

# **Senate Finance and Public Administration References Committee**

Inquiry into the management and assurance of integrity by consulting services (Consulting services)

## **Department of Finance**

### **Response to Question on Notice**

**Hearing of 7 June 2023**

#### **Question on Notice 1 (Proof Hansard page 10)**

**Senator BARBARA POCOCK:** Has the department considered moving away from a devolved model so that a broader ban could be implemented and be more efficient and effective across the sector when an egregious case occurs?

**Mr Danks:** A devolved framework isn't specific to procurement. It comes under the PGPA Act. The PGPA Act is a devolved framework used for all Commonwealth resources, so that would need to be a broader question as to whether the PGPA Act needs to be centralised. I would have to take on notice to see what my colleagues would think. We don't have any colleagues here who are responsible for that act.

**Senator BARBARA POCOCK:** I'm interested on your departmental thoughts on it and also whether you have already considered how to make that stronger and department wide?

#### **Response**

The Commonwealth Procurement Framework applies to all non-corporate Commonwealth entities (NCEs) and those prescribed corporate Commonwealth entities (CCEs) listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014*. This ensures a consistency in approach by entities when undertaking procurement.

The Department of Finance has not considered moving the Commonwealth Procurement Framework away from a devolved model.

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### **Response to Question on Notice**

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#### **Question on Notice 2 (Proof Hansard page 13)**

**Senator O'NEILL:** ... There are 54,000, or the equivalent of 54,000, jobs that are provided by consultants to the federal government. That's the figure that has been cited. Is that roughly right in your estimation, Mr Danks?

**Mr Danks:** I think that was the number that came out of the Audit of Employment, yes.

**Senator O'NEILL:** We just heard from the Institute of Management Consultants Australia, who said that they supervise 300 of a workforce of 90,000 consultants and that there's no policing of any consultants—there's no jurisdiction and there's no overarching statutory observer of what goes on with consultants. How much of a risk is it that the federal government has got 60 per cent of the workforce of consultants operating within this government?

**Mr Danks:** As a clarifier, of the 53,900 that were identified in the Audit of Employment, only a small proportion of that was consultants. A lot of it was outsourced service providers. I can't find the number off the top of my head.

**Senator O'NEILL:** If you want to provide that on notice.

**Mr Danks:** I certainly can.

**Senator O'NEILL:** And can you see if 'outsourced service providers' lines up with what were described as 'expert contractors' by our first witnesses. They said to us that there was an even lower bar for those people.

**Mr Danks:** We see it as: consultants, which is independent thought product; contractors, which is more of a labour hire, sitting within an organisation; and then outsourced service providers, where you contract an organisation to deliver a service, like property management or detention services. I'm happy to take on notice what the split between those three categories was for the 53,900.

## **Response**

The Australian Government's published report on the Audit of Employment showed a breakdown of external Australian Public Service labour force by employment type for 2021-22 (see page 5 of the report for the table and page 11 for the employment type definitions).

The report can be found at: [www.finance.gov.au/publications/reviews/australian-governments-report-audit-employment](http://www.finance.gov.au/publications/reviews/australian-governments-report-audit-employment)

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#### **Question on Notice 3**

**Senator O'NEILL:** We are focused on PwC at the moment, but we are getting KPMG in this afternoon, and you would be aware that there was a widespread exam-cheating. The firm forced two partners to retire over cheating. 16 partners received formal warnings, had their income docked by tens of thousands of dollars. 30 staff members received warnings and had their pay docked. Additional 1,134 staff, about 12% of the firm's total personnel, received verbal or written cautions for either sharing or receiving exam answers. Did that failure of ethical behaviour, reported by Edmund Tadros in 2021, impact KPMG's access to service provision to the federal government?

**Mr Danks:** I would have to take on notice, I can't recall anything in the Department of Finance space, I'm not sure -

#### **Response**

The Department of Finance has updated the Commonwealth's standard contract clauses to include new Notification of Significant Event Clauses. The clauses require a service provider to notify the entity managing the contract immediately upon becoming aware of any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct of the service provider or its capacity to deliver the agreed services.

For future contracts, these clauses will capture circumstances such as the KPMG example provided in the question and will enable the Commonwealth to request a remediation plan from the supplier in response to the notification and potentially terminate the contract.

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#### **Question on Notice 4 (Proof Hansard page 16)**

**Senator O'NEILL:** ... Does the department have oversight of the whole list of companies—the client lists—to establish whether there are conflicts of interest or a substantial concern?

**Mr Danks:** A client list; sorry? From suppliers?

**Senator O'NEILL:** Yes.

**Mr Danks:** We don't. But, again, as part of an RFT process, conflict of interest is critical. With panel arrangements, for each work order that's entered into, there is a conflict of interest section where suppliers need to declare any conflicts, real or perceived, and then it's up to the agency to determine whether those conflicts are going to be managed.

**Senator O'NEILL:** Is there a penalty if they make a false declaration?

**Mr Danks:** It would be a trigger for termination or consideration of termination.

**Senator O'NEILL:** On how many occasions has that occurred? Could you take that on notice.

**Mr Danks:** I'm happy to take it on notice.

#### **Response**

As the Commonwealth Procurement Framework is devolved, this information is not available for the whole of Australian Government. AusTender does not collect specific information on the reasons for contract termination.

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### **Response to Question on Notice**

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#### **Question on Notice 5 (Proof Hansard pages 16 and 17)**

**Senator O'NEILL:** Does the department have strict conditions for contractors with regard to the sharing of Commonwealth information with overseas partners and employees of their respective firms?

**Mr Danks:** Yes. There are quite significant confidentiality arrangements in most Commonwealth contracts. There are also arrangements in most Commonwealth contracts that Commonwealth data doesn't leave Australia.

**Senator O'NEILL:** And where that has there been breached, on how many occasions and—

**Mr Danks:** I can take that on notice. There are always exceptions to the rule, and that's on a case-by-case basis, but the general proposition is that Commonwealth data is confidential. We identify what Commonwealth data is, and, in a lot of contracts that we see, the data needs to stay in Australia for sovereignty reasons.

**Senator O'NEILL:** I agree with you; it needs to. My question is: when has that been breached and what was the response to that?

**Mr Danks:** I can take that on notice for the Finance portfolio.

#### **Response**

The Department of Finance is not aware of any contract breaches with regards to the sharing of Commonwealth information with overseas partners.

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### **Response to Question on Notice**

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#### **Question on Notice 6 (Proof Hansard page 17)**

**Senator BARBARA POCKOCK:** ... I want to ask about a recent contract. You signed on 18 May a new contract listed in AusTender as 'review of SDO cost model update'. Why are you continuing to contract PwC? Is the significant event clause included in that contract?

#### **Response**

On 28 April 2023, Finance's Service Delivery Office (SDO) sought Request for Quotations from a number of suppliers on the Management Advisory Services Panel.

Between 15 and 23 May 2023, the SDO entered into and completed a contract with PwC Australia to review cost modelling by SDO.

The contract (CN3966228), for \$13,987.50 (inc GST), was signed on 15 May 2023. All work under CN3966228 was completed by 23 May 2023.

Finance received confirmation from PwC that no member of the PwC team completing this work was involved in the matter that was the subject of the Tax Practitioners Board investigation.

On 19 May 2023, Finance updated the Commonwealth's standard suite of contract templates to include new notification of significant event clauses.

On 24 May 2023, Finance wrote to all Management Advisory Services Panel suppliers seeking their agreement to vary the existing Panel agreement to include the notification of significant even clauses in the agreement. CN3966228 was executed prior to this update, and subsequently did not include the new notification of significant event clauses.

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### **Response to Question on Notice**

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#### **Question on Notice 7 (Proof Hansard pages 13 and 14)**

**Senator O'NEILL:** Thank you very much. In terms of value for money, I believe that there was a statement from Finance the other day that there's a change—I think you've indicated there's going to be an education about what value for money constitutes. Is it really that value for money is not just about the dollars; it's actually about the support of ethical behaviour in the workplace and creating an even playing field for small businesses to compete with the large businesses? How much of that is part of the current procurement consideration?

**Mr Danks:** Value for money is not just price. It is fitness for purpose. It is ethical considerations moving into things. I'm just trying to find the relevant part of my pack. It certainly isn't just price, and it certainly isn't just the size of the organisation.

**Senator O'NEILL:** Could you take on notice how frequently the price is the key decision point?

**Mr Danks:** I'm not sure we could find that information.

#### **Response**

Price is not the sole factor when assessing value for money for any procurement.

Procuring officials must consider the relevant financial and non-financial costs and benefits of each submission including, but not limited to the:

- quality of the goods and services
- fitness for purpose of the proposal
- potential supplier's relevant experience and performance history, including any unethical behaviour;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement)
- environmental sustainability of the proposed goods or services (such as energy efficiency, environmental and climate change impact and the use of recycled products)
- whole of life costs.

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### **Response to Question on Notice**

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#### **Question on Notice 8 (Proof Hansard page 14)**

**Senator O'NEILL:** If you rejected a bid from one of the big seven on the basis of ethical behaviour—can you tell me if that has ever occurred?

**Mr Danks:** Not off the top of my head, but I could take on notice whether we've got any evidence in Finance of that.

**Senator O'NEILL:** If you could take it on notice.

#### **Response**

On 19 May 2023, the Department of Finance issued a Procurement Policy Note (<https://www.finance.gov.au/government/procurement/procurement-policy-note>) to remind officials of the obligation to consider, amongst other relevant financial and non-financials costs and benefits, ethical behaviour and a potential supplier's performance history when assessing value for money.

The Department of Finance is not aware of any instance where a tender submission has been unsuccessful purely on the basis of ethical behaviour.