver better advice than would be obtained from a public servant. Labour hire companies charge significant mark-ups that inflate the cost over what a directly employed staff member would cost, and overall the Government is choosing to direct enormous amounts of public money away from public services and towards profit-making companies, some of whom pay little or no tax in Australia.

122 Ibid, p258

That the Coalition Government continues to deny these facts demonstrates the extent to which their thinking is limited by their ideological blinkers. Their stakeholders require that Government be seen to shrink, which means cutting staff even if the resulting arrangements cost more and deliver less.

Based on the evidence of its members, the CPSU is calling for the restoration of APS capability by rebuilding its workforce; transparency in arrangements about external suppliers; the reconstruction of in-house ICT capacity; and a change in the Government's industrial relations approach.

Australia is lucky to have exceptional public service institutions, staffed by talented and deeply caring people, whether they be in permanent jobs or insecure employment. But the work of restoring the capacity of the APS ultimately requires leadership and hard work – which CPSU members hope the Coalition Government will now see the need to provide.

List of acronyms

AAD	Australian Antarctic Division
AAT	Administrative Appeals Tribunal
ABS	Australian Bureau of Statistics
ACCC	Australian Competition & Consumer Commission
ACQSC	Aged Care Quality and Safety Commission
AEC	Australian Electoral Commission
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ANAO	Australian National Audit Office
APS	Australian Public Service
APS Review	Independent Review of the Australian Public Service (also, Thodey Review)
APSC	Australian Public Service Commission
ASIC	Australian Securities and Investments Commission
ASL	Average Staffing Level
ATO	Australian Taxation Office
AWM	Australian War Memorial
BoM	Bureau of Meteorology
CDPP	Commonwealth Director of Public Prosecutions
CPSU	Community and Public Sector Union – PSU Group
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Defence	Department of Defence
DSS	Department of Social Services
DVA	Department of Veterans’ Affairs
GDP	Global Digital Platform
GVP	Generic Visa platform
ICT	Information and Communications Technology
IIE	Irregular and Intermittent Employee
JCPAA	Joint Committee of Public Accounts and Audit
MoG	Machinery of Government
MRCA	Military Rehabilitation and Compensation Act 2004
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDISQC	National Disability Insurance Scheme Quality Safeguards Commission
PM&C	Department of the Prime Minister and Cabinet
SES	Senior Executive Service
TEQSA	Tertiary Education Quality and Standards Agency
Thodey Review	Independent Review of the Australian Public Service (also, APS Review)

Appendix A– AusTender Temporary Personnel Service contracts

As at 23 February 2021, the total spend on ‘Temporary Personnel Service’ contracts published on AusTender since 1 July 2015 was \$7,766,032,979.26.

The list of nearly 32,000 contracts includes over 5,000 contracts for the Department of Veterans’ Affairs and does not include all the various labour hire contracts signed by agencies in the Australian Public Service as there is no standard categorisation.

Agency	No of contracts	% of all contracts
Administrative Appeals Tribunal	354	1.11
Aged Care Quality and Safety Commission	111	0.35
Asbestos Safety and Eradication Agency	10	0.031
Attorney-General’s Department	293	0.92
Austrade	410	1.28
Australian Building and Construction Commission	4	0.013
Australian Bureau of Statistics	263	0.82
Australian Centre for International Agricultural Research	67	0.21
Australian Communications and Media Authority	33	0.10
Australian Competition and Consumer Commission	353	1.11
Australian Criminal Intelligence Commission	331	1.04
Australian Digital Health Agency	516	1.62
Australian Electoral Commission	844	2.64
Australian Federal Police	360	1.13
Australian Financial Security Authority	42	0.13
Australian Fisheries Management Authority	4	0.013
Australian Institute of Criminology	3	0.0094
Australian Maritime Safety Authority	1	0.0031
Australian National Audit Office	38	0.12
Australian Prudential Regulation Authority	189	0.59
Australian Public Service Commission	71	0.22
Australian Radiation Protection and Nuclear Safety Agency	4	0.013
Australian Research Council	124	0.39
Australian Securities and Investments Commission	416	1.30
Australian Signals Directorate	1	0.0031
Australian Skills Quality Authority	114	0.36
Australian Sports Anti-Doping Authority	67	0.21

Agency	No of contracts	% of all contracts
Australian Taxation Office	2902	9.09
Australian Transaction Reports and Analysis Centre	153	0.48
Australian Transport Safety Bureau	2	0.0063
Australian War Memorial	5	0.016
Bureau of Meteorology	1688	5.29
Cancer Australia	22	0.069
Clean Energy Regulator	33	0.10
Climate Change Authority	1	0.0031
Commonwealth Grants Commission	2	0.0063
CSIRO	5	0.016
Department of Agriculture	1342	4.21
Department of Agriculture, Water and the Environment	1094	3.43
Department of Defence	346	1.08
Department of Education, Skills and Employment	1233	3.86
Department of Employment, Skills, Small and Family Business	362	1.13
Department of Finance	180	0.56
Department of Foreign Affairs and Trade	236	0.74
Department of Foreign Affairs and Trade - Australian Aid Program	1	0.0031
Department of Health	2815	8.82
Department of Health - Therapeutic Goods Administration	261	0.82
Department of Home Affairs	450	1.41
Department of Industry, Science, Energy and Resources	653	2.05
Department of Infrastructure, Transport, Regional Development and Communications	1165	3.65
Department of Parliamentary Services	257	0.81
Department of Social Services	1066	3.34
Department of the Prime Minister and Cabinet	722	2.26
Department of the Treasury	131	0.41
Department of Veterans' Affairs	5357	16.79
Digital Transformation Agency	732	2.29
Director of National Parks	2	0.0063
Fair Work Commission	349	1.09
Fair Work Ombudsman and Registered Organisations Commission Entity	111	0.35
Future Fund Management Agency	191	0.60

Agency	No of contracts	% of all contracts
Geoscience Australia	67	0.21
Great Barrier Reef Marine Park Authority	89	0.28
Independent Parliamentary Expenses Authority	2	0.0063
IP Australia	796	2.49
Murray-Darling Basin Authority	51	0.16
National Archives of Australia	56	0.18
National Blood Authority	123	0.39
National Capital Authority	38	0.12
National Drought and North Queensland Flood Response and Recovery Agency	10	0.031
National Health and Medical Research Council	265	0.83
National Health Funding Body	2	0.0063
National Indigenous Australians Agency	94	0.29
National Mental Health Commission	11	0.034
National Museum of Australia	4	0.013
National Offshore Petroleum Safety and Environmental Management Authority	4	0.013
NDIS Quality and Safeguards Commission	310	0.97
Office of National Intelligence	6	0.019
Office of Parliamentary Counsel	4	0.013
Office of the Australian Accounting Standards Board	5	0.016
Office of the Commonwealth Ombudsman	310	0.97
Office of the Director of Public Prosecutions	245	0.77
Office of the Official Secretary to the Governor-General	38	0.12
Old Parliament House	1	0.0031
Productivity Commission	74	0.23
Professional Services Review	5	0.016
Regional Investment Corporation	1	0.0031
Royal Australian Mint	99	0.31
Safe Work Australia	1	0.0031
Services Australia	95	0.30
Sport Integrity Australia	38	0.12
Tertiary Education Quality and Standards Agency	175	0.55
TOTAL	31,911	100.00

Appendix B – CPSU submission to the Joint Committee on Public Accounts and Audit inquiry into Australian Government Contract Reporting based on Auditor-General’s report No. 19 (2017-18)

Appendix C – CPSU submission to Digital Delivery of Government Services

Appendix D – Department of Home Affairs Permissions Capability Platform. CPSU proposal for in-house bid

Appendix B



Community and Public Sector Union Submission:

Inquiry based on Auditor-General's report No. 19 (2017-18)

February 2018

Introduction

The Australian Public Service plays a vital role in Australian society and Government. All Australians benefit from a public sector that can meet the big national challenges and deliver quality public services.

However, the Government's cutting of 14,000 APS jobs and increased use of consultants, contractors and labour hire is causing serious damage to the APS. Essential skills are being lost, and the capacity of the APS is being hollowed out, while valuable funding, in a highly constrained resources environment, is being wasted on expensive external providers.

The increased use of contractors and labour hire is being driven by Government's imposition of an arbitrary staff cap that forces agencies, even where they have available budget, including new program funding, to avoid any direct employment of additional staff. This then requires agencies to use labour hire and contractors for work better done through direct employment in the public service.

The CPSU believes the JCPAA's Inquiry to be very important for the APS and for the community. The full extent of Government expenditure on consultants, contractors and labour hire is being obscured by substantial deficiencies in how this expenditure is tracked and reported. This lack of transparency is unacceptable.

The impacts of job cuts and the increased use of external providers is being deeply felt across the APS. Public servants care deeply about the quality of their work and the quality of service to the community – and staff are increasingly angry about the problems they are seeing around them.

It is now urgent to reduce the use of external providers and rebuild APS staff numbers and skills.

In doing so, the Government's goal should be to provide the community with world-class public services. Achieving that goal requires:

- Abolishing the ASL cap
- Eliminating labour hire
- Placing a cap on agency expenditure on consultants and contractors, and reinvesting the savings to build APS staff and internal capacity
- Applying the merit principle of the Public Service Act, and
- A long-term commitment from Government to provide satisfactory funding.

As Terry Moran argued in his IPAA Victoria Fellows' Oration, "reinvesting in policy memory and capability, encouraging frank advice, and improving service delivery know-how is the way forward if the APS is to think for itself and be the crucible for reform that it can and must be for Australia to thrive."¹

¹ Terry Moran AC. (2017, 21 November). 'Back in the Game' IPAA Victoria Fellows' Oration. Retrieved from <https://cpd.org.au/wp-content/uploads/2017/11/Terry-Moran-AC-IPAA-Victoria-Oration-21-November-2017.pdf>

Recommendations

1. Review current categorisation of information in AusTender and provide improved guidance and staff training to help ensure consistency.
2. Regular spot reviews (including analyses of individual contracts) to ensure the accuracy of contract information in AusTender.
3. The Commonwealth should abolish the average staffing level cap which is driving outsourcing and the use of labour hire, reducing APS capability, increasing costs, undercutting wages and conditions, and denying agencies the ability to determine appropriate staffing mix.
4. To restore transparency and accountability in the expenditure of public monies, the Commonwealth should
 - publish annual service-wide information on the:
 - i. total expenditure on consultants
 - ii. number of non-APS employees (inclusive of contractors, consultants and labour hire) as part of the total APS workforce.
 - iii. percentage breakdown of tender method.
 - iv. percentage of contracts adjusted after tender.
 - require agencies to publish in their annual reports the number of non-APS employees that are part of their agency workforce.
5. The Commonwealth create a central clearinghouse for evaluating the performance of companies across multiple contracts, sharing what is learnt, advising public bodies and enforcing contract standards.
6. Rebuild public sector service delivery and policy development capacity through:
 - Identifying public sector work that has been outsourced or contracted out and should now be brought back in house; and
 - Identifying savings in the use of consultants and contractors, and then reinvesting those savings into rebuilding public sector capacity.
7. Strengthening the capability of the APS to offer stewardship and frank advice in the public interest by increasing the number of secure permanent jobs in the public service, through eliminating the use of labour hire in the public service, and reducing the use of contractors, casual and non-ongoing positions, and increased funding.
8. The Commonwealth reconsider digital transformation as an opportunity to improve services, rather than an opportunity to cut costs, by:
 - investing in staff;
 - reducing its reliance on ICT contractors and consultants;
 - providing adequate funding in the Budget to invest in ICT systems and training that support digital government service delivery; and
 - involve and utilise staff and the wider community in the development and delivery of public services.

Effectiveness of Commonwealth procurement policy and guidance

Key points

- There has been a decline in procurements through open tenders.
- Panel tenders have increased.
- A small number of suppliers dominate panel arrangements.
- The Finance Department guidance on what is a consultant versus a contractor is not always clear.
- The definition of 'consultancy' is not consistently applied by agencies, and contracts are regularly categorised incorrectly.

Commonwealth Procurement Rules

The Commonwealth operates a devolved procurement framework.² The Department of Finance is responsible for establishing and promoting the Procurement Framework which applies to all Commonwealth corporate and non-corporate entities. Each entity is responsible for its own procurement processes and decisions.

Central to the Procurement Framework are the Commonwealth Procurement Rules (CPR) which mandate that procurement must achieve value for money.

Competition among suppliers is essential to achieve value for money, and competition is best achieved through open tender processes. Therefore, CPSU notes with concern the ANAO report that³:

- Of total procurement value in 2016-17, less than half was procured through an open tender.
- This is the lowest rate of open tender for some five years.
- The use of panel arrangements has increased since 2014-15, and,
- A large majority of panels examined had a relatively small proportion of suppliers awarded the majority of contract value.⁴

A recent contract for Adecco Pty Ltd to supply labour hire workers for DHS is a case in point:

- This is a very large contract for the provision of 1,000 labour workers for multiple years.
- This contract was not subject to an open tender.
- The contract was awarded from a panel.

Leaving aside for the moment the very serious issues about labour hire use (covered in detail elsewhere in this submission), the tender process for this contract does raise serious questions about how value for money was achieved and whether all potential suppliers had an opportunity to compete.

The CPSU submits that the trend away from open tenders, and the potential for panel provision to be dominated by a limited number of suppliers raises important challenges for the CPRs and is therefore worthy of further detailed examination by the ANAO and others.

Definitions and the clarity and appropriateness of guidance materials

The Commonwealth Procurement Rules (CPR) mandate that procurement must be competitive, not disadvantage small and medium enterprises, and be transparent.

² Department of Finance (2018, February). Submission to the Joint Committee of Public Accounts and Audit - Australian Government Contract Reporting - Inquiry based on Auditor-General's report No. 19 (2017-18) Part A

³ The Auditor-General (2017, December). ANAO Report No.19 2017-18 Information Report: Australian Government Procurement Contract Reporting. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

⁴ The Auditor-General (2017, December). ANAO Report No.19 2017-18 Information Report: Australian Government Procurement Contract Reporting. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

CPSU submission to inquiry based on Auditor-General's report No. 19 (2017-18)

Accurate categorisation of the type of tender or contract is essential to meeting those rules. A fundamental categorisation question is whether a contract is a consultancy or non-consultancy contract. This is an important distinction as it goes to the heart of the purpose of the procurement.

Consultants are distinguished from other contractors by the nature of the work they perform.

One of the distinctions is the output is being produced for the agency (consultancy contract), or on behalf of the agency (non-consultancy contract).⁵

And while the Department of Finance produces guidance material on the matter, the guidance material itself is not always clear. CPSU notes that guidance material states that the nature of each contract involving the provision of services must be assessed on a case-by-case basis to determine whether it involves a consultancy for the purposes of AusTender reporting. This creates the prospect of inconsistency in agency application, and increased scope for incorrect categorisation.

The clarity of the guidance is further clouded by the provision that case by case determination is applied even where the contracted party purports to be a provider of consultancy services.

Furthermore, while the guidance provides a list of common consultancies and non-consultancies, it states that the list is not definitive and there will be cases where the nature of the arrangement is 'grey', requiring a judgement call. This creates further scope for incorrect categorisation.

Incorrect categorisation undermines the transparency of the tender and reportage system, and creates the situation where neither government, the APS nor the public can be entirely clear about what is being spent for what purpose.

This problem is further exacerbated by Department of Finance guidance which provides that entities do not need to separately identify minor consultancy elements in non-consultancy contracts, or particular invoices relating to consultancy work performed under an overarching contract.⁶ This approach means that expenditure and outcomes on some consultancy work will go unreported.

ANAO Report 19 has clearly identified that there are serious issues with the application of this categorisation. The ANAO report confirms long held CPSU concerns that the combination of central guidance that lack clarity and devolved procurement framework with high volumes of contracts is a recipe for inaccurate and inconsistent reportage.

The CPSU recommends there should be:

- A review of the categorisation of information in AusTender
- Improvements to Department of Finance guidance material, and
- The provision of further staff training across the APS.

The Commonwealth should then seek further assurance by way of regular spot reviews (including analyses of individual contracts) to ensure the accuracy of contract information in AusTender.

RECOMMENDATION: Review current categorisation of information in AusTender and provide improved guidance and staff training to help ensure consistency.

RECOMMENDATION: Regular spot reviews (including analyses of individual contracts) to ensure the accuracy of contract information in AusTender.

⁵ Department of the Prime Minister and Cabinet (2015, 25 June). Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies

⁶ Department of Finance (2014, 10 July) Additional Reporting on Consultancies. Retrieved from <https://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/reporting-requirements/consultancies-reporting/principles.html>

Use of consultancy and non-consultancy services in the APS

Key points

- Between 2013 and 2017 APS staffing levels were cut by 14,044. During this period consultancy expenditure increased markedly.
- The Average Staffing Level cap is driving the increased use of contractors, consultants and labour hire
- Agencies are forced to have a maximum average staffing level, even where there is funding available for the direct employment of staff, creating a perverse incentive to employ contractors, consultants or use labour hire.
- The Productivity Commission has recommended the removal of the staffing cap.
- Budget operational rules prevent new policy proposal funding from using new APS staff and this has further driven use of contractors or labour hire
- There are questions about the accuracy of consultancy expenditure published in AusTender which may be much higher than reported.
- It is difficult to determine exactly how much has been spent on specific types of non-consultancy services such as the use of contractors and labour hire.
- The share of ICT contractors has grown over the past five years and spend on internal ICT personnel has fallen accordingly.

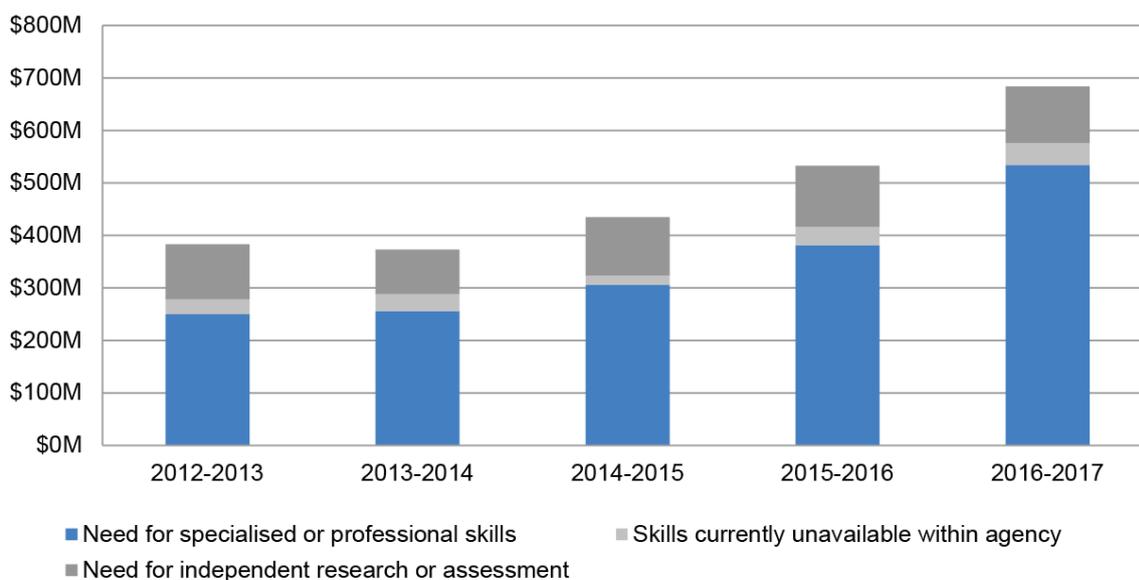
Drivers of use

Job cuts

Jobs cuts have been a major driver of the increased use of consultants and contractors.

As the current Government slashed 14,044 APS jobs between 2013 and 2017, there has been a corresponding rise in consultancy expenditure. The recent ANAO report, at Figure 5.1, makes this clear:

Figure 5.1: Consultancy contract value by consultancy reason and financial year (2012–13 to 2016–17)⁷



⁷ The Auditor-General (2017, December). ANAO Report No.19 2017–18 Information Report: Australian Government Procurement Contract Reporting. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

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The CPSU notes the increase in the number of consultancies for the provision of specialised or professional skills. The CPSU submits that this represents the capability gap caused by mass redundancies.

This increased expenditure is also evidence of the false economy of public service cuts – as the work of APS employees is replaced by expensive external providers.

It is also the case that deficiencies in the AusTender reporting regime result in the under reportage of consultancy use, and that the actual expenditure is most likely to be larger than that reported.

The Average Staffing Level cap

Under the current Coalition Government, a major driver of the use of non-consultancy services in the APS is the average staffing level (ASL) cap.

In October 2013, the newly elected Coalition Government commenced a program of job cuts. Then in the 2015-16 Budget, the Coalition determined that the general government sector employment levels (excluding military and reserves) must be kept at or below 2006-07 levels (167,596).⁸

This decision created an average staffing level cap that is below the actual funding level of the agency. This means that regardless of funding levels or operational requirements, agencies are forced to have a maximum average staffing level equal or below their 2007 staffing level.

The practical effect of the ASL cap is that while agencies have the funding, including new program funding, to hire additional staff, the cap is forcing them to avoid any direct employment of additional staff and instead engage casuals, hire contractors and use labour hire to do work that would normally be performed by permanent APS employees.

Examples of the impact of the cap are now numerous, including:

- Within the Department of Social Services, CPSU delegates have been told by branch managers that DSS cannot not recruit new APS employees, and that new work and work once performed by APS staff made redundant must now be done by contractors.
- The Australian Taxation Office (ATO) has indicated to CPSU it has a financial year staffing cap of 18,043⁹ and although it has funding for more employees above the cap level they are prevented from hiring APS employees and therefore must resort to labour hire and contractors.
- It is a similar story at the Australian War Memorial which has a cap of 278, and an increased use of labour hire.

The National Disability Insurance Agency (NDIA) is a notable example of how the staffing cap is impacts on the capacity of APS agencies. It has a staffing cap of 3,000 employees, a significant reduction from the NDIA's initial estimate of 10,595 in 2018-19.¹⁰ The reduction has driven by the outsourcing of 7,000 future NDIA staffing positions.¹¹

The current staffing cap of 3,000 people has meant the NDIA needs to outsource much of its work. This presents a particular risk when the agency is so new, and therefore needs to build institutional expertise and knowledge.

8 Commonwealth of Australia (2016, May) 2016-17 Budget, Budget Paper No.4 Part 2: Staffing of Agencies. Retrieved from http://budget.gov.au/2016-17/content/bp4/html/09_staff.htm

9 Australian Taxation Office, National Consultative Forum November 2017 report

10 Commonwealth Government (2016). 2016-17 Budget Paper No.4 – Part 2: Staffing of Agencies.

http://www.budget.gov.au/2016-17/content/bp4/html/09_staff.htm

11 Luke Bo'sher (2015, 15 September). 7,000 NDIA jobs to be outsourced. Disability Consulting Services http://www.disabilityservicesconsulting.com.au/resources/7000-ndia-jobs-to-be-outsourced/#_edn2

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Almost one-third of the NDIA's internal staff are contractors. Many staff at the NDIA do not have long experience with the APS. A third (34.7%) of NDIA staff have a length of service of less than a year compared to a tenth (8.1%) across the APS.¹²

The Productivity Commission has recommended the removal of the cap on directly employed NDIA staff:

"The Commission recommends that the Australian Government remove the cap on directly employed staff. This is on the basis that the NDIA is best placed to determine the most effective and efficient staff mix to deliver the scheme, within the constraints of its capped operating budget."¹³

The Commission also identified a link between the staffing cap and outsourcing:

"The rationale for the cap on directly employed staff appears to be to encourage the NDIA to enter into community partnerships. While it is important that the NDIA works collaboratively with the community to deliver the scheme, it could also lead to poorer outcomes. For example, the NDIA outsourcing a lot of its work can present a particular risk when the agency is so new and needs to build institutional expertise and capability."¹⁴

There are further examples of the staffing cap driving outsourcing.

Between 2010-11 and 2016-17, 5,547 or 16% of jobs were cut from the Department of Human Services. Another 1,118 ASL are estimated to go in 2017-18, meaning a loss of 6,192 ASL since 2010-11.

Those job losses are causing substantial problems for the community and for staff – with 55 million missed phone calls in the past year, up from 29 million the previous financial year or nearly 90 per cent.¹⁵ Clients are angry and frustrated while staff are under enormous pressure.

The Department, in response to an ANAO report, estimated that reducing the average speed of answer to five minutes would require an additional 1,000 additional staff.¹⁶ However, the Government has not acted on this recommendation, but has instead contracted Serco to provide 250 call centre jobs, and contracted Adecco to provide 1,000 labour hire workers.

In Senate Estimates, the Department of Human Services responded to questions about why Serco was being engaged, stating that *"we currently recruited all the way up to our ASL cap"* and that they were *"fully staffed"*.¹⁷

Other examples of contractors or labour hire being used because of the staffing cap include

- The Commonwealth Department of Public Prosecutions being forced to convert APS employees to labour hire – at increased cost to the CDPP while also paying the labour hire employees less.¹⁸

¹² Data from APS Employment Database, 31 December 2016

¹³ Productivity Commission (2017). National Disability Insurance Scheme (NDIS) Costs, Study Report, Canberra. Retrieved from <http://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs2.pdf>

¹⁴ Productivity Commission (2017). National Disability Insurance Scheme (NDIS) Costs, Study Report, Canberra. Retrieved from <http://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs2.pdf>

¹⁵ Stephanie Dalzell (2017, 26 October). More than 55 million calls to Centrelink receive engaged signal in 2016/17, Senate Estimates hear. Retrieved from <http://www.abc.net.au/news/2017-10-26/55-million-calls-to-centrelink-received-busy-signal-in-a-year/9086518>

¹⁶ Australian National Audit Office (2015), Audit Report No.37: Management of Smart Centres' Centrelink Telephone Services, p.56

¹⁷ Parliament of Australia. (2017, 25 October). 2017-2018 Supplementary budget estimates - Social Services and Human Services. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ca/2017-18_Supplementary_Budget_estimates

¹⁸ Noel Towell (2017, 14 August). Federal government to dump prosecutors for labour-hire lawyers. Canberra Times. Retrieved from <http://www.canberratimes.com.au/national/public-service/federal-government-to-dump-prosecutors-for-labourhire-lawyers-20170814-qxvo9i.html>

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- Despite having the funds to keep 30 non-ongoing staff, the Australian Institute of Aboriginal and Torres Strait Islander Studies was forced to do a closed tender with Hayes and convert staff to labour hire to keep them beyond 1 July 2017.
- At the end of 2016-17 financial year, the Australian Institute of Health and Welfare at the end of last financial year moved a cohort of staff from being employed on rolling 12 month term contracts to labour hire to avoid their ASL cap. The agency tried to advocate to their relevant Minister that they needed the staff but got nowhere.

The Department of Home Affairs stated in a meeting with CPSU representatives that as staffing numbers will not increase under the ASL cap they need to look to alternate options from the market to deliver visa services. The Department is currently in the process of outsourcing their call centre functions as well as opening to market visa processing functions. The total value in 2026-27 of the bundle of visa processing services the Department is looking at privatising is estimated to be up to \$8.8 billion.¹⁹ This proposal to outsource visa processing is straight out of the Abbott Government's National Commission of Audit.²⁰

The ASL cap is also driving increased use of external providers in the Department of Defence. CPSU members in Defence have provided a separate submission to this Inquiry.

The ASL cap is subject to ongoing monitoring by the Department of Finance and the Australian Public Service Commission (APSC).²¹ ASL information is collected and monitored by the Department of Finance and agencies are required to provide monthly employee headcount reports to the APSC to "monitor the funded size of agencies."²² The APSC has indicated that "inappropriate growth in staffing numbers may result in case-by-case controls on agencies' recruitment activity."²³

In summary, the ASL cap is creating a perverse incentive to use external providers.

The CPSU submits that the ASL cap is terrible public policy. It is based on a flawed ideological preference to contract out. It is also a deeply misleading, as on one hand the Government claims it is making savings through smaller government while it is in fact driving wasteful expenditure, hiring external providers to perform work that could be done more cheaply and more effectively by APS employees.

The ASL cap is also impacting on APS capacity, and has substantial negative impacts on employees. These concerns are covered elsewhere in this submission.

The CPSU therefore submits that the ASL cap must be abolished as a matter of urgency.

Budget Operational rules

CPSU members in a number of agencies have also reported that Budget operational rules are also driving the use of contractors and labour hire.

The effect of the rules is to prevent New Policy Proposal (NPP) funding from being used to employ new APS staff.

The CPSU is aware of circumstances where a NPP was initially rejected because they included additional APS staff, but a revised NPP using external providers at a higher cost was then approved and this has further driven the use of contractors or labour hire.

19 Department of Immigration and Border Protection (2017, June). Delivering visa services for Australia Market Consultation Paper

20 Australian Government (2014, February). The Report of the National Commission of Audit: Phase One. National Commission of Audit. Retrieved from <http://www.ncoa.gov.au/report/phase-one/recommendations.html>

21 Commonwealth of Australia (2016, May) 2016-17 Budget, Budget Paper No.4 Part 2: Staffing of Agencies. Retrieved from http://www.budget.gov.au/2015-16/content/bp4/html/bp4_part_02.htm

22 Australian Public Service Commission (2016, 14 December) Managing the size of the Australian Public Service. Retrieved from <http://www.apsc.gov.au/managing-in-the-aps/recruitment-and-selection/interim-recruitment-arrangements>

23 Australian Public Service Commission (2016, 14 December) Managing the size of the Australian Public Service. Retrieved from <http://www.apsc.gov.au/managing-in-the-aps/recruitment-and-selection/interim-recruitment-arrangements>

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The CPSU recommends the Committee seek information from agencies, such as the ATO, as to examples where budget rules have led to the use of contractors/labour hire rather than APS staff.

RECOMMENDATION: The Commonwealth abolishes the average staffing level cap which is driving outsourcing and the use of labour hire, reduces APS capability, increases costs, undercuts wages and conditions, and denies agencies the ability to determine appropriate staffing mix.

Expenditure on consultancy services and non-consultancy

As noted earlier in this submission, consultancy expenditure has increased as the current Government have slashed more than 14,000 APS jobs.

The CPSU notes the increase in the number of consultancies for the provision of specialised or professional skills. The CPSU submits that this represents the capability gap caused by mass redundancies, and that this increased expenditure is also evidence of the false economy of public service cuts – as the work of APS employees is replaced by expensive external providers.

And while consultancy expenditure is extremely high, and has attracted substantial public comment and concern, the actual expenditure is likely to be much higher than that reported through AusTender.

The CPSU, like other interested parties, finds it difficult to accurately establish what money is being sent and for what purpose.

The Department of Finance's submission to this inquiry has stated that '*Austender does not report expenditure on consultancies, only the value of contract notices flagged as consultancies.*'²⁴ It further goes on to state that '*contract reporting does not equate to actual expenditure in a particular period. Consequently, the reporting of consultancy contracts on AusTender does not, and is not intended to, reflect the Australian Government's annual spending on consultancies.*'²⁵

The Finance submission further states that actual expenditure on consultancies is reported in entities' Annual Report.

However, an extensive review by CPSU of annual reports reveals that they provide very limited information – typically just the number of contracts and overall new and ongoing spending with little to no detail about the reason for the procurement and no detail about outcomes.

This is unacceptable in a public sector environment where transparency and accountability should be paramount.

The situation with non-consultancy contracts is worse.

While information on contracts as consultancy services can be obtained from AusTender and was reported on in ANAO Audit No.19, it can be difficult to determine exactly how much has been spent on specific types of non-consultancy services such as the use of contractors and labour hire. Annual reports do not provide the information either, and typically group together consultancies and contractors.

The lack of information about labour hire use is especially problematic.

We define labour hire as that 'triangular relationship' in which a labour hire agency supplies a labour worker to a third party (host) in exchange for a fee. In this arrangement there is no direct employment

24 Department of Finance (2018, February). Submission to the Joint Committee of Public Accounts and Audit - Australian Government Contract Reporting - Inquiry based on Auditor-General's report No. 19 (2017-18) Part A

25 Department of Finance (2018, February). Submission to the Joint Committee of Public Accounts and Audit - Australian Government Contract Reporting - Inquiry based on Auditor-General's report No. 19 (2017-18) Part A

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or contractual relationship between the host and the labour hire worker. Instead, the worker is engaged by the labour hire agency, either as an employee or as an independent contractor

CPSU workplace research, through exercising consultative rights under enterprise agreements and gathering reports from CPSU workplace delegates, has been able to establish that the Commonwealth is employing thousands of employees via third parties.

Some information has been revealed through Senate Estimates. During the 2016-17 Supplementary Budget Estimates in October 2016, agencies were asked how many staff were employed through labour hire arrangements and total expenditure on labour hire in 2015-16. The table below summarises the answers to the Questions on Notice provided by agencies.

Table 1: 2015-16 Labour Hire Expenditure and Staffing by Agency

Agency	Number of staff	Total expenditure on labour hire
Department of Social Services	700	\$147,000,000.00
Australian National Maritime Museum*	21	\$2,910,657.28
Australian Taxation Office	736	\$83,099,937.76
Commonwealth Superannuation Corporation	40	\$4,492,408.25
Department of Human Services	467	\$43,296,022.34
Department of Health	439	\$36,482,550.85
Australian Bureau of Statistics	160	\$12,846,000.00
Australia Council	5	\$397,364.00
Department of Finance	99	\$7,700,000.00
Department of Agriculture and Water Resources	396	\$26,428,000.00
Australian Grape and Wine Authority	5	\$302,394.00
Climate Change Authority	1	\$52,280.17
Department of Infrastructure	166	\$8,643,175.00
Australian Prudential Regulatory Authority	70	\$2,899,617.82
Department of Veterans' Affairs	641	\$24,300,000.00
Productivity Commission	12	\$433,643.00
Indigenous Business Australia	9	\$322,731.00
Great Barrier Reef Marine Park Authority	12	\$422,000.00
Royal Australian Mint	13	\$412,627.86
Tertiary Education Quality and Standards Agency	42	\$1,294,451.00
Australian Skills Quality Authority	38	\$1,065,658.00
Australian Public Service Commission	18	\$470,682.00
Australian War Memorial	129	\$3,290,854.00
Sydney Harbour Federation Trust	28	\$685,506.54
Australian Accounting Standards Board/ Auditing and Assurance Standards Board	1	\$15,852.59
Australian National Audit Office	9	\$13,966.12
Australian Securities and Investment Commission	n/a	\$15,533,434.00
Bureau of Meteorology	n/a	\$7,913,535.32
Australian Pesticides & Veterinary Medicines Authority	n/a	\$3,091,901.00
Australian Communications and Media Authority	n/a	\$265,000.00
Department of Immigration and Border Protection	n/a	\$1,249,250.00
Department of Education	n/a	\$10,143,259.97
TOTAL	4,257	\$447,474,759.87

This table reveals that some \$447m was spent on labour hire in 2015-16 on more than 4,000 labour hire employees. And as large as that number is, it is not the full picture. The table does not include all APS agencies, and in particular does not include the Department of Defence – one of the largest users of external staffing, nor the NDIA – who have subsequently revealed that they have had to employ some 900 labour hire employees because of the ASL cap.

Since this information was provided, the ASL cap has driven further use of labour hire employees. The full extent of current labour use in the APS is unknown, having effectively been kept hidden by agencies and the Government. The CPSU estimates there are upwards of 5,500 labour hire employees.

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Information and communication technology (ICT).

One area where there is substantial available information about expenditure and the impacts of contractors is in ICT.

There have been a number of major inquiries and reports about government ICT over the previous decade. Each of these reports has produced the same findings:

- Decades of outsourcing and contracting out has substantially eroded APS ICT capability, to the extent that the APS is now overly reliant on external vendors.
- Contractors cost considerable more than APS employees
- APS ICT capability, and the quality of systems and services outcomes, would be improved by reducing the reliance on external vendors and rebuilding internal APS staff numbers and skills, and
- Substantial savings would be made by replacing ICT contractors with APS staff.

Since 2011-12, there has been a significant shift away from permanent APS staff to the use of contractors. The proportion of external ICT full time equivalents (FTE) grew from 23% to 30%, while the proportion of internal FTE decreased from 77% to 70%.²⁶ Between 2011-12 and 2015-16, the number of ICT FTE have been cut by government from 17,758 to 15,808 or 11.3% to 10.4% of total entities FTE.²⁷

The 2015-16 ICT Trends report revealed that, on average, the labour cost of external FTE is \$213,906 while the labour cost of internal FTE is \$131,530.²⁸

The most recent report was the 2017 ICT Procurement Taskforce report. It found that:

- 1 in 3 APS ICT workers are now contractors.
- The share of external ICT personnel has grown over the past five years and spend on internal ICT personnel has fallen accordingly, and
- That external providers continue to cost substantially more than APS employees.

The CPSU calculates that with approximately 4,700 ICT contractors engaged, it is costing in the order of \$385m more per annum than if those contractors were engaged as APS employees.

This decline in internal capacity and increased expenditure on external capacity has occurred over the same time that the ICT failures in government services have increased.

The CPSU recommends therefore recommends that the APS rebuild internal capacity through increasing APS staff numbers and reducing the reliance on external providers.

26 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

27 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

28 Department of Finance. Australian Government ICT Trends Report 2015-16. Retrieved from <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

Transparency of reporting Commonwealth procurement

Key points

- The number of consultants and contractors employed by the APS are not included in official statistics about the APS workforce in annual reports, the Budget or APSC publications.
- The most recent service wide analysis conducted by the ANAO in 2007, found non-APS employees (inclusive of contractors, consultants and labour hire) constituted 11 per cent of the total workforce.
- Annual reports have no requirement to provide information on non-consultancy contracts related to staffing nor details on the consultancy contracts themselves.
- The functionality of AusTender is extremely limited and is affected by incorrect reporting.
- A search for the keywords 'labour hire' in AusTender shows there is no consistent categorisation.
- The ANAO has noted common AusTender errors include inaccuracies in contract dates, contract values, procurement method, and categories of procurement.

Effectiveness of the Commonwealth's reporting requirements and arrangements to foster consistent reporting across the Commonwealth

There are serious deficiencies with the effectiveness of the Commonwealth's reporting requirements.

As discussed earlier, there are substantial flaws in the reporting of consultant expenditure which make it difficult to determine the total expenditure and the outcome for that expenditure.

There are also major gaps in the reportage of non-consultancy contracts.

There has not been a service wide analysis on the use of contractors since a review was conducted by the ANAO in 2007. That review found that:

- Non-APS employees (inclusive of contractors, consultants and labour hire) constituted 11 per cent of the total workforce.²⁹
- Total expenditure on non-APS workers in 2005-06 was \$2.197b, approximately \$2.788b in 2016 dollars.³⁰

Given staffing cuts since 2007 and restrictions on hiring permanent APS employees, non-APS employees are likely to be a larger proportion of the total workforce.

Some agencies, such as the Department of Defence, do provide data about the use of contractors but this type of reportage is far from common across the APS. Defence openly acknowledged the extensive use of outsourced staff. In 2017, the outgoing Secretary of the Department reported that after extensive job losses, there were more consultants, contractors and labour hire staff in Defence than permanent APS employees.³¹ This is despite contractors costing 40 per cent more than their APS equivalents.³²

The ATO has also provided data which shows that the government has cut the number of ATO employees significantly over the past five years. Ongoing staffing levels are 15.5% lower than they were in 2012. Furthermore, there has been a 4,338 or 336% increase in externally engaged staff on the ATO payroll system.³³

29 Australian National Audit Office (2007, 25 June). Non-APS Workers. Retrieved from <https://www.anao.gov.au/work/performance-audit/non-aps-workers>

30 Calculation made using RBA Inflation Calculator from <https://www.rba.gov.au/calculator/annualDecimal.html>

31 Noel Towell (2017, 20 February). Consultants and contractors now outnumber public servants in Defence Department. Canberra Times. Retrieved from <http://www.canberratimes.com.au/national/public-service/consultants-and-contractors-now-outnumber-public-servants-in-defence-department-20170216-quf561.html>

32 Department of Defence (2010, 6 April), *SRP initiative information sheet: workforce and shared services: contractor conversions*. Retrieved from <http://www.defence.gov.au/srp/infosheets.htm>

33 Based on data from Australian Public Service Statistical Bulletin, snAPShots & ATO National Consultative Forum

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But while Defence and the ATO, and some other agencies have made reports, they are the exception.

There is clearly a strong case for the Commonwealth to mandate new and improved reportage requirements. Improved reporting requirements for contractors and consultants will only occur if there are consistent service-wide obligations on agencies.

A yearly-service wide report on the number of non-APS employees would provide greater transparency to the community. Alongside this, agencies should be required to publish number of non-APS employees as part of their agency workforce as part of their annual reports.

There should also be better reporting on the performance of contractors and consultants. The creation of central clearinghouse for the APS, involving the ANAO, that could evaluate the performance of companies across multiple contracts which improve both transparency and what is delivered to the public. The performance evaluations should be shared across government and can help enforce contract standards.

In particular, new mandated reportage requirements should include obligations to report on the use of labour hire.

Currently, neither the APSC nor Government reports to the public on labour hire use. AusTender, the APSC nor annual reports currently provide any indication of the number of labour hire employees.

And they most certainly do not report on the either the pay rates, working conditions or employment rights of this largely casualised workforce.

This is an unacceptable situation. It undermines APS obligations to be transparent and accountable.

It effectively hides from public view explicit government decisions to turn secure jobs into insecure ones, and to use labour hire to drive down wages, conditions and employment rights

The omission of labour employment reportage by the ASPC is particularly egregious.

The APSC is responsible for policing the ASL cap that forces agencies to use labour hire and the APSC is charged with producing State of the Service reports. The most recent State of the Service report informed the public that the rate of casual employment in the APS had fallen slightly. This information is deeply misleading as it fails to reveal that the Commonwealth is employing thousands of casual workers via third parties.

RECOMMENDATION: To restore transparency and accountability in the expenditure of public monies, the Commonwealth should:

- publish annual service-wide information on the:
 - i. total expenditure on consultants
 - ii. number of non-APS employees (inclusive of contractors, consultants and labour hire) as part of the total APS workforce.
 - iii. percentage breakdown of tender method
 - iv. percentage of contracts adjusted after tender
- require agencies to publish number of non-APS employees that are part of their agency workforce in their annual reports.

RECOMMENDATION: The Commonwealth create a central clearinghouse for evaluating the performance of companies across multiple contracts, sharing what is learnt, advising public bodies and enforcing contract standards.

Accessibility to, and availability of, consolidated reporting for both consultancy and non-consultancy contracts (value, expenditure, categories of service)

There is limited consolidated reporting available on consultancy and non-consultancy contracts.

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Annual reports are required to provide a summary statement on consultancies detailing the number of new contracts, the total actual expenditure on all new contracts, the number of ongoing contracts and the total actual expenditure. There is no requirement to provide information on non-consultancy contracts related to staffing nor details on the consultancy contracts themselves.

Previously the Department of Finance had commissioned detailed AusTender data analyses, which included analysis of segments. However, none have been published since the 2012-13 financial year.³⁴

AusTender

While AusTender can provide some reporting, particularly on consultancy contracts, its functionality is extremely limited and is affected by incorrect reporting.

For example, a 'Contracts awarded as Consultancy' report can be exported from the AusTender website. The contracts included in the report would be where 'Yes' is indicated in the column that says Consultancy. However, as previously noted, it may not include all consultancies and would therefore be of limited value.

There are also problems with understanding, from the available reports, why some contracts are tagged as a consultancy when seemingly very similar contracts are not. For example, while some legal services are listed as consultancies, others are not. Similarly some research related data services are listed as consultancies while others are not. The description provided is limited, making it hard to identify why it is a consultancy.

The ANAO has acknowledged this is an issue, stating that "*analysis of individual contracts with respective entities would be required to determine the extent to which consultancy contracts are being accurately reported in AusTender using the 'consultancy' flag.*"³⁵

A further example of inconsistency in AusTender is how outsourced services are categorised and reported. For example, searching for the keyword 'labour hire' for 2016-17 financial year from AusTender shows there is no consistent categorisation. Categories used include:

- personnel recruitment
- human resources services
- information technology consultation services
- temporary personnel services
- business law services
- project administration of planning
- employment services
- printed publications
- corporate objectives or policy development
- personnel recruitment
- Information technology consultation services
- information services

There are also a range of variations on contract titles. The end result is to make it very difficult and timing to retrieve useful information – as one would need to predict all the potential keywords and categories that could cover consultancy and non-consultancy contractor services.

Another example of the problematic categorisation is an ATO contract for the Provision of Outsourced Contact Centre Services. It is categorised as "management advisory services".³⁶

34 Department of Finance (2014, 12 December). Analysis of Australian and Overseas contracts by the Australian Government. Retrieved from <https://www.finance.gov.au/procurement/analysis-of-australian-overseas-purchasing-contracts.html>

35 The Auditor-General (2017, December). ANAO Report No.19 2017–18 Information Report: Australian Government Procurement Contract Reporting. Retrieved from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting>

36 AusTender (2017, 6 October). Contract Notice View - CN867971-A7. Retrieved from <https://www.tenders.gov.au/?event=public.cn.Amendment.view&CNUUID=533DDEF8-A6DF-86EF-68CEB63C9682F280>

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As a further example of the deficiencies of AusTender, the CPSU draws the Committee's attention to an ATO contract³⁷ from October 2017 (Contract Notice View - CN867971-A7):

- This is a very substantial contract with a value of \$248m.
- The contract was awarded to Serco Pty Ltd.
- CPSU understands this contract to be for Serco to use Serco premises, equipment and staff to operate a call centre.
- However the contract is categorised as "management advisory services".

In the CPSU's view the use of "management advisory services" is an inadequate description of what is in effect the wholesale outsourcing of an important function that should more properly be the work of the ATO.

As previously recommended, the CPSU submits that a review of the current categorisation of information in Austender should be undertaken along with improved guidance and staff training to help ensure the consistent and correct categorisation of information in AusTender such as 'labour hire'.

³⁷ AusTender (2017, 6 October). Contract Notice View - CN867971-A7. Retrieved from <https://www.tenders.gov.au/?event=public.cn.Amendment.view&CNUUID=533DDEF8-A6DF-86EF-68CEB63C9682F280>

Australian Public Service capability and capacity

Key points

- Australians want government to retain the skills and capability to deliver services directly.
- The use of contractors and consultants has driven the deskilling of the APS.
- Contractors are completing ongoing work, not just fixed-term projects, and are brought in to fill higher vacancies.
- The over reliance on external advice carries substantial risks for agencies.
- If Departments solely become a contract manager it becomes disconnected from direct service delivery and is removed from understanding best practice, as well as the challenges and pitfalls.
- The increasing use of contractors and consultants has eroded the merit based employment principles of the APS.
- The rebuilding of the public service will not occur while there is heavy reliance on the use of contractors and consultants
- More funding and additional staff are needed to improve the quality of outcomes.
- There should be a cap on contractors and consultants to ensure investment in staff and steps should be taken to bring in-house any work that has been outsourced, instead use it to rebuild public sector capacity.

Effects on Commonwealth agencies' (and APS more broadly) capability and capacity

The Australian Public Service plays a vital role in Australian society and Government. All Australians benefit from a public sector that can meet the big national challenges and deliver quality public services.

Four in five Australians want government to retain the skills and capability to deliver services directly.³⁸ Australians do not just want more effective government; they want a more active government with the courage to take on ideas.³⁹

However, the Government's cutting of more than 14,000 APS jobs and increased use of consultants, contractors and labour hire is causing serious damage to the APS. Essential skills are being lost, and the capacity of the APS is being hollowed out, while valuable funding, in a highly constrained resources environment, is being wasted on these more expensive external providers.

Terry Moran, the former Secretary of the Department of Prime Minister and Cabinet, has noted that there has been the overuse of consultants and the public service has been stripped of specialist capability and service delivery experience. He added, *"If it were a patient it would be in palliative care. Successive governments haven't nurtured the APS: they've gutted it."*⁴⁰

CPSU members report the contractors are completing ongoing work, not just fixed-term projects, with several reporting career progression being limited as labour hire staff are brought in to fill higher vacancies rather than allowing more junior staff to act.

As noted previously in this submission, there have been a number of major reports which have all found that the use of contractors and consultants has driven the deskilling of the APS ICT.

More recently, the former Digital Transformation Office CEO Paul Shetler has gone on the public record to say that:

38 What do Australians Want? Active and Effective Government Fit for the Ages (2017, December). Centre for Policy Development. Retrieved from <https://cpd.org.au/2017/12/what-do-australians-want-discussion-paper-december-2017/>

39 Terry Moran AC. (2017, 21 November). 'Back in the Game' IPAA Victoria Fellows' Oration. Retrieved from <https://cpd.org.au/wp-content/uploads/2017/11/Terry-Moran-AC-IPAA-Victoria-Oration-21-November-2017.pdf>

40 Terry Moran AC. (2017, 21 November). 'Back in the Game' IPAA Victoria Fellows' Oration. Retrieved from <https://cpd.org.au/wp-content/uploads/2017/11/Terry-Moran-AC-IPAA-Victoria-Oration-21-November-2017.pdf>

CPSU submission to inquiry based on Auditor-General's report No. 19 (2017-18)

“Over the last 40 years, as we’ve outsourced technology, there’s been a progressive deskilling of the public service. The reliance on consultants is remarkable and the amount spent on them is eye watering. That’s just not necessary if we re-skill the public service...”

Paul Shetler also stated that ICT failures have been *“further complicated and exacerbated by the lack of technical and contract management expertise in government. (Too frequently, we actually ask vendors to tell us what they think we should buy.)”*

Outsourcing as a driver of deskilling is not a new nor novel finding. The 2008 Gershon Report recommended a reduction in the use of external contractors in favour of building internal APS capacity.

Many of these technical ICT capability gaps in the Australian Public Service have resulted from an over-reliance on external ICT contractors — particularly for more complex, high-value ICT work.⁴¹

Paul Shelter has noted that *“Government is one of the last industries that thinks it can outsource wholesale.”*⁴² Core business should be in-sourced. Dealing with your end users and understanding your end users is your core business.⁴³

Effects on Commonwealth agencies’ (and APS more broadly) performance and delivery outcomes

The professional and technical capacity of many agencies has been severely eroded as core functions have been outsourced. The Department of Human Services is a case in point.

Dealing with social security debts is an incredibly sensitive job that should be done by well-trained public servants. The introduction of labour hire staff to a highly trained and skilled DHS workforce has begun to result in deskilling and a loss of departmental capacity. CPSU members in DHS have reported plummeting morale as non-ongoing staff find their jobs at risk of being replaced by labour hire employees, and long-term staff leave the department.

A prime recent example of the impact on performance and delivery outcomes is the establishment of the Serco call centre in Melbourne, handling compliance work usually undertaken by trained APS officers. This core APS function comprises the provision, approval and auditing of federal benefit payments to DHS customers. As a growing number of simple enquiries are being resolved online, Serco staff are receiving increasingly complex confidential enquiries, involving direct customer contact and the handling of sensitive data.

In addition to the associated confidentiality concerns, DHS employees and customers have reported mistakes routinely made by Serco call centre staff, including reported earnings being processed incorrectly, overpayments being made to customers and incorrect debts being raised. These incidents directly disadvantage vulnerable DHS customers, and then have to be rectified by trained APS staff, resulting in inefficient double-handling.

The CPSU has kept a record of reported incidents of DHS customers being transferred back and forth between multiple Serco call centre operatives, without receiving adequate answers to their queries. One customer reported being on the phone to this call centre for two hours and transferred between operatives a total of seven times during that period. The call was eventually transferred back to the same staff member who initially answered it.

DHS is far from the only example of how outsourcing has affected the delivery of core APS functions.

Following the integration of the Australian Customs and Border Protection Service and the Department of Immigration and Border Protection, a large number of ICT functions that had been performed by Customs employees were outsourced to Unisys as Unisys held ICT contracts with the Department of Immigration. Members report that since these functions have been undertaken by

41 Digital Transformation Agency (2017) ICT Procurement Taskforce. Retrieved from <https://ict-procurement.digital.gov.au/>

42 Australian Public Service Commission (2015, 23 October). Digital transformation in the APS. Retrieved from <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

43 Stephen Easton (2017, 2 August) Paul Shetler: forget high tech fantasies if you can't answer the phones. The Mandarin. Retrieved from <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

CPSU submission to inquiry based on Auditor-General's report No. 19 (2017-18)

Unisys they experience significant delays in lodging tickets and delays for resolution. Members have also reported that Unisys staff would need to contact the remaining ICT staff from ex-Customs in order to resolve a number of issues due to their lack of knowledge of the specificities of ex-Customs systems and processes.

The over reliance on external advice carries substantial risks for agencies. Paul Shetler noted, “*Too frequently, we actually ask vendors to tell us what they think we should buy.*” It is point that rings true from the 2016 Census failures, where it seems clear that the ABS did not have the expertise to assess the quality or suitability of the advice and products from their external supplier.

Crises such as the so-called ‘Robo debt debacle’ not only undermine the public’s faith in these institutions – they are also a reflection of an underlying neglect of these institutions that form the foundations of our community.

Furthermore, the separation of policy, regulation and service delivery functions has significant implications for government.

If a Department solely become a contract manager it becomes disconnected from direct service delivery and is removed from understanding best practice, as well as the challenges and pitfalls. The result is that the capacity of the Department to understand and respond to ‘on the ground’ challenges are significantly eroded, affecting policy development. The erosion of capability means that there is a high risk that the public sector designs and develops associated policy in a vacuum, without a working understanding of how service delivery operates to achieve lasting outcomes.

The increasing use of contractors and consultants have also eroded the merit based employment principles of the APS. A recent example was the employment of a program manager in the Industry Department using procurement rules, rather via a competitive recruitment round that APS employees could apply for.⁴⁴

The CPSU also notes the recent State of the Service report findings that APS employees report increased cronyism and green lighting. 5% reported witnessing corrupt behaviour in 2016-2017, a significant increase from the 2.6% who witnessed corruption in 2013-14 and the 3.6% of respondents in 2014-15.⁴⁵ Cronyism was by far the most common form of corruption witnessed, accounting for almost two-thirds of all responses, followed by nepotism (26%), and “green-lighting” (21%), a term for decisions that improperly favour a person or company, or disadvantage another.⁴⁶

CPSU members have reported to their union that concerns about cronyism have increased as the numbers of contractors and consultants has increased – with the particular concern arising where contractors/consultants are seen to try to increase the numbers of their colleagues in the APS.

Opportunities to address any issues identified

For all of the above reasons, CPSU submits that it is now urgent to reduce the use of external providers and rebuild APS staff numbers and skills.

In doing so, the Government’s goal should be to provide the community with world-class public services. Achieving that goal requires:

- Reducing the reliance on external vendors and contractors
- Placing a cap on agency expenditure on consultants and contractors, banning labour hire and reinvesting the savings to build APS staff and internal capacity

⁴⁴Public Eye (2017, 5 December). Job for the boy? The public service is giving up on the merit principle. We'll all regret it. Canberra Times. Retrieved from <http://www.canberratimes.com.au/national/public-service/job-for-the-boy-the-public-service-is-giving-up-on-the-merit-principle-well-all-regret-it-20171204-gzyg75.html>

⁴⁵ Australian Public Service Commission (2018, 8 January). APS Values and the Code of Conduct. Retrieved from <https://stateoftheservice.apsc.gov.au/2018/01/aps-values-code-conduct-2/>

⁴⁶ Australian Public Service Commission (2018, 8 January). APS Values and the Code of Conduct. Retrieved from <https://stateoftheservice.apsc.gov.au/2018/01/aps-values-code-conduct-2/>

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- Ending the staffing cap and a long-term commitment from Government with associated funding
- Applying the merit principle of the Public Service Act.

As Terry Moran argued in his IPAA Victoria Fellows' Oration, "reinvesting in policy memory and capability, encouraging frank advice, and improving service delivery know-how is the way forward if the APS is to think for itself and be the crucible for reform that it can and must be for Australia to thrive."⁴⁷

RECOMMENDATION: Rebuild public sector service delivery and policy development capacity through:

- Identifying public sector work that has been outsourced or contracted out and should now be brought back in house; and
- Identifying savings in the use of consultants and contractors, and then reinvesting those savings into rebuilding public sector capacity.

RECOMMENDATION: Strengthening the capability of the APS to offer stewardship and frank advice in the public interest by increasing the number of secure permanent jobs in the public service, through eliminating the use of labour hire in the public service, and reducing the use of contractors, casual and non-ongoing positions, and increased funding

RECOMMENDATION: The Commonwealth reconsider digital transformation as an opportunity to improve services, rather than an opportunity to cut costs, by:

- investing in staff;
- reducing its reliance on ICT contractors and consultants;
- providing adequate funding in the Budget to invest in ICT systems and training that support digital government service delivery; and
- involve and utilise staff and the wider community in the development and delivery of public services.

⁴⁷ Terry Moran AC. (2017, 21 November). 'Back in the Game' IPAA Victoria Fellows' Oration. Retrieved from <https://cpd.org.au/wp-content/uploads/2017/11/Terry-Moran-AC-IPAA-Victoria-Oration-21-November-2017.pdf>

Jurisdictional comparison and lessons

Key points

- The experience of the United Kingdom highlights the danger of Government relying on 'too big to fail' providers.
- Insourcing is an alternative to outsourcing
- There should be a consideration of the 'whole life' costs of contracts, the effects on staff and service quality and other social and economic impacts.

The impact of a reliance on privatisation, outsourcing and contracting out is clearly on show in the United Kingdom, where problems with outsourcing are now clearer than ever. Outsourcing has fragmented services when serious complex issues require joined up responses and there have been a host of contract failures.⁴⁸ It challenges the idea that competition among public service providers will necessarily lead to improved services at lower costs.⁴⁹

The creation of 'public service markets' in the United Kingdom has led to an oligopoly situation where providers like Serco and G4S are seen as 'too big to fail'.⁵⁰ The British National Audit Office has acknowledged that it can be difficult to maintain competitive pressure through the different stages of a contract. It concluded that complex contracts can diminish competition when the contract begins and expensive variations can reduce cost-effectiveness.⁵¹ The collapse of Carillion, a major provider of support services to the National Health Service, highlights the danger of this situation where *"the government has effectively created outsourcing monopolies whose primary expertise is in extracting value from the public sector."*⁵²

The manifest problems in the United Kingdom are seeing the start of a move towards insourcing, the returning of previously outsourced services, to public sector control. The service area most commonly subject to insourcing is administrative services such as benefits, human resources and ICT.⁵³ Four core reasons why services have been returned in-house have been poor performance, a drive for quality and value for money, strategic governance and local policy drive and the workforce.⁵⁴

The lesson from the United Kingdom is that there is a need to understand in what circumstances using contractors and consultancies works, there should be a consideration of the 'whole life' costs of contracts, the effects on staff and service quality and other social and economic impacts. Further, moving away from a reliance on outsourcing to deliver core public sector work will require a significant expansion of public service capacity.⁵⁵

48 David Walker and John Tizard (2018, January). Out of Contract: Time to move on from the 'love in' with outsourcing and PFI. The Smith Institute

49 TT Arvind, Lindsay Stirton (2018, 2 February). Carillion, Capita and the costly contradictions of outsourcing public services. The Conversation. Retrieved from <https://theconversation.com/carillion-capita-and-the-costly-contradictions-of-outsourcing-public-services-91030>

50 Alan White (2012, 3 December). The rise of the shadow state: the truth about outsourcing. New Statesman. Retrieved from <http://www.newstatesman.com/politics/2012/12/rise-shadow-state-truth-about-outsourcing>, (accessed 26 June 014)

51 National Audit Office, op. cit, pp.14

52 Grace Blakeley (2018, 1 February). The problem with outsourcing is not Carillion but the market itself. New Statesman. Retrieved from <https://www.newstatesman.com/politics/economy/2018/02/problem-outsourcing-not-carillion-market-itself>

53 APSE (2009, January), Insourcing: A guide to bringing local authority services back in house.

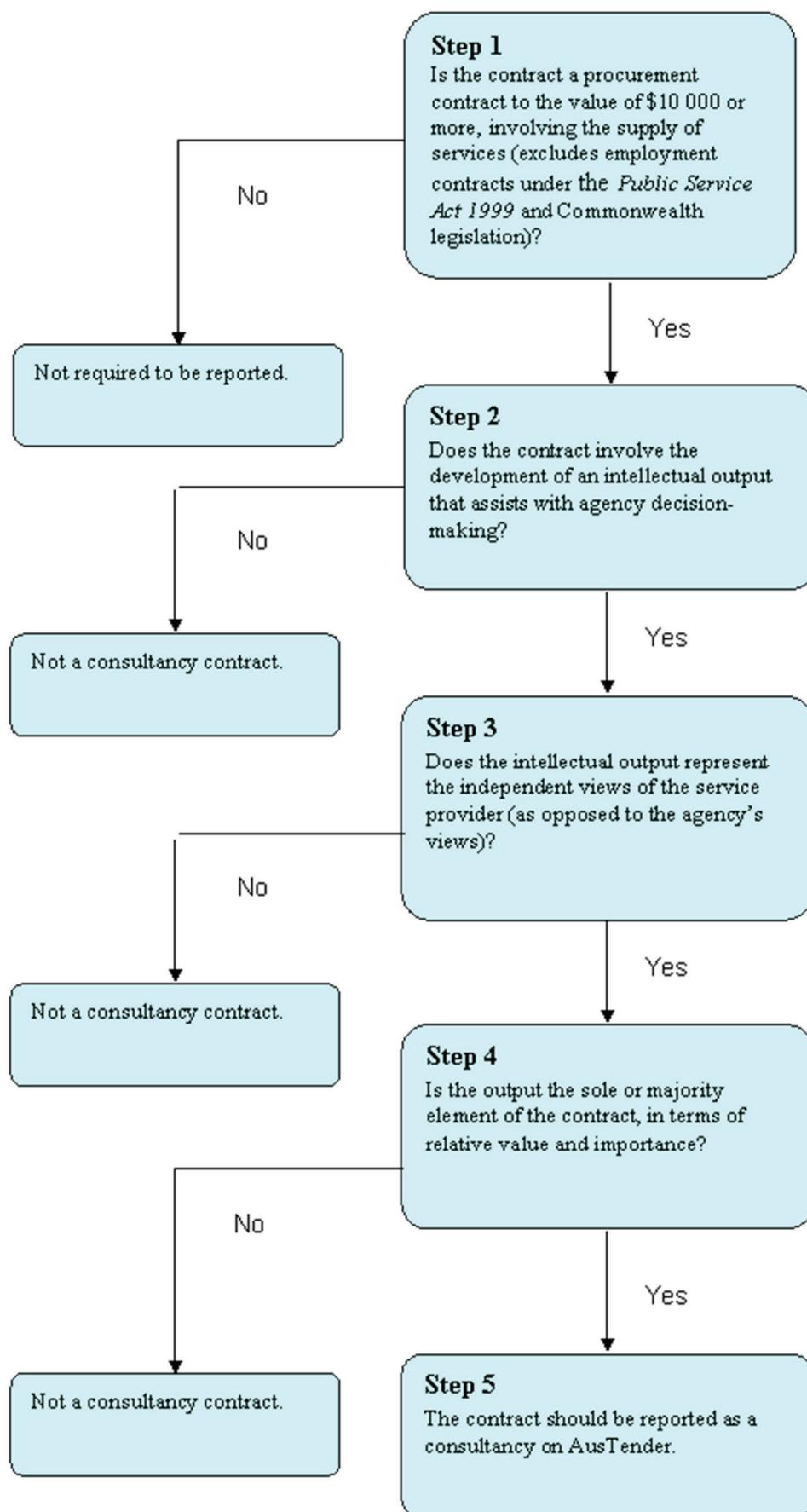
54 APSE (2009, January) Insourcing: A guide to bringing local authority services back in house.

55 David Walker and John Tizard (2018, January). Out of Contract: Time to move on from the 'love in' with outsourcing and PFI. The Smith Institute

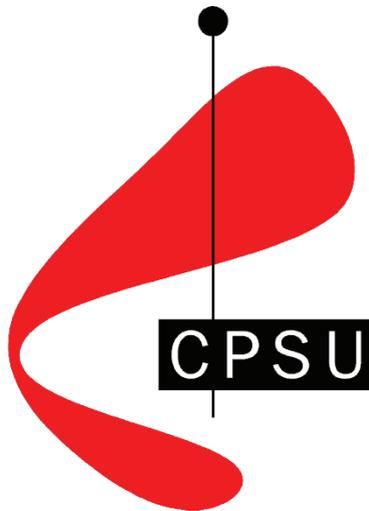
APPENDIX A – Department of Finance list of services generally considered to involve a consultancy

Examples of consulting services	Examples of general contracting services
Type of project	Type of assignment
<ul style="list-style-type: none"> • investigating an issue or problem • diagnosing a problem • undertaking defined research • design, analysis and reporting of formal market research studies • carrying out an independent review • business process analysis, design and other advice • undertaking independent evaluations • evaluation of programme performance and recommendations regarding changes • providing independent advice • providing independent information • developing advertising and marketing campaigns • providing advice on training needs and developing training plans • legal services, such as: - general legal advice (not related to litigation or potential litigation or given incidentally in connection with the development of contracts or other legal documents); - advice on the application of legislation and on development of new legislation; and - legal audit, probity and process advice, in relation to contracting out or tendering • reviews of, and the provision of advice on, occupational health and safety matters • provision of internal audit services • probity adviser/audit services • undertaking risk assessments • analysis of technology needs and development of software and hardware specifications • change facilitation advice • undertaking business and property valuations • development of a framework for benchmarking 	<ul style="list-style-type: none"> • individuals undertaking operational work within the entity under temporary external labour hire arrangements • conducting a recruitment activity • provision of travel services, including travel booking • provision of communications services, eg telephones • provision of information technology support services • development of software in line with already developed specifications • printing and copying services • scribe services • provision of cleaning and waste removal services • indoor plant maintenance services • provision of security services • delivery of training • writing of manuals and guidance materials covering existing processes • legal services, such as: <ul style="list-style-type: none"> ○ conveyancing; ○ development of contracts or other legal documents (and any incidental advice given relating to such work); ○ litigation services (including any drafting or advice connected with litigation or potential litigation); and ○ drafting of legislation and legislative instruments • data processing • project management • interpreter services

APPENDIX B – Department of Finance process flowchart



Appendix C



CPSU (PSU Group) Submission:

**Digital delivery of government
services**

September 2017

Inquiry into digital delivery of government services

As the primary union representing Australian Public Service (APS) employees, the Community and Public Sector Union (CPSU) is committed to providing a strong voice for our members in key public policy and political debates.

The CPSU welcomes the opportunity to make a submission to the inquiry into the digital delivery of government services. The CPSU has previously raised concerns about the digital delivery of government services in prior submissions to Government.

Summary of the CPSU submission

There are serious problems with the digital delivery of government services, and with government ICT more generally these problems include:

- Governments service standards are not meeting community expectations and are falling behind service delivery in non-government sectors.
- The Government's credibility on innovation and service has been eroded by a series of high profile ICT failures and ongoing service delivery problems for clients
- Poor quality ICT systems are also a major problem for APS staff

There are two primary reasons for these problems, they are:

- Decades of outsourcing and contracting out has left the APS overly reliant on external vendors and contractors – creating critical issues with capability and cost.
- Previous ICT reviews and strategies have been focussed on achieving savings, and opportunities for strategic and architectural reform were missed.

Government's goal should be to provide the community with world class digital services, achieving that goal requires:

- Reducing the reliance on external vendors and contractors
- Rebuilding APS capability
- A long-term commitment from Government with associated funding
- Fostering an APS culture that better supports innovation and digital transformation.

The community know what they want from government digital service delivery

There is a strong and growing demand for on-line government services. In any four-week period more than 1 in 8 Australians, around 2.5 million people, will seek to access government information and public services on-line¹. Small business owners are the most likely to have accessed a government website in the four-week period, followed by job seekers, parents and workers.²

The millions of Australian citizens that use these digital services have a clear idea about what they want from their online experience. A 2017 study by the Australian Information Industry Association (AIIA)³ found that Australians see four main benefits to improving digital services:

- Improving accuracy and quality
- Providing personalised services that make it faster and convenient to deal with government
- Making proof of identify easier
- The ability to do their business with government online using whatever device they want, when it suits them.

These community expectations are not news to government. Numerous reports, reviews and consultations have left governments in no doubt that people need government services to be widely available, easy to access, simple to use, and with a choice of channels.

But government is not meeting the community's expectations

There is substantial evidence of community dissatisfaction with the government's efforts.

- A Boston Consulting group report found that 55 per cent of users report facing a problem when using online government services⁴.
- The Australian Information Industry Association (AIIA) found that only 16 per cent of Australians think the government is doing a good job of providing digital services.⁵

It should be clear to government that community expectations are shaped by the communities broader digital experiences. As far back as 2008, the Gershon Report recognised that citizens expect government services to be as good as those provided by the private sector.⁶ However a significant portion of users rate government online services as much worse than private sector services.⁷

This quality gap between government and non-government service is widening. According to AIIA, Australians think the organisations best at using technology to deliver services to their customers are:

- Banks and financial institutions (64%)
- Online shopping sites (61%)
- Travel information and booking sites (48%)
- Telecommunications providers (39%)
- Entertainment sites (39%)

¹ <http://www.roymorgan.com/findings/6327-going-online-for-government-information-or-services-march-2015-201507070247>

² <http://www.roymorgan.com/findings/6327-going-online-for-government-information-or-services-march-2015-201507070247>

³ AIIA Technology and Government Study 2017

⁴ Boston Consulting Group, 2014, 2014 Digital Government Survey – Australia Fact-base

⁵ AIIA Technology and Government Study 2017

⁶ Deloitte Touche Tohmatsu (2007), 'One size fits few: Using customer insight to transform government',

[http://www.deloitte.com/dtt/cda/doc/content/dtt_ps_onesizefitsfew_040908\(1\).pdf](http://www.deloitte.com/dtt/cda/doc/content/dtt_ps_onesizefitsfew_040908(1).pdf)

⁷ Boston Consulting Group Digital Government turning Rhetoric into reality

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- Gas and electricity utilities (28%)⁸.

However, Australians rated the Commonwealth Government (19%) and the State Government (15%) the lowest for using technology to deliver services. This clearly shows us that the government is not meeting the community's expectations of digital services.

Service delivery problems erode the public's trust in government

This failure to meet the community's digital expectations occurs in an environment where traditional service delivery channels, face to face and telephone, are also under enormous pressure.

Decades of public sector cuts have left the APS understaffed and under resourced.

- Since 2013 this Government has made \$7.6 billion worth of cuts, costing more than 18,000 jobs.
- Staffing levels are set to be their lowest in a decade with core public sector staffing in 2016-17 projected to be lower than 2006-07 staffing levels⁹
- The continuation of the Efficiency Dividend and other budget cuts in the 2017 Federal Budget has further increased budgetary pressure on the APS.

These cuts to our public services have resulted in the Australian public having low expectations of government digital services and expectations of long wait times and low service standards. This has affected clients of the Department of Human Service (DHS) in particular.

In the past few years we have seen multiple high-profile ICT failures such as, the 2016 Census, ATO outages, and MyGov problems. These failures in conjunction with service delivery issues, the pressure on face to face and telephone services, and government digital services not keeping up with the standards of non-government services have resulted in serious damage to the public's trust in the governments capacity to deliver essential government services.

ICT is also a major problem for APS staff

APS staff care deeply about their clients and the quality of their work. The problems clients face with ICT failures and ongoing service delivery issues therefore have adverse impacts on staff.

CPSU members in many agencies report that the ICT systems and applications they use are a substantial barrier to getting their work done efficiently and accurately. There are a number of aspects to this:

Firstly, many APS staff are using old and out-dated equipment and platforms:

- 44 per cent of all the government's major applications are over a decade old.
- 53 per cent of the government's desktops and laptops are past the end of their planned useful life¹⁰.

Secondly, inadequate access to IT support is a major problem. Many members report that outsourced IT service arrangements have substantial limitations on the range and timeliness of IT support. In addition, members report pressure from managers not to request IT support, changes and fixes because of concerns about the cost and budget implications.

⁸ AIIA Technology and Government Study 2017

⁹ CPSU calculations based on Average Staffing Levels figures from previous Budget Papers.

¹⁰ <http://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

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A lack of consultation, poor planning and management of projects, inadequate provisions for user input to system and application design and functionality, and regular failures to allow for user testing of new products, are also common concerns across the APS.

Underlying these concerns is the widespread view that staff have inadequate access to information, decision making and expertise in an environment where ICT has been heavily outsourced and contractors now comprise around a third of ICT staff.

There are several agencies that the CPSU wishes to bring to the specific attention of this Inquiry. These case studies are at appendix 1.

Decades of outsourcing and contracting out has left the APS overly reliant on external vendors and contractors – creating critical issues with capability and cost

The current system of outsourcing and contracting out ICT is costly to Government and agencies and is accompanied by inadequate internal and long-term ICT investment within the APS itself. In 2015-16 the Australian Government spent \$6.2 billion on ICT good and services. Agencies further estimated that they would require some 17,000 contracts for ICT totalling \$9 billion¹¹.

The APS is very reliant on external vendors and contractors. Since 2011-12, there has been a significant shift away from permanent APS staff to the use of contractors. The proportion of external ICT FTE grew from 23% to 30%, while the proportion of internal FTE decreased from 77% to 70%.¹² Between 2011-12 and 2015-16, the number of ICT FTE declined from 17,758 to 15,808 or 11.3% to 10.4% of total entities FTE.¹³

As of 2017, the Australian Public Service employs more than 14,000 ICT personnel, a third of which are contractors. The share of external ICT personnel has grown over the past five years and spend on internal ICT personnel has fallen accordingly. This decline in internal capacity has occurred over the same time that the ICT failures in government services have increased. The increasing reliance on contractors and external vendors also has major implications for the capability and cost of APS ICT.

Capability

Several reports and reviews over recent years have found that the APS lacks crucial ICT skills.

- The Australian Public Service Commission's State of the Service Report 2012–13 found that 47 per cent of agencies reported having skills shortages in ICT procurement, while 69 per cent of agencies reported having an overall ICT skills shortage.¹⁴
- The 2015 APS Census also found a clear gap in capability. The majority of survey respondents indicated that they know their agencies need to make greater progress, but feel under-equipped to meet the challenges of digital transformation.¹⁵ While many used digital technologies in the workplace, they felt there was a lack of any formal digital skills training.¹⁶

¹¹ https://ict-procurement.digital.gov.au/assets/documents/ICT-procurement-taskforce-report_WCAG.pdf

¹² <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

¹³ <https://www.finance.gov.au/sites/default/files/ict-trends-report-2015-16.pdf>

¹⁴ <https://ict-procurement.digital.gov.au/>

¹⁵ <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

¹⁶ <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

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More recently the Report of the ICT Procurement Taskforce identified that the capability and capacity issues identified included a lack of technical ICT capability and market nous required to articulate the requirements sought and assess the potential solutions on offer, decision-making resting with individuals without technical expertise and the inability to adapt as technology or circumstances change.¹⁷ Importantly for the purposes of this current Inquiry, the Procurement Taskforce, found that the ICT capability gaps in the Australian Public Service have resulted from an over-reliance on ICT contractors — particularly for more complex, high-value ICT work.

Outsourcing as a driver of deskilling is not a new nor novel finding. The 2008 Gershon Report recommended a reduction in the use of external contractors in favour of building internal APS capacity. More recently the former DTO CEO Paul Shetler has gone on the public record to say that:

“Over the last 40 years, as we’ve outsourced technology, there’s been a progressive deskilling of the public service. The reliance on consultants is remarkable and the amount spent on them is eye watering. That’s just not necessary if we re-skill the public service...”

The over reliance on external advice carries substantial risks for agencies. Paul Shetler noted that *“Too frequently, we actually ask vendors to tell us what they think we should buy.”* It is a point that rings true from the 2016 Census failures, where it seems clear that the ABS did not have the expertise to assess the quality or suitability of the advice and products from their external supplier.

And with a third of the ICT workforce now contractors this is denying APS staff access to develop their own skills. Crucially the ICT Procurement Taskforce has determined that this over reliance on contractors is unsustainable for reason of the ongoing skills erosion in the APS and for cost.

The increased costs of contractors.

In 2008, a report into the ‘Government’s Use of Information and Communication Technology’ (Gershon Report) was commissioned by the Commonwealth Government. The Report found that outsourcing has cost the Commonwealth Government significantly. A key finding was that the extensive use of ICT contract staff had been significantly more expensive than engaging in-house employees. At that time, an ICT contractor cost an agency \$186,000 per annum, \$94,000 more than the average *Financial Management and Accountability Act* (FMA Act) agency ICT employee.¹⁸

The 2017 Report of the ICT Procurement Taskforce has found that contractors continue to cost substantially more than APS employees, putting the updated figures at an average annual cost of an internal ICT employee of around \$132,000 while the cost of a contractor is around \$214,035.

CPSU calculates that the approximately 4,700 ICT contractors engaged is costing in the order of \$385m more per annum, than if those contractors were engaged as APS employees.

The increased cost of contractors is not limited to ICT employees. Defence Department contractors can cost between 15 and 30 per cent more than APS employees.¹⁹ There is no guarantee that the use

¹⁷ <https://ict-procurement.digital.gov.au/>

¹⁸ Sir Peter Gershon CBE FREng, Review of the Australian Government's Use of Information and Communication Technology, Department of Finance and Deregulation, <http://www.finance.gov.au/publications/ICT-Review/chapter3.html>, August 2008, p.48-49

¹⁹ Sir Peter Gershon CBE FREng, Review of the Australian Government's Use of Information and Communication Technology, Department of Finance and Deregulation, <http://www.finance.gov.au/publications/ICT-Review/chapter3.html>, August 2008, p.59

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of contractors will result in a better outcome or that there will be the same level of accountability. An ANAO audit report found that while contractors were treated similarly to APS employees, for the majority of engagements, “there was generally little formal assessment of how the contractor met the contractual terms.”²⁰

The cost of staff is only a small part of the government spend on ICT. The ICT Procurement Taskforce reports that in 2015-16 the Australian Government will spend \$6.2 billion on ICT good and services. Agencies report a further anticipated ICT spend of \$9 billion, via some 17,000 contracts.

Based on these figures it would seem unlikely that the digital service delivery problems are the result inadequate expenditure.

A very small number of the government’s 17,000 ICT procurements drive most of the government’s ICT commitments. In 2015–16, less than 200 ICT procurements (1 per cent) were worth \$5 million or more, but these procurements were responsible for \$4.7 billion (52 per cent) of the government’s \$9 billion of ICT commitments, with an average value of \$25 million each. The remaining procurements had an average value of \$0.25 million each, but collectively were worth 48 per cent of the government’s \$9 billion ICT commitment.²¹

A small number of large government agencies are responsible for the vast majority of ICT goods and services purchases. Of the 106 government agencies that record their ICT procurements on AusTender, 10 agencies accounted for more than 86 per cent of the \$9 billion committed in 2015–16. The remaining 14 per cent were spread across the other 96 agencies.²²

The largest spend is on services, which accounted for 52 per cent of ICT procurements in 2015–16. The biggest categories of ICT services procured were system integration services (20 per cent), external ICT labour hire (15 per cent) and managed IT services (10 per cent)²³. CPSU believes that some proportion of this labour hire expenditure is driven by government and agency preferences to reduce APS staff numbers and replace them with labour hire.

CPSU believes that savings can be made through reducing the numbers contractors and increasing the number of APS employees. However, this savings potential comes with important caveats, and the experience around the Gershon Review is instructive in this regard.

The Gershon review had a heavy emphasis on savings. One of the key recommendations was to reduce the total number of ICT contractors across the APS by 50 per cent over the next two years and increase the number of APS ICT staff²⁴.

Some two years later The *Independent Review of Implementation of the ICT Reform Program* (Reinecke Review’) released in June 2010, identified that the Gershon initiatives would have resulted in savings on ICT budgets totalling \$1 billion over four years²⁵.

However, the \$447.5 million in funding quarantined to implement the Gershon recommendations were reclaimed prior to the implementation of the initiatives that would generate the savings²⁶, and the full potential savings were not realised.

20 Department of Defence, The Strategic Reform Program 2009 – Delivering Force 2030, p.19, <http://www.defence.gov.au/publications/reformbooklet.pdf>, 2009

21 https://ict-procurement.digital.gov.au/assets/documents/ICT-procurement-taskforce-report_WCAG.pdf

22 https://ict-procurement.digital.gov.au/assets/documents/ICT-procurement-taskforce-report_WCAG.pdf

23 https://ict-procurement.digital.gov.au/assets/documents/ICT-procurement-taskforce-report_WCAG.pdf

24 Sir Peter Gershon CBE FREng, Review of the Australian Government's Use of Information and Communication Technology, Department of Finance and Deregulation, <http://www.finance.gov.au/publications/ICT-Review/chapter3.html>, August 2008, p.3-4

25 Dr Ian Reinecke, Independent Review of Implementation of the ICT Reform Program, June 2010, p.v

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CPSU has significant concerns about the tendency of Government and agencies to reap savings upfront, before they have been realised, or, even worse, to return to revenue savings earmarked for reinvestment. Such behaviours, which are counterproductive and have major implications for service delivery, staffing numbers and workloads, have been a frequent feature on many change programs, from shared services initiatives to contestability programs.

CPSU therefore does not support digital transformation that is focused on the pursuit of a 'digital dividend', or savings generated, rather than improving services. CPSU believes that there is potential to find savings, and then reinvest them in the crucial task of rebuilding APS ICT capacity, and that over time this increased in-house capacity will deliver both greatly improved service standards and the prospect of further savings. The tendency of all governments to realise savings ahead of service delivery and ICT changes being imbedded is a key barrier to the achieving effective digital delivery of government services.

Further Issues with Outsourcing

Rather than more efficiency and lower costs as supporters of privatisation argue, the impact of outsourcing in many stances has been increased costs that are ultimately borne by the public. In 2010, the Australian Taxation Office revealed that its five-year desktop services contract with Lockheed Martin was 25 per cent higher than it had initially estimated.²⁷

There can be significant hidden transaction costs associated with managing contracts as opposed to directly providing the services. Hidden costs include:

- Administration of the tenders;
- Post tender contractual variations; and
- Risks remaining with agency and the taxpayer.

Public services provided to non-paying 'customers' also operate in markets that are different to those with paying customers. Any competition is largely confined to tenders and re-negotiation with contract managers.²⁸ The United Kingdom's National Audit Office has highlighted that it can be difficult to maintain competitive pressure through the different stages of a contract. Complex contracts can diminish competition when the contract begins and expensive variations can reduce cost-effectiveness. The National Audit Office noted that existing providers may also have an in-built advantage when contracts are up for renewal because they are seen as a safer and easier option.²⁹

Further, outsourcing has also been found to enable price gouging. The inability to specify every aspect of a service in advance for multi-year contracts leads to contracts that allow for future adjustments with fees. As the need for these adjustments arises, the government purchaser may be at some negotiating disadvantage should the contractor demand an unreasonable price for a necessary variation, particularly if the cost of contract termination is excessive. In this way, the cost of a service can significantly rise over the life of a contract.³⁰ For example, Serco in Western Australia

26 Election Commitment Costings, Federal Election 2010 - "Remove Funding Quarantined under the Gershon Reforms for ICT Spending across Government", 2 August 2010, <http://electioncostings.gov.au/2010/08/02/gov23-remove-funding-quarantined-under-the-gershon-reforms-for-ict-spending-across-government/>

27 Australian National Audit Office, Non-APS Workers, <http://www.anao.gov.au/Publications/Audit-Reports/2006-2007/Non-APS-Workers/Audit-brochure>, 25 June 2007

28 Cook, B., Quirk, V., and Mitchell, W.. (2012). The Impact on Community Services of Staff and Service Reductions, Privatisation, and Outsourcing of Public Services in Australian States. *Centre of Full Employment and Equity*. University of Newcastle. p.143-144

29 Daley J. (2012 June). Game-changers : Economic reform priorities for Australia. *Grattan Institute*. Melbourne. p.22.

30 Cook, B., Quirk, V., and Mitchell, W.. (2012). The Impact on Community Services of Staff and Service Reductions, Privatisation, and Outsourcing of Public Services in Australian States. *Centre of Full Employment and Equity*. University of Newcastle. p.147

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has been accused of massive price gouging on prison transport services, charging \$518,490 for 170 additional services over and above its set baseline monthly fee.³¹

Another key argument used to support privatisation and outsourcing is that private sector competition drives efficiency and innovation. However, it can also lead to a situation where the provision of services becomes dominated by a few established private firms, creating an oligopoly. Indeed, commentators have noted that ‘Australia is a relatively small market, distant from other developed economies. Entering the Australian market is usually a relatively low priority for efficient international players. There is often only room for a few players with minimum efficient scale.’³²

In the context of innovation and digital transformation there are strong emerging design methodology arguments for retaining or returning core functions in-house. The former head of the Digital Transformation Office, Paul Shelter, argues that:

*“You don’t build digital services in the same way that you build bridges. How can you test with users, deliver a lean solution quickly, and iterate with what you learn, if you are forced to specify all your requirements upfront? When you’re locked in a big IT contract, changing what you’re building comes at a huge expense — in both cost and time.”*³³

Mr Shetler further argues that *“Core business should be in-sourced, dealing with your end users and understanding your end users is your core business.”*³⁴

A similar a view was also previously expressed by Malcolm Turnbull before becoming Prime Minister. He said that he did not want the public service further eroded by consultants, and expressed concerns that too much outsourcing was turning Departments into *“mailboxes for sending out tenders and then receiving reports and paying for them”*. *“What we have to do in government”* he said *“is stop panning public servants and do more to ensure that they do their job better. And one of the ways to do that is to make sure they do the work that is their core responsibility, as opposed to outsourcing everything”*.

It is a sentiment that the CPSU supports.

What should be done to improve ICT and digital service delivery.

There is substantial expert opinion that the rebuilding APS ICT capacity is a priority.

Paul Shetler argues that *“Government’s biggest challenge in the digital age is to completely upskill the public service so that it is well equipped to deliver the change that’s needed”*, while the ICT Procurement Taskforce found that the skills gaps resulting from the over-reliance on contractors is unsustainable going forward. The ICT Procurement Taskforce also found that the government lacks a comprehensive strategy for addressing these capability gaps.”³⁵

CPSU submits that the elements of a successful strategy to rebuild APS ICT capacity would include:

31 AAP (2014, January 9). Rapist’s escape from WA prison blamed on prison van security. *The Guardian*.

<http://www.theguardian.com/world/2014/jan/09/rapists-escape-from-wa-prison-blamed-on-prison-van-security>

32 J. Daley, Game-changers : Economic reform priorities for Australia, *Grattan Institute*, June 2012, pp.22

33 <https://stateoftheservice.apsc.gov.au/2015/10/digital-transformation-in-the-aps/>

34 <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

35 ICT Procurement Taskforce

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- Setting an express and specific goal to reduce the reliance on contractors and external vendors.
- Placing a cap on agency expenditure on consultants and contractors, and reinvesting the savings to build APS staff and internal capacity

Although this submission has focused on the deskilling caused by contracting out and outsourcing, there are also other factors at play that can be addressed:

- A lack of a digital profession: we don't have a taxonomy of roles and as a result, we haven't developed nor delivered the training required to support professionals to assume these roles
- A lack of digital training: only 15% of APS employees report having any digital skills training, even when digital skills are defined broadly to include writing for the web and social media engagement.
- A misunderstanding of digital, which is not only about ICT or websites but about business transformation.
- There is little appreciation of the timing and frequency of change in response to our understanding of user needs, where we modify the product in real time, rather than delivering changes every six months.
- High attrition rates among ICT staff.
- A perceived absence of future career opportunities, and low remuneration relative to the private sector

CPSU notes that the Gershon Review recommended a whole-of-government Australian Public Service ICT career structure, including training and development programs for ICT professionals in key skills areas. The CPSU also notes that the federal government will have IT apprenticeships, cadetships and graduate jobs in 2018, run by the DTA for the first time.³⁶ This is a welcome start but the focus needs to be expanded.

Consideration should also be given to adopting some of the successful approaches of the UK civil service, which has just trained up 5000 frontline customer service staff in new digital skills.³⁷ Those approaches could also include:

- Creating an expert-in-residence programme to engage private sector experts on secondment. The Coalition promised a similar plan prior to the 2016 Federal Election, but never acted on it.
- Establishing a Digital Academy, modelled on the UK's Academy, to offer intensive in-person training for SES officers and online learning modules for all APS staff.
- Creating an internal accreditation system, so that digital skills can be recognised across the APS.
- Providing the necessary commercial training in negotiation skills, contract design and management including re-negotiation of contracts as required, so that the APS takes over the role of the integrator - from waterfall to agile

Hand in hand with reducing the reliance on externals and rebuilding APS staffing and skills must be a clear statement from Government, and APS leaders, that the purpose of digital delivery is to provide

³⁶ <http://www.themandarin.com.au/81920-digital-transformation-agency-embarks-geek-recruitment-drive/>

³⁷ <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

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the Australian community with world class services that match the best of the non-government sectors. Those statements must be backed up with long term commitment and funding. There has been a tendency for Governments and APS to make big 'announceables', rather than a long-standing commitment to transform government's digital service delivery.

One avenue for delivering a clear statement would be to amend the single outcome set for the DTA in its Portfolio Budget Statement. The outcome is currently set as:

"To improve the user experience for all Australians accessing government information and services by leading the design, development and continual enhancement of whole or government service delivery policies and standards, platforms and joined-up services"³⁸.

CPSU submits that this outcome can and should be more ambitious, and expressly commit government to world class standards.

Delivering world class services also means focusing on the user need.³⁹ Digital transformation cannot just be shifting people from face to face to online services to reduce costs. It needs to focus on those who use the service and working with them and staff. There needs to be the ability to learn from service delivery and iterate to improve. CPSU also argues that community choice of service delivery channel must be mandatory. Ensuring that Government and agencies maintain the option of face-to-face and other delivery channels is vital. Not all members of the community will want to, or be equipped to, access government services digitally. Low levels of digital literacy are often more prevalent amongst the people in our community with the greatest need for government support. This needs to be a key consideration in both designing government services and supporting the vulnerable in our communities. To give people a choice in how they engage with government services, it is essential that physical offices are maintained. Maintaining a regional network will also be a key concern to maintain direct engagement with people using government services, but to also practically support those who need assistance when they do want to access online services.

Experimenting with new technological advances is important but must not come at the expense of basic service delivery.⁴⁰ Former DTO head Paul Shelter recently pointed out that reducing call waiting times was one of the first things achieved by the highly regarded ServiceNSW as part of its successful efforts to improve service delivery through digital transformation.⁴¹ Such an outcome should be a highest priority in DHS where 42 million missed calls and unacceptable wait times are distressing for clients and staff.

The APS should also seek to involve and utilise staff and the wider community in the development and delivery of public services. Employees are uniquely placed to provide input into how public services can be improved and ameliorate risk when addressing the complex issues we face. Properly involving and utilising the capacity and experience of the APS workforce will result in better designed services.

Consideration also needs to be given to what changes should be made to public service culture.

A key focus should be fostering an agency and government culture which supports innovation and is willing to take risks. There needs to be a more effective risk framework, which recognises that digital

³⁸ www.dpmc.gov.au/resource-centre/pmc/portfolio-budget-statement-2016-2017

³⁹ <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

⁴⁰ <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

⁴¹ <http://www.themandarin.com.au/82114-shetler-forget-high-tech-fantasies-cant-answer-phones/>

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transformation and innovation requires space for adaption and innovation, but ensures the important services the Australian community rely on are not compromised.

CPSU members are very clear that better leadership and buy in from Government and senior APS leaders is required. Practical steps to achieve that could be involvement of Secretaries Board and use of the Deputy Secretary's Working Groups.

Finally, CPSU notes that there is a real risk that the transformation of digital service delivery could be derailed because of community concerns about privacy and digital rights. The widespread and deep community concern with the ABS collecting and storing names in the 2016 census is an example of the issues that will arise if privacy and digital rights are not properly dealt with at the start of processes. Such community engagement and consultation takes planning, time and funding.

End.

APPENDIX – APS ICT CASE STUDIES

Australian Tax Office

There have been well publicised and ongoing problems with the ATO's information and communication technology over the past two years.

In December 2016 and in February 2017, ATO's Storage Area Networks (SAN) failed. This SAN failure resulted in a systems outage, causing the majority of the ATO's online services to become unavailable, with significant disruption to clients and adverse impacts for ATO staff.

The Commissioner of Taxation has acknowledged that these issues have eroded public trust in the ATO.⁴²

What is less apparent to the public is that ATO ICT is largely outsourced. Hewlett Packard Enterprises owns and operates computing infrastructure in the ATO. ATO staff have no direct access to the SAN technology operated by HPE.⁴³

The ATO report into the SAN outage notes that HPE were aware of the problems that lead to the December outage. The report also notes the complexity of the ATO ICT environment where key infrastructure is owned and operated by a third party, and where there are substantial numbers of contractors involved, in addition to the ATO staff. CPSU's reading of that report is that ATO was not made fully aware about the significance of these issues, and that complexity of the IT environment presented major challenges in responding to the outage and keeping clients adequately informed of developments.

CPSU submits that this major ICT failure should not be understood as an equipment failure, but as an example of the complex and critical issues that arise from a circumstance where the ATO has effectively outsourced most of its operation, and in doing so has moved accountability for critical infrastructure to external vendors, and exposed the limits of the ATO's ability to successfully manage vendor failure. We further submit that the ATO reliance on external vendors and contractors be subject to critical review.

Department of Human Services

In 2016, a CPSU survey of members in the Department of Human Services revealed serious concerns with the Department's outsourced ICT. A common theme was that outsourcing had led to regular errors and delays, disrupting work and affecting productivity:

"The outsourcing of computer software development in DHS has meant exceptionally inefficient and unstable computer systems in the past several years and it continues to have a significant impact on productivity."

"IT services to DHS have become increasingly inefficient in the past few years. Technology failures are a frequent source of disruption (and frustration) for service officers trying to provide a service to the public. It is time consuming and wasteful to try and get IT problems

⁴² <https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Commissioner-s-address-to-the-National-Press-Club/>

⁴³ <https://www.ato.gov.au/About-ATO/Access,-accountability-and-reporting/In-detail/ATO-systems-report/>

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solved (e.g. difficulty in contacting). Staff send off repetitive requests to get problems solved.”

“Contractors are unaware of the impact that a small error or delay within their work affects a welfare recipient. We are told to persevere until IT fixes these issues however this then significantly delays customers’ payments placing vulnerable customers at severe risk and immense hardship.”

“Products such as the computer systems that are used by DHS staff who serve customers have been released against testing advice because of the push by management to use a product 'off the shelf'. This has, and continues to, cause delays in processing claims, frustration by customers leading to customer aggression to staff and continuous maintenance in fixing the bugs. The products needed to be correctly analysed in the first place by experienced staff, not contractors, with more successful testing as well as acceptance by management that the product was not fit for use and that its release to the Network should be delayed. Because contractors were the majority of staff implementing this change, confidence in the testing process could not be guaranteed but the product was released anyway. Without experienced DHS staff involved in this product testing, inefficiencies have occurred and more money, time and bad publicity has been the result.”

One member provided an example of how in-sourcing work led to an improvement:

IBM used to build and support middleware components for Medicare online: Since IBM handed these components to DHS, we can now see that DHS' implementation of Centrelink middleware is far superior with far more automation and controls in place. It is evident that IBM built the systems with as little effort as possible and did not apply any automation, presumably so that they could charge DHS extra time to perform simple tasks (several hours for an application deployment under IBM, but only a matter of minutes with the DHS in-house automated capability).

Many members spoke about persistent and prolonged IT issues which impacts upon customers' capacity to use online services and DHS staff's capacity to complete work in a timely and efficient manner.

“WLM (workload manager) is a failure. The system crashes and is down more often than it works. Phone systems - calls cutting out, phone systems down. Every day, there are reports of system failures from Operational Blueprint to accessing scanned images. The continued failure of our IT systems has made us inefficient.”

“Systems not built to cope with the work we do, systems not designed to be user friendly from a customer end, systems that continually fail or crash, links to blueprints that don't work, links to other "help" tools that also do not work, MyGov failures, the list is honestly endless.”

“The whole DHS system is falling apart. Our tools fail on a regular basis, we use “internet based” phone systems, so calls to customers are hard to hear, cutting in and out all the time. They are forcing so many things to be done online or over the phone, and people like the elderly and disabled struggle with this. “

“DHS seems to have removed the IT assistance function to some degree, we no longer have access to IT assistance apart from online enquiries. Any online requests for help are not

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responded to. We have failing computer systems, customer data is being lost/deleted due to system malfunctions. DHS does not provide any communication to staff in relation the IT issues that are constantly raised. This makes it even more difficult to manage customer expectations and puts more pressure on staff. DHS fails to address the multitude of IT problems that exist. Staff are frustrated and morale is very low."

"Systems are old, not built for current capacity required to sustain customer online interactions."

"It never works, the systems do not speak with each other, the computers keep crashing and all DHS is worried about is their new system to answer calls, that throws you in and out of modes all day mucking up any possibility of getting work done"

The rollout of the Online Compliance Initiative (OCI) program, better known as the 'robo-debt program', placed a massive strain on these already over stretched ICT systems.

There are three fundamental failures built in to the OCI. Firstly, the human oversight involved in assessing discrepancies and raising debts has been limited. A second and related flaw is that the administrative cost of managing overpayments has been transferred from the Department to ordinary Australians, with the Department no longer taking responsibility for contacting employers to investigate discrepancies before debts are raised. The business process has been designed to minimise cost to the government by reducing the usual manual oversight requirements and removing employer verification of PAYG anomalies prior to customer contact commencing. The business process design has all but ensured high rates of error in the calculation of debt. Staff have been directed not to fix errors they could clearly identify. Instead they have been instructed to refer customers to online self-service portals in an attempt to transfer the administrative burden of debt recovery onto the customer.

Thirdly, the onus of proof has in effect been reversed, with customers now obliged to investigate alleged discrepancies and provide evidence that an overpayment doesn't exist – rather than the burden being on government to show that it does.

The impact of the robodebt program on DHS clients, staff and resources has been well publicised. CPSU has previously provided detailed evidence to the Parliamentary Inquiry that:

- The Department did not provide staff with adequate ICT support, and lacked the ICT capacity to deal with the demand from the rollout of the OCI program.
- The fundamental design and roll out of the program were deeply flawed, and that these flaws were foreseeable.
- The decision to introduce an automated debt recovery scheme was driven by budgetary pressures and done without the consultation with staff, despite widespread awareness that the computer systems are problematic.

These comments by CPSU members convey the anger and distress caused to staff by robodebt:

"Automated debt services are a business tragedy. If you automate a service that uses outdated and dysfunctional computer software you can't possibly expect anything less than substantial errors. The software used by all DHS departments is out of date and desperately needs to be updated with a more intelligent system. If the system is not intelligent enough to calculate, determine, find and correct debts that are incorrect then a decision to implement an automated debt collection service is a decision that will always result in failure."

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"It was obvious at the briefing when OCI had just commenced that the process had basic flaws which meant nearly all debts would be wrong. There was an audible gasp from the room when we first heard of the averaging concept. It was obvious some would be wrong by a few dollars some were not debts at all. The group of staff I was in clearly knew this would not work. Management minimised this concern and moved forward. I suspect they knew but had no control over things happening in Canberra."

"This was always going to happen. I knew this as I used to be one of the human beings that used the data matching information they now have the system calculating automatically."

"The OCI program was rolled out without my team in Compliance ever having had the chance to look at it or understand the details - had we been consulted, we could have pointed out many problems (some of which have been addressed in later updates, months down the track)."

"Once again, the systems are implemented for "live testing" by staff. We make it work because we have to ensure the customers continue to receive their correct entitlement, or any entitlement, within a timely manner. Systems are constantly "tweaked" as staff feedback problems and issues. The majority of staff genuinely care about the customers and are appalled at the pushing through of changes without real consideration of the impact on both customers and staff."

The robodebt debacle highlights the thorough staff involvement in system and program design.

Australian Bureau of Statistics

Early in 2015, it emerged the ABS and the Government were considering discarding the 2016 Census altogether. Members reported that this was to fund an urgent "transformation programme" that needed to occur to upgrade ageing ICT systems and processes. The ABS needed this funding for 'critically urgent upgrades to [ABS] ICT systems' in advance of the Budget because the 'current ICT infrastructure is highly vulnerable to failure and error... the ability of ICT staff to maintain the existing systems is becoming increasingly compromised'.⁴⁴

The ABS planned to replace the Census with a large population survey conducted every ten years. Members reported that the plans to move to a large population survey were effectively forced on the ABS because it was in such a dire financial position.

After a public outcry the Census was retained, however, it received reduced funding and the members report the ABS only received half of the money they needed for the ICT transformation programme. While the 2011 Census cost approximately \$440 million,⁴⁵ no figure has been forthcoming for the cost of 2016 Census but savings of more \$100 million have been projected from the move to an e-census. The ABS expected a doubling of the number of people to complete their Census forms online to 65% or 16 million⁴⁶. The financial pressures and the need to generate savings affected Census work.

⁴⁴ Hockey, J. and O'Dwyer, K. (2015, 7 May). New Investment to Modernise the ABS (Media Release). Retrieved from: <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F3815943%22>

⁴⁵ Australian Bureau of Statistics (2011, February 11). *2011 Census Fact Sheet: General*. Retrieved from <http://www.abs.gov.au/websitedbs/D3310114.nsf/home/2011+Census+Fact+Sheet:+General>

⁴⁶ Bajkowski, J. (2015, 27 August). Census shake-up saves more than \$100 million. *GovernmentNews*. Retrieved from <http://www.governmentnews.com.au/2015/08/census-shake-up-saves-more-than-100-million/>

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In the wake of the 2016 Census debacle, the CPSU surveyed members which found ABS employees felt the impact of budget cuts over the preceding twelve months. An overwhelming number of members raised concerns about inadequate resourcing for ICT. 83% said there had been ICT and tech issues. Comments included that:

The IT problems at ABS are crippling. We experience constant and ongoing technical problems with all our systems, both those externally and internally facing. This severely affects our ability to do our work in a timely way and with high quality. There is also a severe lack of training for all staff, both permanent and contract.

In the support of existing systems, we're told that we are not allowed to fix anything that is not an emergency and/or prioritized as critical. (At the same time we're told we should be innovating!) There are sometimes insufficient resources for multiple people to be able to take on each others' support roles, and client areas have insufficient resources to test system changes in a timely manner.

Members also thought that better ICT would make a significant difference. A lack of internal capacity and skills were highlighted which should be addressed. Comments focused on ICT included that:

The ABS is drastically under skilled in the areas of modern web based ICT and public relations. Given this, they sought outside advice, which turned out to be insufficient but still seems like the right call. Increasing skills across these areas should be a priority.

Better external specialist IT support. Anyone even peripherally involved in ICT would say that there should have been multiple back up sites available - clearly if the Census had one it should have had more. The attacks were basically going to happen, it's such a big event it's just a no brainer. They needed better contingency plans, for this and probably for other areas we haven't seen from outside.

Addressing these funding and ICT skills will help ensure that there will not be a repeat of what occurred and assist in avoiding future problems.

National Disability Insurance Agency

The problems with the NDIS portal are well-documented with some providers going eight weeks without payments because of ongoing ICT glitches with the online portal that facilitates payments to providers.⁴⁷

The NDIS portal stopped processing thousands of applications from individuals, businesses and not-for-profit providers wanting to join.⁴⁸ Between 3,000 and 4,000 businesses and not-for-profit providers were blocked from entering the NDIS because applications could not be transferred to a new IT system.⁴⁹ Some clients and providers were thousands of dollars out of pocket as a result.⁵⁰

Documents released under Freedom of Information found the NDIA was forced to enact an emergency payment system just eight days into its launch because there was a fear that people with disabilities would run out of funding after IT systems failed and participants could not access an

⁴⁷ <http://www.abc.net.au/news/2016-08-10/ndis-providers-entering-their-eighth-week-without-payment/7711754>

⁴⁸ <http://www.abc.net.au/news/2017-04-25/ndis-enacted-emergency-plan-eight-days-in.-foi-documents-reveal/8468688>

⁴⁹ <http://www.abc.net.au/news/2017-03-12/ndis-rollout-plagued-with-problems-foi-documents-reveal/8346892>

⁵⁰ <http://www.abc.net.au/news/2016-08-10/ndis-providers-entering-their-eighth-week-without-payment/7711754>

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online portal to pay for their services.⁵¹ NDIA staff could not even update their own website for days and were forced to call the Department of Human Services to make changes.⁵²

A review into MyPlace portal conducted by PwC found that implementation activities were not fully completed and the full scheme proceeded despite the risks. The program was under-resourced and under prepared to provide the support needed to clients and providers when they experienced ICT problems.⁵³ The stakeholder engagement, training and preparedness provided were insufficient, and necessary training materials were not finalised for staff and providers before the full launch of the scheme on 1 July 2016.⁵⁴

Furthermore, staff report that the National Disability Insurance Agency does not have adequate facilities and many staff are still working out of the back of Department of Human Services (DHS) offices. Members report significant ICT system problems with the client relationship management system that replaced the SEBEL system, resulting in slowed down plan processing and long waits for plan approvals and paying providers. The National Broadband Network has also not rolled out as planned and many regional areas do not have the connections necessary. Planners are having issues accessing the portal and many are working off wi-fi dongles and in offices that do not have printers. The basic IT supports that NDIA staff need to do their jobs are not in place.

End.

⁵¹ <http://www.abc.net.au/news/2017-04-25/ndis-enacted-emergency-plan-eight-days-in-foi-documents-reveal/8468688>

⁵² <http://www.abc.net.au/news/2017-03-12/ndis-rollout-plagued-with-problems-foi-documents-reveal/8346892>

⁵³ https://www.dss.gov.au/sites/default/files/documents/09_2016/pwc_review_of_the_ndia_myplace_portal_implementation_-_final_report.pdf

⁵⁴ https://www.dss.gov.au/sites/default/files/documents/09_2016/pwc_review_of_the_ndia_myplace_portal_implementation_-_final_report.pdf



Appendix D

Permissions Capability Platform

DEPARTMENT OF HOME AFFAIRS

CPSU Proposal for in-house bid

Community and Public Sector Union (PSU Group)

February 2021

Introduction

Secretary Pezullo told the Digital Transformation Agency’s (DTA) Summit that Australian Public Service (APS) leaders needed to “get our act together” to achieve “a rapid paradigm shift” that will enable technology for the public service of the future. He also said it was not the fault of “the great staff” who work in technical areas. “It’s a strategy question. It’s a leadership question. It’s a management question.”

In October 2020 the Department of Home Affairs and DTA partnered to release a new Request for Tender for the “Delivery of a Permissions Capability for government services”. This permissions capability requires the capacity to be scaled up to be used by the entire department and the rest of the APS. This RFT calls for a provider to work with the Commonwealth government under a Deed of Standing Offer to design, deliver and provide ongoing support for a new Permissions Capability architecture.

We take this opportunity to present this case for an “in-house bid”. It will demonstrate the APS is better placed than any private company to build the Permissions Capability. Our skills, and expertise rival any external company. Given the opportunity, Australian public servants will build a world class system that exceeds the quality, reliability and suitability of what a private tenderer would propose, and cost a fraction of the price. Further, building the capability in-house would mean valuing the staff already employed and providing opportunities to better the department and the wider public service.

Accepting an in-house bid would lead the re-imagining of the public service proposed by the Thodey Review – a technology-enabled public service. Recommendation 15 specifically calls for action to ensure the APS is able to develop and build user friendly system solutions.

Background: Previous successes & failures

The success of the online account platform

Right now, the vast majority of applications for visas and citizenship, are lodged via a platform built by public servants in-house. Since 2011, various sections have expertly upscaled and enhanced these client-facing systems to meet the needs of our clients and our internal decision makers quickly and adeptly. This platform is a cohesive online platform that utilised a reuse model from inception before it was commonplace. The online forms in ePlus use a model where form questions and functionality are easily reused across visa, citizenship and other products like APEC Business Travel Card (ABTC) card applications. This type of platform is scalable and could be reused for other services offered by the Department or APS.

Departmental officers also built a form component library to support consistency, facilitate streamlined prototyping and provide a source of truth for business rules. This library was rebuilt using modern technologies and methodologies. It was built without disruption to delivery.

The online account platform allows clients and their agents to lodge applications, monitor their progress, access their correspondence, provide documents for their applications and advise the Department of any changes. We now have over 10 years of corporate knowledge and experience of the pros and cons of reuse models and in the successful implementation of large scale systems to the global public.

Brave and innovative managers decided to invest in their people and we have been moving the ICT capabilities of the Department in the context of visas and citizenship forward, under extremely difficult circumstances, for 20 years using legacy and new systems. These managers saw potential in building ICT capability, including in the regions. They saw the potential in employing those who had come from visa processing in ICT delivery roles. The Australian Computer Society submission to the Thodey Review into the APS recognised the benefit of utilising the unique expertise of APS employees when developing user interfaces.

If we continue to grow this capacity our options for a stronger, better more capable public service are endless.

The failure of GVP

The Department attempted to outsource the development of a new visa processing platform from 2006. When it was ready, almost five years later, it was in operation for less than 12 months before the decision was taken to decommission it. This platform was called the Generic Visa Platform (GVP). It was built by IBM as part of the Systems for People program. After sinking more than \$450 million it was determined that GVP was not fit for purpose and was subsequently decommissioned.

The stakes were high then and now they are even higher. Immigration delivers economic growth in the tourism and education industry. Immigration delivers secure, and cohesive communities. We continue to battle with existing outsourcing arrangements that stifle our ability to make changes to temporary visas that have been in place since the beginning of online visa lodgement, including delaying government initiatives to wait for vendors to catch up.

We fear that allowing this work to be created outside of the department is only opening us up for further issues. There is a risk that once again the successful tender will not address the key components, will provide a platform that does not support the delivery of our basic services and will again need to be decommissioned with great risk to program delivery and to the Department.

Capability and Capacity

We have built, rebuilt and maintained the current systems used by the department to process visa and citizenship applications (and other similar boutique products).

We are experienced in delivering the listed requirements including but not limited to:

- virtual assistants
- appointment systems
- correspondence systems
- reporting and analysis capabilities
- dynamic online forms and mobile applications
- case management systems
- secure user accounts
- record management
- identity resolution/biometrics capture
- business rule orchestration
- payments and refund systems
- risk systems

We are experienced in developing systems and tools that align with legislation and government directives including safeguarding the border.

Our current service provision in Home Affairs requires a significant security infrastructure to assure against cyber attacks, ensures personal privacy and protects sensitive government information.

We have excellent relationships with a range of APS agencies including memorandums of understanding for shared ICT services and infrastructure with Services Australia, DFAT and several more.

Our architects have been heavily involved already in the capture, analysis and documentation of technical design for this product.

We also have experience using modern frameworks and methodologies such as:

- Cloud technologies including Azure and Amazon
- ReactJS and AngularJS
- DevOps
- Utilisation of technologies like API Gateway to enable scalability and interoperability
- Digital user experience methods
- Frameworks
- Containerisation
- Enterprise-scale data handling (DB2/Oracle)
- Infrastructure as code

- Automated testing
- Behaviour Driven Development
- Agile, Scrum, SAFe and Waterfall methods, including leading cross government agency learning and development
- Experience in a wide range of delivery platforms, for example, the Atlassian suite, HP suite, Agile Manager.

We doubt any other tenderer would be able to match our claims that:

- We already understand the exact business context in which these requirements exist.
- We have responded to these issues in the past including: standing up new online lodgement systems for simple and complex visa and citizenship products, creating new visa processing products including work allocation, enforcement and processing systems
- We created and continue to maintain a permissions platform designed for citizenship initially and then scaled up for visa products, enforcement actions and border processing under the Migration and Citizenship Acts, and now the Border Force Act.
- We have the knowledge to dismantle and decommission systems and provide transition of caseloads and processes in alignment with Commonwealth record keeping and privacy requirements.
- We understand how our systems currently integrate with each other and how best to integrate them with a new platform.

This strong organisation resumé is transferable to other agency jurisdictions, legislative frameworks and service environments.

We agree that our systems are aging and need to be modernised and we know we are the only people with the background and expertise to do it. We know this because we have been keeping the Visa and Citizenship programs operating in spite of this lack of investment.

There would be a number of requirements for this tender that would be met without any cost or effort including, compliance with Commonwealth policies and retention of agency control over decisions and information.

Earlier this year, the Government directed that the borders would be closed for certain countries due to COVID-19. This was an ever-changing list as the situation progressed. The public servants who currently manage the visa systems were able to immediately react to these changes within hours. When we retain control over our systems all it takes is an email.

Proposed Solution

Regarding the use cases in the tender, we have already digitised the vast majority of visas and the citizenship caseload. We already offer integrated application experiences for clients including adaptable question sets and risk settings. We have done this for simpler products like Maritime Crew and Transit visas and very complicated products like citizenship; and we can do it again, this time with a focus on enabling whole-of-government functions.

High Level Delivery Plan:

1. Digitisation of passenger cards

There is a strong and urgent need here to enable a public health response. This data is needed by Border Force for immigration and customs compliance, it is used by quarantine and law enforcement and various health authorities. We would prioritise this delivery by expanding our existing capabilities.

The digital passenger declarations would be built using our existing mobile apps delivery and mobile responsive web applications. The ABTC app was built in-house for Android/iOS using modern technologies, holographic security features and cloud tenancies. This app already allows for seamless travel through borders for ABTC holders.

Building this quickly using existing technology, is a prudent and efficient way to resolve this important need. It would build public confidence in the Permissions Capability program and would also allow time for the whole of government approach to the permission platform to be progressed.

2. The Permissions Platform

We would approach this by first conducting a thorough current state analysis engaging the relevant government agencies. We would ensure that the full gamut of existing capabilities in the APS were known and rated according to leveragability to a whole of government product. Without this there is a clear risk that we would again, build systems in a fragmented manner.

The progress and outcomes of this analysis would be reported to the Permissions Capability Expert Panel (the panel), representative of key government agencies. They would develop the unified, integrated strategy to drive this work and determine the delivery hubs (responsible agency) for the key deliverables. The barriers to creating a common platform are not technical, they lie with the various segmented legal and policy frameworks. These siloed legal frameworks have historically meant agencies have developed their ICT shops separately. A private tenderer is unable to resolve this barrier, only the public service can.

An audit of the current functions across agencies would identify any in-use technologies that are scalable including data lake, ServiceNow and blockchain to name a few.

The issue is not the scalability of technologies but rather a plan to implement a broader solution.

3. A simple visa product

Utilising the initial analysis and discovery findings of the current state analysis, key opportunities would be identified for the most suitable platforms to enable later integration. Based on current strengths we would consider the panel would iteratively provide recommendations such as:

Develop front end online services based on Home Affairs experience i.e. using development of the New eLibrary as a basis for methodology and technology.

Model client data security and storage through technologies available with Services Australia and Home Affairs, i.e., use of data lake tenancies.

Form a Working Group to identify key issues where modernisation is stymied by legislative frameworks. The working group will deliver a plan for enabling legal and regulatory milestones and communicate these across the APS.

Economic Benefit to Australia

The investment in permanent staff who have the training, experience and accountability to do this work is to the long-term benefit of the APS and the community. The cost would also be a lot less than a mass engagement of contractors and consultants from a private company all of whom would require a range of administration (including Employee Suitability Clearances) to enable their access to our staff and resources.

Public servants must consider which platforms and tools are the most cost effective. Private companies look at immediate profit and aim to ensure the maximum cost is incurred to make the contract worth their while. Further, private companies will push platforms that are likely to benefit them – due to their business partnerships or investments.

Ending the constant outsourcing of ICT to private companies and instead rebuilding in-house ICT capacity is a critical infrastructure project that will deliver community benefits, help the nation recover from the recession and build our nation's digital skill base.

Indigenous Participation

The public service could utilise the existing Indigenous Australian Government Development Program to drive the introduction of a specialised ICT stream.

Conclusion

Public servants see delivery differently to private sector workers.

We deliver for Government and the community. Our bottom line is about value not profit. When we are asked to build something, we want to know about the Government's intention. We want to understand the interaction with the existing regulatory framework. We want to know about the clients using the visa product.

In the digital space, we think about the balance between making the online form user friendly and collecting information in a way to assist decision makers to determine risks to the integrity of visa programs.

What we don't think about is profits, shareholders, contractual clauses, the easiest way to get paid, and how to sell add-on products to a client.

Our CIO has stated that the Home Affairs department has the strongest ICT capability in the APS. This is an important decision and an opportunity for the APS to lead in the burgeoning field of techno-ethics. We cannot rely on the private sector to apply ethical decision making when their focus is on profits. All we need is the Government to believe in the value of the public service, to let us enable recruitment if required, and use the foundations we have built these past two decades to deliver the future. Investment in the public service of the future, committing resources to a new way of delivering... now *that's* disruption.

Secretary Pezzullo stated at the DTA's Digital Summit, "Unless the strategy is laid down to move forward in a unified fashion, in an integrated fashion, all of that good work will come to naught. We have to bring this together."

A private company is not well placed to achieve this, we need public servants with the right expertise and knowledge to be given the freedom to use the public service craft to shape this platform.