Submission to the Senate Finance and Public Administration Legislation Committee's Inquiry into Public Consultancy and Services Contracts Bill 2025

Andrew Podger AO

Australian National University

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Overview

While sharing many of the concerns raised by the Senate Finance and Public Administration References Committee in its inquiry into the management and assurance of integrity in consulting services, I do not support passage of this bill. I suggest instead that the Inquiry into the Public Consultancy and Services Contracts Bill 2025 recommend alternative measures to meet those concerns. Some of those alternatives are set out further below.

Proposed Parliamentary Joint Committee on Public Consultancy and Services Contracts

The bill proposes the establishment of a Parliamentary Joint Committee to examine certain proposed consultancy contracts before they are agreed upon. In particular, consultancies valued above $2 million would be required to have the Committee's approval.

It is not usual for the Parliament, the legislature, to be involved directly in decisions by the Government, the executive, made within the scope of the appropriations approved by the Parliament. The Explanatory Memorandum refers to the Public Works Committee which does play such a role, but I believe this is for the most part because that Committee deals with major capital investments whose costs must be weighed against the claimed long-term benefits. In most cases, the investments concerned comprise a significant part of the relevant appropriation made by the Parliament.

Consultancies, on the other hand, are not so directly related to long-term investments and the costs involved; even for major consultancies, the costs represent a small part of the relevant agency's administrative expenses appropriation. The creation of administrative expenses appropriations in the 1980s, combining a wide range of such expenses previously appropriated in separate line items, was intended to foster the optimal use of the resources involved to achieve agency objectives, removing the barriers between line items that fostered an inputs focus rather than an outputs and outcomes focus within agencies and by the Finance Department.

In addition, ministers are not as a rule directly involved in decisions within the Executive about consultancy or other service contracts. Accordingly, the public servants involved are obliged under the Public Service Act and administrative law to be impartial and apolitical in making such decisions, and under the PGPA Act must ensure the proper use of resources (efficient, effective, economical and ethical). Involving the Parliament as the Bill suggests would inevitably draw politics into the decision-making process.

The more appropriate role for the Parliament is to hold the Executive to account for its decisions about consultancies, drawing on ANAO audits and agency reports, through the JCPAA and the various Senate Estimates Committees. The Parliament might also be made more confident of such decisions if it pressed the Government to introduce processes which required more careful consideration of proposed consultancy contracts.

Alternative measures

An alternative approach to ensuring more careful consideration of consultancies would be to use Finance Directions under the PGPA Act, possibly within the Procurement Rules. One option would be to require proposed contracts exceeding $2 million to be referred for approval by the Finance Department and APS Commission. Their decisions could be made public and available for scrutiny by Parliamentary committees including of course the Senate FPA References Committee.

I also share the previous inquiry's concerns about the extent of reliance by agencies on consultancies and contractors. I have previously suggested legislative change primarily to the Public Service Act, adding weight to the PGPA Act's emphasis on proper use of resources (efficient, effective, economical and ethical). One of the reasons for drawing on amendments to the PS Act is to ensure that consultancy and other service contracts do not facilitate the engagement of people in an employment relationship within the APS without being subject to the merit-based processes for recruitment which are required by the Act – that is a recipe for cronyism and corruption. Excessive use of consultants and contractors also undermines capability within the APS.

The legislative changes I propose would require:

- the use of consultants and contractors to meet strict tests of essentiality, cost effectiveness and overall value for money;
- staff to be employed under the merit provisions of the Public Service Act where they are to be effectively engaged in an employment relationship;
- all departments and agencies to provide the Department of Finance and the Public Service Commission with annual plans for the use of consultants and contractors;
- all consultancies costing more than $250k to be based on open tenders that should not be rolled over;
- the details of all consultancies and contractor engagements to be notified on departmental and agency websites within a week of contracts being signed;
- all department and agency annual reports to include information on their use of consultants and contractors including assessments of value for money and any effects on maintaining inhouse capability; and
- (as indicated above) all consultancies costing more than some set amount (I previously suggested $1m) to be cleared with the Department of Finance and the Public Service Commission.

To address some of the other ethical issues that arise from the use of consultants and contractors, I also recommended that:

> Consideration be given to amending the Public Service Act to provide specific provisions for regulating conflicts associated with post separation employment along the lines of those recommended by the 1979 Bowen Committee report on Public Duty and Private Interest.

I encourage the Committee to include these recommendations whether or not it supports passage of the Bill.