

# **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**

#### **Written QoN 45 (Senator Colbeck)**

The committee has heard evidence through this inquiry that there is effectively no regulation of consulting services operating in Australia.

- a) Should consulting firms operating in Australia be regulated?
- b) If yes, how does Finance think this should be approached? For example, should Australia have a compliance and monitoring regime in place for consulting, and if so, who should do the monitoring and compliance work?
- c) What role should Finance have in such regulation?

#### **Response**

The Department of Finance notes that these questions are seeking a policy position on the regulation of consulting services. Should the committee make recommendations in its final report on these matters, the Government will address these matters in its response.

# **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**

#### **Written QoN 46 (Senator Colbeck)**

Who does Finance regard as the ultimate client of suppliers to the Commonwealth?

#### **Response**

The Australian Government enters into a broad range of contracts for goods and services in order to meet entities' needs and deliver the Australian Government's policy objectives. Each entity, through its Accountable Authority, is independently responsible for its own procurement processes and decisions, including ensuring value for money is achieved.

AusTender data shows that in 2022-23, entities entered into 83,625 contracts with a combined value of \$74.8 billion.

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

##### **Written QoN 47 (Senator Colbeck)**

APES110, The Code of Ethics for Professional Accountants, acknowledges in its first context setting sentence, the profession's recognition of its public interest responsibility.

The Commonwealth Supplier Code of Conduct does not explicitly require Commonwealth suppliers to act in the public interest.

Given a Commonwealth supplier, including a consultant, is contracted to assist the Commonwealth fulfil its fundamental obligations to the Australian community:

- a. Why does the Commonwealth Supplier Code of Conduct not set that context out in its first paragraph?
- b. Why does the Commonwealth Supplier Code of Conduct not make explicit an expectation that all suppliers to the Commonwealth act in the public interest?

##### **Response**

The Commonwealth Supplier Code of Conduct (the Code) has not been finalised and the Department of Finance is currently considering feedback from a recent public consultation on the Code.

# **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**

#### **Written QoN 48 (Senator Colbeck)**

Why does the Commonwealth Supplier Code of Conduct not function as a stand-alone document and why does it include links to the APS Code and value that are unclear and difficult to navigate?

#### **Response**

The Commonwealth Supplier Code of Conduct (the Code) has not been finalised and the Department of Finance is currently considering feedback from a recent public consultation on the Code.

To enable enforcement and management of the Commonwealth Supplier Code of Conduct (the Code) it must be supported by provisions in request documentation and clauses in Commonwealth contracts. Contractual provisions make clear the obligations of both parties on performance, compliance, and breaches of the Code, enabling remediation and termination activities to be undertaken where necessary.

Expectation 1.4 of the Code requires suppliers, when undertaking work on behalf of the Commonwealth, to uphold similar values and behaviours to those expected of public officials in the APS Values. The hyperlink within that expectation navigates the reader directly to the APS Values page on the Australian Public Service Commission website. The Code links the reader to the source rather than duplicate content to ensure that the Code will be consistent with the APS Values, should the Values be revised in the future.



# **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**

#### **Written QoN 49 (Senator Colbeck)**

The Business Council of Australia's submission (number 61 – attached) makes 11 recommendations. Please provide Finance's view on each of these recommendations.

#### **Response**

The Department of Finance notes that these questions are seeking a policy position. Should the committee make recommendations in its final report which include these recommendations, the Government will address these matters in its response.

# Senate Inquiry into management and assurance of integrity by consulting services

BCA Submission

February 2024

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# 1. Overview

The Business Council of Australia welcomes the opportunity to provide a submission to the Senate Inquiry into management and assurance of integrity by consulting services. All government procurement contracts should be committed to and undertaken judiciously to ensure value for money for taxpayers and support a strong and capable Australian Public Service (APS).

The BCA supports the recently released APS Strategic Commissioning Framework, which will help build the skills, expertise, and capabilities of the APS. It also outlines when to rely on external support, which in turn is supported by the Commonwealth Procurement Framework to help effectively manage risk and maximise value for money from procurement.

The private sector plays an important role in complementing, supporting and building the skills and capabilities of the public sector when it seeks external support through procurement. It should not seek to replace public service capacity. Consulting services support the procurement process by providing access to specialised skills not otherwise available in the APS, access to temporary support, and independent research and assessments.

Trust and integrity in the procurement process is critical for protecting Commonwealth and taxpayer interests, as well as for the entities providing these services. Recent misconduct has reduced trust and highlighted regulatory gaps which government is seeking to address to restore public confidence and prevent a reoccurrence. All companies must meet their legal obligations and where arrangements do not keep pace with community norms, they should be reviewed. Both government and this Senate Inquiry have already identified potential areas for review and improvement in the procurement process. They include:

- The need for updated guidelines on the use of external expertise, which has been reflected in the recently released APS Strategic Commissioning Framework.
- The management of conflicts of interest, with a Department of Finance review looking to identify opportunities to strengthen the management of conflicts of interest in contracts.
- A code of conduct framework with a clear and consistent set of definitions, expectations and accountability, with the Department of Finance currently consulting on a draft Commonwealth Supplier Code of Conduct.
- Adequate and appropriate implementation of monitoring and enforcement measures to identify and manage potential conflicts or breaches, with the Department of Finance exploring options to improve transparency of contracts which have been terminated due to material breaches.
- Greater transparency to improve individual, organisation and industry accountability for performance and conduct, understanding of the procurement process and the treatment of potential conflicts of interest.

This inquiry will also contribute to other ongoing reviews, and recommendations should be calibrated to best address the specific issues raised. The range of existing reviews and actions currently underway represent an extensive set of actual and proposed reforms. Our position is that reforms that are directly responsive to the issues that have arisen should be implemented and reviewed before further steps are considered. This submission therefore directly responds to the inquiry's terms of reference, with a mix of recommendations for existing reviews, new proposals, and calls for more effective and consistent implementation of existing policies and contract assurance practices. Updated guidelines or procurement rules should apply to all procuring entities to ensure consistency of regulations and obligations across the broader government services market, and ultimately, greater accountability for businesses that derive revenue from government programs. They should also be well targeted to address identified issues at least cost, and not be so burdensome as to create barriers to tendering for procurement contracts, particularly for small businesses.

Business also stands ready to support the development of procurement capability within government entities by sharing lessons on its experience with consulting partners. This can ultimately help lift the efficiency and effectiveness of government processes and enable an open, transparent, 'level playing field' and competitive market for procurement.



## 2. Key recommendations

### Procurement framework/process

#### Recommendation 1

- The Department of Finance's procurement support functions could be extended through enhanced training and education for procurement personnel, alongside powers to monitor, enforce and audit execution of procurement policy across the whole of government. This could be strengthened by embedding professional (certified) procurement personnel into this function.

#### Recommendation 2

- Require procurement contracts with government to be signed under a government panel and/or government template contract. This will ensure government has the right and consistent mechanisms to manage any issues that may arise. If work is signed under a supplier contract, there should be clear equivalence provisions as per a government template contract.

#### Recommendation 3

- Government contracts that rely on external consultants should:
  - Work with the chosen provider to provide clear guidance on delivery model, scope, deliverables, measures of success, roles and responsibilities, collaboration model and knowledge transfer.
  - Require knowledge and skills transfer in all contracts as an evaluation criterion for all tenders (including on an 'if not, why not' basis) while respecting the intellectual property rights of all parties. This should be assessed at the evaluation stage as well as in the firm's performance reports.

#### Recommendation 4

- Consider the development of a performance-based scorecard in consultation with industry to allow government entities to better compare providers and help drive better outcomes. An example of this is the Department of Defence's Supplier Rating System.

#### Recommendation 5

- Prioritise the development of subject matter expertise within the APS by creating alternative career paths for specialists.

### Code of conduct

#### Recommendation 6

- The Department of Finance's development of a Commonwealth Supplier Code of Conduct should:
  - Be embedded in the Commonwealth Procurement Rules so there is one set of guidelines.
  - Outline expected standards for both the procurement and execution stages of a contract. This should recognise the need for government and suppliers to interact throughout the procurement process to enable a common understanding of how the project would be executed.
  - Clearly and consistently outline what encompasses a material breach of clauses within a contract, as well as the consequences (for example, penalties or termination of contract). The assessment and application of penalties should be performed in accordance with a consistent framework by an independent and central agency (for example, Department of Finance).
  - Consider how the code might interact with other codes of conduct that may apply to individuals and organisations. For example, this could include requiring consultants or other service providers above a



revenue threshold to adopt the *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, or an equivalent set of professional obligations and ethical requirements.

## Conflicts of interest

### Recommendation 7

- The Department of Finance review of confidentiality agreements and conflicts of interest in contracts should consider:
  - Consistency in reporting and management of conflicts of interest around what to disclose, how to assess conflicts of interest, and appropriate safeguards for managing conflicts among suppliers (for example, probity plans, or ensuring suppliers cannot bid for follow on work). It should also take into account whether consulting firms have professional obligations as to conflict management.
  - A clear and consistent definition of what constitutes a conflict of interest, a conflict-of-interest breach, and expectations around the management of conflicts of interest.
  - Clearly and consistently outlining the consequences for failing to disclose potential or actual conflicts of interest, as well as the consequences of inappropriately managing a conflict of interest.
  - Requiring large entities that tender for government contracts to undertake independent reviews of conflicts of interest policies, systems and processes. Conversely, measures should not act as a barrier to small businesses in engaging in government procurement contracts.
  - Consistency with other relevant guidelines or principles that also consider conflicts of interest, such as the *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*.
  - Annual public reporting on aggregated data of conflicts of interest breaches, including enforcement action.

## Monitoring and enforcement

### Recommendation 8

- The Department of Finance's scoping work to improve transparency of contracts which have been terminated due to material breaches should consider:
  - Clear and consistent definitions of breaches (for example, around conflict of interest, and confidentiality and ethical standards), which have been determined independently after consultation with the procuring and contracting entities.
  - Maintaining breaches in a central register for use by government entities to promptly identify breaches for new/existing tenders. Notification could be achieved through a mix of requiring government entities to consult the register before considering tenders, and notifying government entities of material breaches as they occur.
  - Public reporting of the volume and nature of material breaches.

### Recommendation 9

- Evaluate the merits and effectiveness of debarment regimes for serious misconduct or breaches.
  - An evaluation should consider the performance and effectiveness of existing debarment regimes and, how such a regime could operate (such as administration by a central agency and whether it would be prospective).

## Transparency

### Recommendation 10

- Improve the quality of AusTender data through:
  - Clearer and more consistent definitions of consulting services, as well as identification of contracts.
  - More meaningful information on the scope of contracts by category and sub-category.
  - More detailed, consistent and meaningful descriptions of contracts.
  - Clarity on the nature of contract extensions.

### Recommendation 11

- Consider additional data to enhance transparency, improve community confidence and demonstrate the benefits from procurement. This could include:
  - Reporting on the number of unsuccessful bidders.
  - Reporting on subcontractors and partners for contracts (for example, name, category and description).
  - Exploring ways to identify the impacts of procurement contracts, including in buildings skills and capabilities, and the impact on outcomes.

## 3. Background information

### Procurement statistics

Total Australian Government procurement contracts were worth around \$75 billion in 2022-23, with contracts identified as consultancy contracts accounting for around \$600 million (around 0.8 per cent of all procurement). There were around 84,000 procurement contracts issued in 2022-23, with consultancy contracts accounting for over 3,000 of those contracts (around 4.0 per cent of all procurement contracts).

These data are dependent on contracts being identified as consultancy contracts by procuring entities. The definition of a consultancy contract is “the engagement of temporary services that:

- involves the development of an intellectual output that assists with decision making; and
- the intellectual output represents the independent view of the service provider.”<sup>1</sup>

A contract must meet both criteria and “the independent intellectual output must be sole majority element of the contract in terms of relative value or importance.”<sup>2</sup> The breadth of contracts identified as consultancy contracts in 2022-23 ranges from categories of ‘accounting services’ through to ‘wildlife and flora’.

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<sup>1</sup> Department of Finance, 2020, *RMG-423: Procurement Publishing and Reporting Obligations*, May.

<sup>2</sup> *Ibid.*



**Figure 1 Total Australian Government procurement contracts**



Source: AusTender

The value of Australian Government procurement contracts has remained relatively steady over the past decade when compared with the size of the economy, at around 3.2 per cent GDP. The value of consultancy contracts averaged around 0.03 per cent of GDP over the past decade, with a sharp rise and fall the past couple of years.

**Figure 2 Value of Australian Government procurement contracts as a share of GDP**



Source: AusTender and ABS

Consultancy contracts represented around 0.8 per cent of the value of Australian Government procurement contracts last year, below the decade average of 0.9 per cent. By share, the value of consultancy contracts has remained relatively steady the past decade. Consultancy contracts have fallen as a share of the total number of contracts from around 5.0 per cent a decade ago to around 4.0 per cent last year.



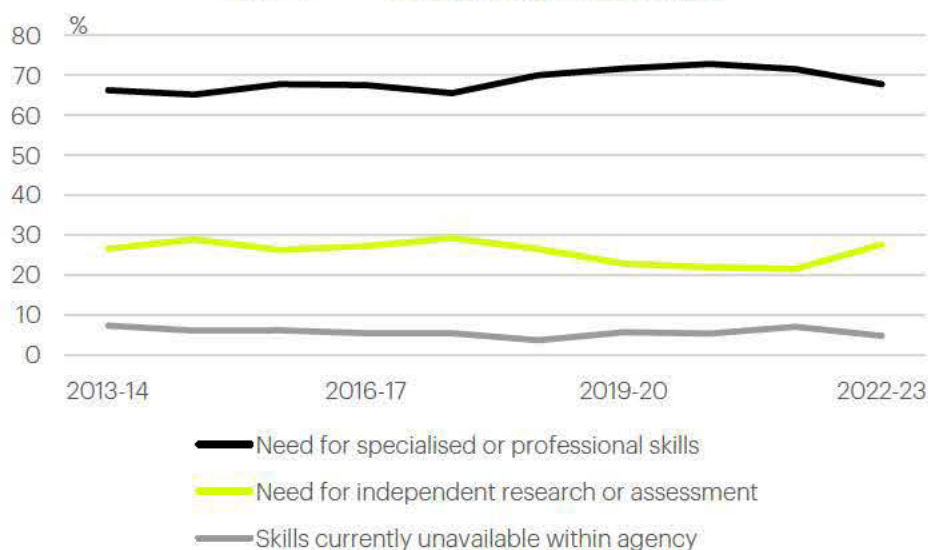
**Figure 3 Consulting share of total Australian Government procurement contracts**



Source: AusTender

Consultancy contracts are issued to perform a range of functions, with the main reason being a need for specialised or professional skills – around two-thirds of all consultancy contracts. Independent research or assessment accounts for over a quarter of all consultancy contracts, with the remainder due to the skills currently being unavailable within the agency.

**Figure 4 Reason for consultancy contract**



Source: AusTender

## Actions taken to date

There are many actions taken to date to address recent misconduct and gaps in Australia's tax and regulatory framework, as well as around the procurement process. In the context of procurement this includes:

- The introduction of a Notification of Significant Events clause that provides procuring entities with additional rights in response to adverse findings about a supplier/its personnel, or other significant matters.
- Updated guidelines on the use of external expertise, reflected in the recently released APS Strategic Commissioning Framework.
- A draft Commonwealth Supplier Code of Conduct currently out for consultation, with a clear and consistent set of definitions, expectations and accountability.

- A Department of Finance review looking to identify opportunities to strengthen the management of conflicts of interest in contracts, as well as the use of confidentiality agreements.
- The Department of Finance is exploring options to improve transparency of contracts which have been terminated due to material breaches.
- A new in-house consulting capability, Australian Government Consulting, to reduce reliance on external consultants.

There have been several reviews and actions in the context of the tax system and capital market integrity:

- A foreshadowed increase in both the size and scope of tax promoter penalty laws, with penalties increasing from \$7.825 million up to \$782.5 million. This will further increase to \$825 million in line with the increased Commonwealth Penalty Unit value announced at the Mid-Year Economic and Fiscal Outlook 2023-24.
- Treasury reviews of:
  - tax promoter penalty laws, to ensure they capture schemes that may otherwise be out of scope
  - emerging fraud and threats, to address systemic abuse by bad actors
  - the use of legal professional privilege, with the Attorney-General's Department, to ensure it is not being used to obstruct investigations
  - the compulsory information gathering powers of the Australian Taxation Office (ATO), to ensure it has the tools to both effectively perform its role and to support the investigation of serious criminal offences, and
  - secrecy provisions as they apply to the ATO and Tax Practitioners Board (TPB), to assess whether their scope should be broadened.
- Changes to the TPB, including increased funding, additional time for complex investigations, extended whistleblower protections, enhanced investigations, improvements in the TPB register, amendments to the Code of Professional Conduct, strengthening sanctions for misconduct, and removing limitations to secrecy provisions where they act as barriers to dealing with misconduct.

This Senate Inquiry into the management and assurance of integrity by consulting services is also complemented by:

- The Parliamentary Joint Committee on Corporations and Financial Services inquiry into Ethics and Professional Accountability: Structural Challenges in the Audit, Assurance and Consultancy Industry.
- NSW Government inquiry into use and management of consulting services.
- Treasury review of the regulation of consulting, accounting and auditing firms.

## 4. Additional feedback

### **Procurement framework/process**

The BCA supports the recently released APS Strategic Commissioning Framework, which will help build the skills, expertise, and capabilities of the APS. It also outlines when to rely on external support, while maximising benefits/minimising risks, as well as an approach to monitoring and accountability that will help ensure its effectiveness. The framework could be expanded over time to include other functions as deemed appropriate.

The APS Strategic Commissioning Framework is supported by the Commonwealth Procurement Framework, overseen by the Department of Finance. Together they seek to ensure value for money for taxpayers through procurement, while also promoting accountability and transparency.



The Department of Finance provides a range of support, templates and guidance for procuring entities to help deliver on the Commonwealth Procurement Framework and good procurement practice. This is critical as the procurement process is decentralised, meaning procurement capabilities vary considerably across entities. Some have dedicated procurement teams (for example, due to large, complex, multi-year projects) while others do not due to their size or infrequent use of procurement.

At the same time, the procurement process should not create barriers to entry for small businesses that may wish to engage in government procurement contracts, and in turn drive greater competition.

Actions that can be taken to strengthen the Commonwealth procurement function and improve existing agency capabilities are suggested below. There is also scope to implement the recommendations of the Independent Review of the APS.<sup>3</sup>

A related aspect is the need to strengthen the internal capacity of the public service, which in turn will reduce the need to engage external consultants and also strengthen engagement with external firms. This will help enhance the overall effectiveness and efficiency of the APS. Individuals with specific skills and expertise, especially those who do not wish to become managers, can face limited opportunities for career advancement within the APS. This can lead to the loss of valuable expertise, as skilled professionals may opt to pursue opportunities outside the APS that offer higher remuneration and career progression. The establishment of alternative career paths would recognise and reward subject matter expertise and support the APS in retaining talented individuals.

#### Recommendation 1

- The Department of Finance's procurement support functions could be extended through enhanced training and education for procurement personnel, alongside powers to monitor, enforce and audit execution of procurement policy across the whole of government. This could be strengthened by embedding professional (certified) procurement personnel into this function.

#### Recommendation 2

- Require procurement contracts with government to be signed under a government panel and/or government template contract. This will ensure government has the right and consistent mechanisms to manage any issues that may arise. If work is signed under a supplier contract, there should be clear equivalence provisions as per a government template contract.

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- Government contracts that rely on external consultants should:
  - Work with the chosen provider to provide clear guidance on delivery model, scope, deliverables, measures of success, roles and responsibilities, collaboration model and knowledge transfer.
  - Require knowledge and skills transfer in all contracts as an evaluation criterion for all tenders (including on an 'if not, why not' basis) while respecting the intellectual property rights of all parties. This should be assessed at the evaluation stage as well as in the firm's performance reports.

#### Recommendation 4

- Consider the development of a performance-based scorecard in consultation with industry to allow government entities to better compare providers and help drive better outcomes. An example of this is the Department of Defence's Supplier Rating System.

#### Recommendation 5

- Prioritise the development of subject matter expertise within the APS by creating alternative career paths for specialists.

<sup>3</sup> Department of the Prime Minister and Cabinet, 2019, *Our Public Service, Our Future. Independent Review of the Australian Public Service*.



## Code of conduct

The BCA supports the Department of Finance development of a Commonwealth Supplier Code of Conduct. The draft Code currently out for consultation outlines broad standards expected from suppliers as part of procurement contracts, including around conflicts of interest disclosures. While a clear and consistent set of definitions and expectations is critical, there must also be accountability to ensure the code of conduct is adhered to and consequences for noncompliance. At the same time, the Code should be mindful of the capacity of suppliers – particularly smaller businesses – to meet the expectations of the Code. For example, corporate governance, internal policy documentation and business practices can vary significantly between small, medium and large businesses.

The Code will also ultimately sit alongside other codes of conduct for organisations and professions, and consideration should be given to if, and how, they might interact.

### Recommendation 6

- The Department of Finance’s development of a Commonwealth Supplier Code of Conduct should:
  - Be embedded in the Commonwealth Procurement Rules so there is one set of guidelines.
  - Outline expected standards for both the procurement and execution stages of a contract. This should recognise the need for government and suppliers to interact throughout the procurement process to enable a common understanding of how the project would be executed.
  - Clearly and consistently outline what encompasses a material breach of clauses within a contract, as well as the consequences (for example, penalties or termination of contract). The assessment and application of penalties should be performed in accordance with a consistent framework by an independent and central agency (for example, the Department of Finance).
  - Consider how the code might interact with other codes of conduct that may apply to individuals and organisations. For example, this could include requiring consultants or other service providers above a revenue threshold to adopt the *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*, or an equivalent set of professional obligations and ethical requirements.

## Conflicts of interest

The management of conflicts of interest, be they potential or actual, is critical to delivering impartial and quality outcomes, as well as delivering trust and integrity in those outcomes. BCA member companies have extensive and comprehensive policies, systems and procedures for managing conflicts of interest, as outlined in submissions to this inquiry. Perceived or potential conflicts of interest can arise in many circumstances – regardless of ownership, structure, or industry – but they do not necessarily represent actual conflicts of interest in many circumstances. The starting point for managing conflicts of interest is to adopt a conservative approach to reporting to ensure they are readily identified and can be monitored. For example, the APS Code of Conduct requires APS employees to take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with their APS employment.<sup>4</sup>

The BCA supports the Department of Finance review into the use of confidentiality arrangements, which will also identify opportunities to strengthen the management of conflicts of interest in contracts. As noted in the previous section, this should be accompanied by clear and consistent mechanisms across government to ensure accountability in cases where breaches may occur.

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<sup>4</sup> *Public Service Act 1999*.



## Recommendation 7

- The Department of Finance review of confidentiality agreements and conflicts of interest in contracts should consider:
  - Consistency in reporting and management of conflicts of interest around what to disclose, how to assess conflicts of interest, and appropriate safeguards for managing conflicts among suppliers (for example, probity plans, or ensuring suppliers cannot bid for follow on work). It should also take into account whether consulting firms have professional obligations as to conflict management.
  - A clear and consistent definition of what constitutes a conflict of interest, a conflict-of-interest breach, and expectations around the management of conflicts of interest.
  - Clearly and consistently outlining the consequences for failing to disclose potential or actual conflicts of interest, as well as the consequences of inappropriately managing a conflict of interest.
  - Requiring large entities that tender for government contracts to undertake independent reviews of conflicts of interest policies, systems and processes. Conversely, measures should not act as a barrier to small businesses in engaging in government procurement contracts.
  - Consistency with other relevant guidelines or principles that also consider conflicts of interest, such as the *APES 110 Code of Ethics for Professional Accountants (including Independence Standards)*.
  - Annual public reporting on aggregated data of conflicts of interest breaches, including enforcement action.

## Monitoring and enforcement

Any changes that seek to improve the procurement process should be complemented by adequate and appropriate implementation of monitoring and enforcement measures.

Effective monitoring can help ensure policy changes achieve their objectives. For example, the recently released APS Strategic Commissioning Framework proposes that agencies collect data on the use of external labour, accompanied by targets (as well as their estimated impact) and public reporting.<sup>5</sup> This mix of both monitoring and accountability will help embed a process and culture of improvement and building capabilities.

Effective and robust enforcement measures complement monitoring, support accountability and help build trust and integrity in the procurement process. For example, the BCA supports the Department of Finance's scoping work to improve transparency of contracts which have been terminated due to material breaches. This work could be complemented by an evaluation of debarment regimes, such as that recently introduced in Western Australia as well as those in operation overseas.

A formal process for reviewing breaches of contract, alongside clear procedures for investigation and adjudication is critical. When combined with clear consequences for breaches, this will uphold accountability, safeguard integrity, and maintain public trust in procurement.

## Recommendation 8

- The Department of Finance's scoping work to improve transparency of contracts which have been terminated due to material breaches should consider:
  - Clear and consistent definitions of breaches (for example, around conflict of interest, and confidentiality and ethical standards), which have been determined independently after consultation with the procuring and contracting entities.

<sup>5</sup> For example, <https://www.apsc.gov.au/publication/aps-strategic-commissioning-framework>.



- Maintaining breaches in a central register for use by government entities to promptly identify breaches for new/existing tenders. Notification could be achieved through a mix of requiring government entities to consult the register before considering tenders, and notifying government entities of material breaches as they occur.
- Public reporting of the volume and nature of material breaches.

#### Recommendation 9

- Evaluate the merits and effectiveness of debarment regimes for serious misconduct or breaches.
  - An evaluation should consider the performance and effectiveness of existing debarment regimes and, how such a regime could operate (such as administration by a central agency and whether it would be prospective).

## Transparency

Transparency around government procurement can help improve individual, organisational and industry accountability for performance and conduct, as well as understanding of the procurement process. It complements the other measures discussed in this submission.

There is currently extensive data provided on procurement contracts through AusTender. The Department of Finance provides some contextual analysis to help users better understand and interpret the data.<sup>6</sup> There are opportunities to improve the quality of this data, such as through clearer and more consistent definitions and identification of consultancy contracts.

Better quality and more meaningful data can help inform stakeholders and improve community confidence in the procurement process. A set of principles can help guide any changes to transparency measures:

- The information provided should be meaningful, readily accessible and better inform stakeholders. This information can be both qualitative and quantitative in nature.
- Compliance costs should be minimised for both entities tendering for contracts and government entities issuing contracts/reporting.
- There should be consistency between other transparency and reporting measures, for example across other jurisdictions or other reporting requirements, to minimise compliance costs and support comparisons.

#### Recommendation 10

- Improve the quality of AusTender data through:
  - Clearer and more consistent definitions of consulting services, as well as identification of contracts.
  - More meaningful information on the scope of contracts by category and sub-category.
  - More detailed, consistent and meaningful descriptions of contracts.
  - Clarity on the nature of contract extensions.

#### Recommendation 11

- Consider additional data to enhance transparency, improve community confidence and demonstrate the benefits from procurement. This could include:
  - Reporting on the number of unsuccessful bidders.
  - Reporting on subcontractors and partners for contracts (for example, name, category and description).

<sup>6</sup> <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts->



- Exploring ways to identify the impacts of procurement contracts, including in buildings skills and capabilities, and the impact on outcomes.

## 5. The role of business

Business plays an important role in complementing, supporting and building the skills and capabilities of the public sector when it seeks external support through procurement. It is there to complement, not replace, public service capacity. The business community can support the public sector through specialised skills not otherwise available in the APS, access to temporary support, and through independent research and assessments as needed. This also provides an avenue through which to transfer new knowledge and expertise, best practice, technology, management techniques and other workplace skills. Business has had to respond rapidly to a changing environment over the past decade – particularly the past few years – and lessons learned from these experiences can be shared with the public sector to help drive better outcomes for the community. The success of the procurement process is closely intertwined between government and business.

Business also stands ready to support the development of procurement capability within government entities by sharing lessons and best practice from its experience with consulting partners in building capability and managing risk. This can ultimately help lift the efficiency and effectiveness of government processes and enable an open, transparent and 'level playing field' as well as a competitive market for procurement.

Examples of where business can share lessons and best practice include procurement practices around automation and digitisation, and approaches to managing major projects (for example, through a cohort of specialists rather than being centrally managed for certain projects). This can help to better manage risk and maximise value for money from procurement.

More broadly, the government response to misconduct and the range of reviews (current and planned) will drive significant change for business around transparency, accountability, misconduct and regulatory oversight of large partnerships in particular. Issues raised around the regulatory frameworks for large accounting, assurance and consultancy firms will be dealt with through other processes, including the announced Treasury review.

BUSINESS COUNCIL OF AUSTRALIA

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