

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 27 September 2023

Question on Notice 1 (Proof Hansard page 2)

Mr Jaggers: Yes, that's right, on that panel. We also have other panels where we've done the same thing. With the People Panel, in the first phase, there are 84 suppliers, and we've amended the clauses in those contracts. We've had all members of that panel come back. It's the same with the labour hire services head agreements. They now have that clause in them. And then the Stationery and Office Supplies Panel, and we're working through the rest of the Australian government panels that Finance is responsible for and providing the revised clauses and seeking those providers of services under those panels to sign up. That action has been taken. We've also—

CHAIR: This goes to adverse findings by professional bodies which you've mentioned as part of the process. Several of the professional bodies have compulsory self-reporting requirements by the organisations that are their members. So, if something happens within the organisation that doesn't comply with the code or the standard under which they're operating, there's a requirement for that organisation to report it to the overseeing body. Does that self-reporting or failure to self-report fall within the remit of this process you've initiated?

Mr Jaggers: Under our process, we're requiring service providers to notify if there is a significant event. We've described that in the clauses. The team might be able to go to the—

Senator O'NEILL: Can you provide a copy of that, a sample letter perhaps that you've sent to one of the suppliers on the panel?

Response

A copy of the letter and attachments sent to Whole of Australian Government panel suppliers regarding inclusion of the Notice of Significant Events clauses is attached. These documents are listed below:

- Attachment A - Letter to Service Providers re Amendments to Significant Events DOV
- Attachment B – Explanatory Note
- Attachment C – Marked-up Draft Deed of Variation
- Attachment D – FINAL Deed of Variation



Australian Government

Department of Finance

Dear Service Provider

Management Advisory Services (MAS) Panel – Formal Proposal of a Deed of Variation: Significant Events

I refer to the Department of Finance's letter dated 24 May 2023, in which the Commonwealth of Australia as represented by the Department of Finance (Finance) gave Service Providers the opportunity to review and provide feedback on a draft Deed of Variation to the Panel Head Agreement between Finance and the Service Provider for the provision of Management Advisory Services to the Australian Government (Head Agreement).

Finance has reviewed the feedback it received from Service Providers and has made amendments to the draft Deed of Variation based on this feedback. A marked-up draft Deed of Variation (showing the changes made since the version issued with our letter of 24 May 2023) and accompanying explanatory note are set out in **Attachment 1**.

Finance now formally proposes, in accordance with clause 31.2.1 of the Head Agreement, to amend the Head Agreement in accordance with the updated Deed of Variation attached. An executable version is attached in **Attachment 2** to this letter.

Background

The Australian Government has an expectation that suppliers of goods and services to the Commonwealth will act ethically and maintain the confidentiality of Commonwealth information in all aspects of their businesses. Having regard to that expectation, Finance has recently updated the Commonwealth Contracting Terms that forms part of the Commonwealth Contracting Suite to incorporate certain requirements regarding the notification of, and the requirement for suppliers of goods and services to the Commonwealth to take certain actions in respect of significant events affecting them (see https://www.finance.gov.au/sites/default/files/2023-05/Commonwealth_Contract_Terms_v8.0_19_May_2023.pdf).

Ethical behaviour is of course of the utmost importance in relation to the provision of professional services, such as those supplied under the Head Agreement. The Head Agreement (clause 16.2.3(b)) already requires the Service Provider to notify

Finance immediately upon becoming aware of certain events or circumstances relating to the conduct or performance of the Service Provider. Failure to comply with clause 16 is a material breach of the Head Agreement.

Consultation

Finance proposed to vary the terms of the Head Agreement by issuing a Deed of Variation to expand the situations in which notification of certain conduct or performance of the Service Provider is required to be provided to Finance and requires certain action on the part of the Service Provider where such an event occurs.

To this end, on 24 May 2023, Finance issued all 400+ Service Providers on the Management Advisory Services (MAS) Panel a letter in relation to the MAS Panel - Draft Deed of Variation: Significant Events, attaching a draft Deed of Variation and a form for feedback on the Draft Deed of Variation.

Service Providers were asked to provide feedback to Finance on or before 6 June 2023. Finance received responses from 22 Service Providers. Finance has proposed a number of changes to address feedback from Service Provider responses as set out in **Attachment 1** and is now requesting that Service Providers agree to enter into the Deed of Variation at **Attachment 2**.

Given the trust which the Commonwealth has placed in Service Providers who are on the MAS panel, Finance considers the amendments contained in the Deed of Variation are reasonable and measured amendments to make.

Instructions for Service Providers

Please:

1. complete the items shown in yellow for your Deed of Variation (execution version in **Attachment 2**);
2. if the Service Provider is:
 - a) a *Corporations Act* company, use the execution block provided and execute the Deed of Variation; or
 - b) otherwise, insert the appropriate execution block for the Service Provider entity and execute the Deed of Variation; and
3. return the executed Deed of Variation to Finance on or before **21 July 2023** by providing a scanned executed copy to MASPanel@finance.gov.au.

Finance will review your executed Deed of Variation and may then execute the Deed of Variation. The date of effect of the Deed of Variation is **22 July 2023**, including with retrospective effect where it is executed by either party after this date.

This letter is the Confidential Information of Finance under the Head Agreement and must only be used or disclosed by the Service Provider in accordance with the Head Agreement.

If you have any questions in relation to this correspondence, please contact Mr Long Dang, Director of the Management Advisory Services Panel at MASPanel@finance.gov.au or via telephone on [REDACTED].

Yours sincerely

[REDACTED]

Richard Austin
A/g Assistant Secretary
Strategic Contracting Branch

07 July 2023

Attachment 1 – Marked-up Draft Deed of Variation and Explanatory Note

Attachment 2 – Deed of Variation

Clause	Explanation
16.2.3(a) - Entitlement to Work in Australia	<p>Some Service Providers suggested amending this clause to narrow their obligation (ie to ensure that, for Services performed in Australia, its workers are entitled to work in Australia) to employees who are physically present and performing the Services in Australia. However, this clause already exists in the Head Agreement (in clause 16.2.3(a)).</p> <p>Finance does not propose to amend clauses which the Service Provider is already under an obligation to comply with.</p>
16.2.3(b) - Notification Requirement	<p>Finance has inserted “<i>during the Head Agreement Period and any Order Term</i>”, suggested in substance by many Service Providers. Finance agrees the clause will not be relevant where a Head Agreement or Contract is not on foot.</p> <p>Finance has also inserted “<i>to the extent permitted by Law</i>” as proposed by several Service Providers. Finance acknowledges concerns raised about overriding obligations under laws generally and privacy laws in particular. Under the MAS Head Agreement ‘Law’ is defined to include common law, which also addresses concerns raised by some Service Providers that they may have overriding obligations under contract.</p> <p>A number of Service Providers suggested limiting the notification requirements to matters “<i>in connection with</i>” the Services performed under the MAS Panel. An important reason why Finance is proposing a Deed of Variation is to capture a broader scope of matters involving the Service Provider which may not be directly related to the Services under the MAS Panel. This suggestion was made in several places within clause 16.2.3(b) and Finance’s reasoning not to accept that change is the same for all those suggestions.</p>
16.2.3(b) - Timing of notification	<p>Some Service Providers proposed replacing the language of ‘immediately’ with ‘as soon as reasonably practical’. However, the matters contemplated by this clause impact on public trust in government institutions, so Finance needs to know about and mitigate the impact of such matters immediately upon the Service Provider becoming aware of them.</p> <p>Note Finance has balanced this requirement with the insertion of a knowledge threshold in clause 16.2.4.</p>
16.2.3(b)(i) - Adverse comments or findings	<p>Limited feedback received on this clause (which we note is an existing clause in the current MAS Head Agreement) included concern over the breadth of “<i>adverse comments or findings</i>”. Finance requires the use of broader terms like “<i>comment</i>” in addition to “<i>finding</i>” to ensure it captures all types of communications from the listed bodies. Further since this is an existing clause, all Service Providers are already bound to comply with it.</p> <p>For clarification, however, we have changed the formatting so that each obligation is clearly listed.</p>
16.2.3(b)(ii) - Definition of a Significant Event	<p>Several Service Providers suggested that this clause is too broad, suggesting different amendments to address the issue. Finance has taken on board that feedback and has:</p> <ul style="list-style-type: none"> - limited the notification requirements of this new clause to where there are adverse comments or findings regarding the conduct or performance of the Service Provider’s Personnel, agents or Subcontractors. Finance has removed the reference to the Service Provider itself, noting that the existing clause 16.2.3(b)(i) sufficiently covers the notification requirement in relation to the Service Provider itself;

	<ul style="list-style-type: none"> - clarified that it is the Service Provider’s own professional capacity, capability, fitness or reputation that needs to be impacted for a Significant Event to arise; and - added a materiality threshold so that the impact on the Service Provider’s professional capacity, capability, fitness or reputation must be (or be reasonably perceived to be) material in order to trigger the notification. <p>Finance believes the changes to this subclause appropriately narrow the scope of what will be considered a Significant Event and therefore we did not implement other related suggestions including the deletion of the clause due to it being too broad.</p> <p>As a minor point of clarification, the use of “<i>reasonably perceived</i>” in this clause creates an objective test. Reasonableness is assessed on an objective standard based on what would be considered ‘reasonable’ in the circumstances. This is the approach to reasonableness adopted by the Commonwealth across its supplier contracts.</p>
16.2.3(b)(ii) - Agents and Subcontractors	<p>Several Service Providers suggested amending the drafting to exclude matters relating to a Service Provider’s agents and Subcontractors. Finance appreciates that some Service Providers operate globally and have several agents and subcontractors that it may find difficult to monitor in relation to the notification requirements in this clause. Finance reminds Service Providers that under clause 7.2.1 of the Head Agreement, a Subcontractor must be approved by Finance for the purposes of providing Services under the MAS Panel (unless the subcontract relates to the Service Provider’s ordinary course of business). The definition of a Subcontractors includes agents. So the notification requirement will only extend to those Subcontractors (and agents) who have already been approved by Finance, and those who are subcontracted to the Service Provider in respect of its ordinary course of business. Noting this, plus the addition of a materiality threshold, Finance does not believe the notification requirement is so broad that it is unmanageable.</p>
16.2.3(b)(iii) - Notification Requirement	<p>Finance did not implement any Service Provider suggestions. Under the Head Agreement (in clause 16.2.3(b)(ii)) the Service Provider is already required to report unsettled judicial decisions regarding unpaid employee entitlements. It is also a requirement under paragraph 6.7 for the Commonwealth to seek a declaration from all tenderers confirming that they have no unsettled judicial decisions regarding employee entitlements against them.</p>
16.2.3(b)(iv) - Notification Requirement	<p>Finance has clarified what is meant by disciplinary action, following Service Provider feedback that this was unclear. Some Service Providers have suggested that if “<i>disciplinary action</i>” were to include disciplinary action internal to the Service Provider, this would be unmanageable because it might require the Service Provider reporting on matters that it is required under certain contracts to keep confidential. As explained above, Finance has addressed this point by limiting clause 16.2.3(b) to the extent the obligations are permitted by Law.</p> <p>Finance has also included a materiality threshold to address Service Provider feedback that the clause captured too broad a range of activities.</p> <p>A number of Service Providers sought clarification on who “<i>any person’s</i>” refers to. Finance has clarified the intent.</p> <p>For consistency with earlier clauses, subclause D was introduced to capture actions that affect the professional capacity or capability of the Service Provider or its Personnel to deliver services.</p>

16.2.3(b)(v) - Notification Requirement	The majority of feedback on this clause related to limiting or deleting the inclusion of “agents or Subcontractors”. Finance has included a knowledge threshold, as suggested by one Service Provider, to limit the non-compliance of an agent or Subcontractor to the extent that information is “known by or reasonably available to” the Service Provider. Finance does not wish to delete “agents or Subcontractors” from the clause as it wishes for the Significant Event to capture their actions. Note Finance’s comment in relation to “agents and Subcontractors” in response to clause 16.2.3(b)(ii) above.
16.2.4 - Information Required when Notifying a Significant Event	Finance has inserted a knowledge threshold into this clause which means that Service Providers will only need to provide information required under clause 16.2.4 to the extent that information is known by or otherwise reasonably available to the Service Provider at the time that the Service Provider gives notice of a Significant Event under clause 16.2.3(b).
16.2.5 - Where Finance notifies a Significant Event	<p>Finance received several suggestions regarding extending the applicable timeframe within which Service Providers are required to notify Finance of a Significant Event. Finance has changed the timeframe from three Business Days to five Business Days.</p> <p>Finance has also inserted drafting to allow changes to the timeframe if agreed in writing with Finance.</p> <p>Finance has replaced the reference to “this clause” with “clause 16.2.3(b)” for clarity.</p>
16.2.6 - Requests for Additional Information	<p>Finance has inserted a knowledge threshold into this clause which means that Service Providers will only need to provide additional information requested by Finance to the extent that information is known or reasonably available to the Service Provider at the time Finance makes that request.</p> <p>Finance has also changed the timeframe within which the Service Provider needs to respond to a request from Finance from three Business Days to five Business Days.</p> <p>Finance has also inserted drafting to allow any changes to the timeframe which can be agreed in writing with Finance.</p>
16.2.8 - Where Finance notifies a Significant Event	Several Service Providers suggested that a draft remediation plan may not be achievable within 10 Business Days. Finance considers 10 Business Days is sufficient but has inserted drafting to allow changes to the 10 Business Day timeframe (agreed in writing with Finance) where that may be required.
16.2.9 - Information a Remediation Plan must Include	<p>Clause 16.2.9 outlines certain information a Service Provider has to include in the draft remediation plan it prepares. One of those is the requirement to explain how the Service Provider will address the Significant Event and confirmation that the implementation of the remediation plan would not impact on the delivery of the Services. Finance has included a materiality threshold so that the Service Provider only needs to confirm that the implementation of the remediation plan will not “materially” impact on the delivery of the Services.</p> <p>Finance has made a formatting amendment so that the Service Provider’s obligations are clear in the way the clause is drafted.</p> <p>Finance has also amended the word “matter” in subclause (c) to “information” to make it clear Finance can only request further information.</p>
16.2.10 - Review of	Clause 16.2.10 outlines the three actions Finance can take after reviewing the draft remediation plan.

Draft Remediation Plan	Finance has inserted a reasonableness requirement for subclause (b), meaning that Finance must act reasonably regarding the changes it considers the Service Provider must make to the draft remediation plan.
16.2.11 - 16.2.16 - Where Finance Requests Changes or Reasons	<p>Finance received some responses from Service Providers suggesting that it is not fair for a Service Provider to be deemed to have breached clause 16 (which for the purposes of clause 26.1.2 constitutes a material breach not capable of remedy) where Finance reviews their draft remediation plan (or their resubmitted draft remediation plan) and finds that the remediation plan is not satisfactory.</p> <p>Some Service Providers suggested that Finance's termination rights should be based on e.g. a termination for convenience, rather than termination as a result of a material breach not capable of remedy under clause 26.1.2 of the Head Agreement.</p> <p>The MAS Panel Head Agreement has always been drafted such that a breach of clause 16 is considered a material breach not capable of remedy. So Finance does not propose to change this. However to make the process fairer for Service Providers and to avoid an immediate material breach, Finance has updated clauses 16.2.11 - 16.2.16 to allow Service Providers an additional opportunity to provide reasons and suggest any further drafting amendments where Finance notifies the Service Provider that any draft remediation plan it submits is not satisfactory.</p>
16.2.17 - Other obligations (previously 16.2.13)	Finance has updated the cross-references in this clause to ensure that the Service Provider is required to comply with the remediation plan as approved by Finance in all instances under clause 16.2.3, which are clauses 16.2.10(a), 16.2.12(a), 16.2.13(a) or 16.2.15(a).

Attachment 1 – Marked-up Draft Deed of Variation and Explanatory Note

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Schedule 10 – Deed of Variation

Parties

- A.

Commonwealth of Australia as represented by the Department of Finance
ABN 61 970 632 495 (Finance); and
- B.

[Service Provider to Insert Name and ABN of the Service Provider] (Service
Provider)

Recitals

- A.

Finance and the Service Provider are party to the Head Agreement dated [insert
dateService Provider to Insert Date Indicated in the Head Agreement with
Finance] for the provision of Services.
- B.

The parties wish to vary the Head Agreement as provided by this Deed of variation.

The parties agree as follows:

The Head Agreement is varied in accordance with the terms set out below. Unless specifically
stated in this Deed of Variation, all terms and conditions of the Head Agreement continue
unaffected.

1.	Deed of Variation number	[Service Provider to insert relevant DOV number for your organisationthe Service Provider, ie 1, 2, 3]
2.	Raised by	Finance
3.	Details of change (use attachments if required)	Amendments to the Head Agreement as set out in the "Variation to Head Agreement" section in this Deed of Variation.
4.	Implementation date of variation	This Deed of Variation will take effect on [2023-June-122 July 2023], including with retrospective effect where it is executed by either party after this date.
5.	Effect on services	None
6.	Plan for implementing the change [if any]	Not Applicable
7.	Effect on price [if any]	None
8.	Effect on service levels [if any]	None

9.	Other relevant matters (e.g. transitional impacts)	None
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Variation to Head Agreement:

- Delete clause 16.2.3 in its entirety.
- Insert new clauses 16.2.3 to ~~16.2.16~~ 16.2.20 after clause 16.2.2 as follows:

16.2.3 The Service Provider must:

- ensure that, in connection with any Services performed in Australia, its Personnel are at all times:
 - Australian citizens; or
 - in the case of persons who are not Australian citizens, entitled to work in Australia.
- during the Head Agreement Period and any Order Term, and to the extent permitted by Law, notify Finance immediately on becoming aware of:

- ~~any adverse comments or findings made by a court, commission, tribunal, or other statutory or professional body regarding the conduct or performance of the Service Provider or:~~
 - regarding the conduct or performance of the Service Provider; or
 - ~~impacting on the professional capacity or capability of its Personnel to deliver the Services;~~
- ~~any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Service Provider's, its Personnel, agents or Subcontractors that materially impacts or could be reasonably perceived to materially impact on their the Service Provider's professional capacity, capability, fitness or reputation;~~
- ~~any unsettled judicial decisions against it relating to unpaid employee entitlements;~~
- ~~any other significant matters, including the commencement of legal, or regulatory or action, disciplinary action by an independent person or disciplinary action internal to the Service Provider, involving the Service Provider, or its Personnel, agents or Subcontractors that may adversely have a material adverse impact on:~~
 - ~~any person's the Service Provider's compliance with Australian Government policy or legislation; or~~
 - Finance's or an Agency's compliance with Australian Government policy or legislation; or
 - ~~the Commonwealth's reputation; and or~~
 - the professional capacity or capability of the Service Provider or its Personnel to deliver the Services; and
- any non-compliance by:
 - the Service Provider or its Personnel; or
 - to the extent that information is known by or reasonably available to the Service Provider, the Service Provider's agents or Subcontractors,
- ~~any non-compliance by the Service Provider or its Personnel, agents or Subcontractors with any judgment against it the Service Provider, its~~

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Personnel, agents or Subcontractors (as relevant) from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law,

each a **Significant Event**.

- 16.2.4 A notice issued under clause 16.2.3(b) must provide to the extent that information is known by or reasonably available to the Service Provider at the time of giving the notice, a summary of the Significant Event, including the date that it occurred and whether any Key Personnel or other Personnel, agents or Subcontractors engaged in connection with the Services were involved.
- 16.2.5 If, prior to the Service Provider providing a notice under clause 16.2.3(b) in respect of an event, Finance notifies the Service Provider in writing that an event is to be considered a Significant Event for the purposes of ~~this clause 16.2.3(b)~~, the Service Provider must issue a notice under clause 16.2.3(b) in relation to the event within ~~three (3)~~ five (5) Business Days of being notified by Finance, unless a different timeframe is agreed in writing with Finance.
- 16.2.6 Where reasonably requested by Finance, the Service Provider must provide Finance with any additional information regarding the Significant Event ~~within three (3)~~ (to the extent that information is known or reasonably available to the Service Provider at the time that Finance makes a request) within five (5) Business Days of the request, unless a different timeframe is agreed in writing with Finance.
- 16.2.7 If Finance is notified of a Significant Event in accordance with clause 16.2.3(b), or notifies the Service Provider of an event under clause 16.2.5, then Finance may:
- (a) notify the Service Provider that no further action in relation to the Significant Event is required;
 - (b) notify the Service Provider that a remediation plan is required; or
 - (c) acting reasonably, determine that the Significant Event is of such a serious or significant nature that it is not appropriate in the circumstances for the Service Provider to continue as a Service Provider on the Management Services Advisory Panel, in which case Finance will notify the Service Provider of that and the occurrence of the Significant Event will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.8 If Finance notifies the Service Provider under clause 16.2.7(b) that a remediation plan is required, the Service Provider must prepare a draft remediation plan and submit that draft plan to the Panel Manager for approval within ten (10) Business Days of the request, unless a different timeframe is agreed in writing by Finance.
- 16.2.9 A draft remediation plan prepared by the Service Provider in accordance with clause 16.2.8 must include the following information:
- (a) how the Service Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not ~~in any way impact on the delivery of the Services or compliance by the Service Provider with its other obligations under the Head Agreement or a Contract; and~~
 - i. materially impact on the delivery of the Services; or
 - ii. impact on compliance by the Service Provider with its other obligations under the Head Agreement or a Contract;

- (b) how the Service Provider will ensure events similar to the Significant Event do not occur again; and
- (c) any other matter information reasonably requested by Finance.

16.2.10 Finance must review the draft remediation plan and may:

- (a) approve the draft remediation plan;
- (b) notify the Service Provider of the details of any changes that Finance, acting reasonably, considers are required to the draft remediation plan; or
- (c) ~~reject the draft remediation plan if~~ notify the Service Provider that Finance, ~~acting reasonably~~, considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan ~~could address~~ addresses the matters raised by the Significant Event, in which case Finance will ~~notify request that the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2 give, in writing, and within five (5) Business Days of the request, reasons explaining how the draft remediation plan sufficiently addresses the Significant Event and propose any further amendments that would assist further with this.~~ notify request that the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2 give, in writing, and within five (5) Business Days of the request, reasons explaining how the draft remediation plan sufficiently addresses the Significant Event and propose any further amendments that would assist further with this.

Changes to the Remediation Plan

16.2.11 The Service Provider must make any changes to the draft remediation plan reasonably requested by Finance under clause 16.2.10(b) and resubmit the draft remediation plan to Finance for approval within ~~three (3)~~ five (5) Business Days of the notice unless a different timeframe is agreed in writing by Finance.

16.2.12 Finance may:

- (a) approve the resubmitted draft remediation plan; or
- (b) notify the Service Provider that Finance considers that the resubmitted draft remediation plan is unsatisfactory because it has not sufficiently addressed the changes reasonably requested by Finance under clause 16.2.10(b), in which case Finance will request that the Service Provider give, in writing, and within five (5) Business Days of the request, reasons explaining how the resubmitted draft remediation plan sufficiently addresses the changes request by Finance, and propose any further amendments that would assist further.

16.2.13 If the Service Provider provides a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, Finance must review the response and may:

- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the resubmitted draft remediation plan (resubmitted again if relevant); or
- ~~(a)(b) determine, acting reasonably, that the resubmitted draft remediation plan is not satisfactory because it has not sufficiently addressed the changes reasonably request~~ (b) determine, acting reasonably, that the resubmitted draft remediation plan is not satisfactory because it has not sufficiently addressed the changes requested by Finance, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

16.2.14 If the Service Provider does not provide a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, then the Service Provider will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

Service Provider Response

16.2.15 If the Service Provider provides a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, Finance must review that response and may:

- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the draft remediation plan (as resubmitted if relevant); or
- (b) reject the draft remediation plan (as resubmitted if relevant) if Finance determines, acting reasonably, that Finance is not satisfied with the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

16.2.16 If the Service Provider does not provide a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, then the Service Provider will be deemed to be in breach of this clause 16, including for the purposes of clause 26.1.2.

Other Obligations regarding Remediation Plans

~~46.2.43~~16.2.17 Without limiting its other obligations under the Head Agreement or a Contract, the Service Provider must comply with the remediation plan as approved by Finance in accordance with clause 16.2.10(a) ~~or~~ 16.2.12(a), 16.2.13(a) or 16.2.15(a).

~~46.2.44~~16.2.18 The Service Provider must provide reports and other information about the Service Provider's progress in implementing any remediation plan as reasonably requested by Finance.

~~46.2.45~~16.2.19 Finance's rights under clauses 16.2.3 to ~~46.2.44~~16.2.18 (both inclusive) are in addition to and do not otherwise limit any other rights Finance may have under the Head Agreement or an Agency may have under a Contract.

~~46.2.46~~16.2.20 The performance by the Service Provider of its obligations under clauses 16.2.3 to ~~46.2.44~~16.2.18 (both inclusive) will be at no additional cost to Finance or any Agency.

Signed as a Deed on _____ (insert date of this deed).

SIGNED, SEALED AND DELIVERED for
and on behalf of the Commonwealth of
Australia, represented by the Department of
Finance ABN 61 970 632 495 by:

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

SIGNED, SEALED AND DELIVERED by
[Service Provider to insert Service Provider's
name and ABN] by the following persons in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

Schedule 10 – Deed of Variation

Parties

- A. Commonwealth of Australia as represented by the Department of Finance ABN 61 970 632 495 (**Finance**); and
- B. [Service Provider to Insert Name and ABN of the Service Provider] (**Service Provider**)

Recitals

- A. Finance and the Service Provider are party to the Head Agreement dated [Service Provider to Insert Date Indicated in the Head Agreement with Finance] for the provision of Services.
- B. The parties wish to vary the Head Agreement as provided by this Deed of variation.

The parties agree as follows:

The Head Agreement is varied in accordance with the terms set out below. Unless specifically stated in this Deed of Variation, all terms and conditions of the Head Agreement continue unaffected.

1.	Deed of Variation number	[Service Provider to insert relevant DOV number for the Service Provider, ie 1, 2, 3]
2.	Raised by	Finance
3.	Details of change (use attachments if required)	Amendments to the Head Agreement as set out in the "Variation to Head Agreement" section in this Deed of Variation.
4.	Implementation date of variation	This Deed of Variation will take effect on 22 July 2023, including with retrospective effect where it is executed by either party after this date.
5.	Effect on services	None
6.	Plan for implementing the change [if any]	Not Applicable
7.	Effect on price [if any]	None
8.	Effect on service levels [if any]	None

9.	Other relevant matters (e.g. transitional impacts)	None
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Variation to Head Agreement:

1. Delete clause 16.2.3 in its entirety.
2. Insert new clauses 16.2.3 to 16.2.20 after clause 16.2.2 as follows:

16.2.3 The Service Provider must:

- (a) ensure that, in connection with any Services performed in Australia, its Personnel are at all times:
 - i. Australian citizens; or
 - ii. in the case of persons who are not Australian citizens, entitled to work in Australia.
- (b) during the Head Agreement Period and any Order Term, and to the extent permitted by Law, notify Finance immediately on becoming aware of:
 - i. any adverse comments or findings made by a court, commission, tribunal, or other statutory or professional body:
 - A. regarding the conduct or performance of the Service Provider; or
 - B. impacting on the professional capacity or capability of its Personnel to deliver the Services;
 - ii. any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of the Service Provider's Personnel, agents or Subcontractors that materially impacts or could be reasonably perceived to materially impact on the Service Provider's professional capacity, capability, fitness or reputation;
 - iii. any unsettled judicial decisions against it relating to unpaid employee entitlements;
 - iv. any other significant matters, including the commencement of legal or regulatory action, disciplinary action by an independent person or disciplinary action internal to the Service Provider, involving the Service Provider or its Personnel, agents or Subcontractors that may have a material adverse impact on:
 - A. the Service Provider's compliance with Australian Government policy or legislation; or
 - B. Finance's or an Agency's compliance with Australian Government policy or legislation; or
 - C. the Commonwealth's reputation; or
 - D. the professional capacity or capability of the Service Provider or its Personnel to deliver the Services; and
 - v. any non-compliance by:
 - A. the Service Provider or its Personnel; or
 - B. to the extent that information is known by or reasonably available to the Service Provider, the Service Provider's agents or Subcontractors,
 with any judgment against the Service Provider, its Personnel, agents or Subcontractors (as relevant) from any court or tribunal (including overseas jurisdictions but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of workplace relations law, work health and safety law or workers' compensation law,

each a **Significant Event**.

- 16.2.4 A notice issued under clause 16.2.3(b) must provide, to the extent that information is known by or reasonably available to the Service Provider at the time of giving the notice, a summary of the Significant Event, including the date that it occurred and whether any Key Personnel or other Personnel, agents or Subcontractors engaged in connection with the Services were involved.
- 16.2.5 If, prior to the Service Provider providing a notice under clause 16.2.3(b) in respect of an event, Finance notifies the Service Provider in writing that an event is to be considered a Significant Event for the purposes of clause 16.2.3(b), the Service Provider must issue a notice under clause 16.2.3(b) in relation to the event within five (5) Business Days of being notified by Finance, unless a different timeframe is agreed in writing with Finance.
- 16.2.6 Where reasonably requested by Finance, the Service Provider must provide Finance with any additional information regarding the Significant Event (to the extent that information is known or reasonably available to the Service Provider at the time that Finance makes a request) within five (5) Business Days of the request, unless a different timeframe is agreed in writing with Finance.
- 16.2.7 If Finance is notified of a Significant Event in accordance with clause 16.2.3(b), or notifies the Service Provider of an event under clause 16.2.5, then Finance may:
- (a) notify the Service Provider that no further action in relation to the Significant Event is required;
 - (b) notify the Service Provider that a remediation plan is required; or
 - (c) acting reasonably, determine that the Significant Event is of such a serious or significant nature that it is not appropriate in the circumstances for the Service Provider to continue as a Service Provider on the Management Services Advisory Panel, in which case Finance will notify the Service Provider of that and the occurrence of the Significant Event will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.8 If Finance notifies the Service Provider under clause 16.2.7(b) that a remediation plan is required, the Service Provider must prepare a draft remediation plan and submit that draft plan to the Panel Manager for approval within ten (10) Business Days of the request, unless a different timeframe is agreed in writing by Finance.
- 16.2.9 A draft remediation plan prepared by the Service Provider in accordance with clause 16.2.8 must include the following information:
- (a) how the Service Provider will address the Significant Event in the context of the Services, including confirmation that the implementation of the remediation plan will not:
 - i. materially impact on the delivery of the Services; or
 - ii. impact on compliance by the Service Provider with its other obligations under the Head Agreement or a Contract;
 - (b) how the Service Provider will ensure events similar to the Significant Event do not occur again; and
 - (c) any other information reasonably requested by Finance.
- 16.2.10 Finance must review the draft remediation plan and may:
- (a) approve the draft remediation plan;
 - (b) notify the Service Provider of the details of any changes that Finance, acting reasonably, considers are required to the draft remediation plan; or
 - (c) notify the Service Provider that Finance considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan addresses the matters raised by the

Significant Event, in which case Finance will request that the Service Provider give, in writing, and within five (5) Business Days of the request, reasons explaining how the draft remediation plan sufficiently addresses the Significant Event and propose any further amendments that would assist further with this.

Changes to the Remediation Plan

- 16.2.11 The Service Provider must make any changes to the draft remediation plan reasonably requested by Finance under clause 16.2.10(b) and resubmit the draft remediation plan to Finance for approval within five (5) Business Days of the notice unless a different timeframe is agreed in writing by Finance.
- 16.2.12 Finance may:
- (a) approve the resubmitted draft remediation plan; or
 - (b) notify the Service Provider that Finance considers that the resubmitted draft remediation plan is unsatisfactory because it has not sufficiently addressed the changes reasonably requested by Finance under clause 16.2.10(b), in which case Finance will request that the Service Provider give, in writing, and within five (5) Business Days of the request, reasons explaining how the resubmitted draft remediation plan sufficiently addresses the changes request by Finance, and propose any further amendments that would assist further.
- 16.2.13 If the Service Provider provides a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, Finance must review the response and may:
- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the resubmitted draft remediation plan (resubmitted again if relevant); or
 - (b) reject the resubmitted draft remediation plan (resubmitted again if relevant) if Finance determines, acting reasonably, that the Service Provider's reasons and if applicable the further proposed amendments do not sufficiently address the changes requested by Finance, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.14 If the Service Provider does not provide a response as requested by clause 16.2.12(b) within five (5) Business Days of the request, then the Service Provider will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.

Service Provider Response

- 16.2.15 If the Service Provider provides a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, Finance must review that response and may:
- (a) approve the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will approve the draft remediation plan (as resubmitted if relevant); or
 - (b) reject the draft remediation plan (as resubmitted if relevant) if Finance determines, acting reasonably, that Finance is not satisfied with the Service Provider's reasons and if applicable the further proposed amendments, in which case Finance will notify the Service Provider of that, and the failure to provide a satisfactory remediation plan will be deemed to be a breach of this clause 16, including for the purposes of clause 26.1.2.
- 16.2.16 If the Service Provider does not provide a response as requested by clause 16.2.10(c) within five (5) Business Days of the request, then the Service Provider will be deemed to be in breach of this clause 16, including for the purposes of clause 26.1.2.

Other Obligations regarding Remediation Plans

- 16.2.17 Without limiting its other obligations under the Head Agreement or a Contract, the Service Provider must comply with the remediation plan as approved by Finance in accordance with clause 16.2.10(a), 16.2.12(a), 16.2.13(a) or 16.2.15(a).
- 16.2.18 The Service Provider must provide reports and other information about the Service Provider's progress in implementing any remediation plan as reasonably requested by Finance.
- 16.2.19 Finance's rights under clauses 16.2.3 to 16.2.18 (both inclusive) are in addition to and do not otherwise limit any other rights Finance may have under the Head Agreement or an Agency may have under a Contract.
- 16.2.20 The performance by the Service Provider of its obligations under clauses 16.2.3 to 16.2.18 (both inclusive) will be at no additional cost to Finance or any Agency.

Signed as a Deed on _____ (insert date of this deed).

SIGNED, SEALED AND DELIVERED for
and on behalf of the Commonwealth of
Australia, represented by the Department of
Finance ABN 61 970 632 495 by:

Signature of Signatory

Signature of Witness

Full name of Signatory

Full name of Witness

Date:

SIGNED, SEALED AND DELIVERED by
[Service Provider to insert Service Provider's
name and ABN] by the following persons in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of Director

Signature of Director/Company Secretary

Full name of Director (print)

Full name of Director/Company Secretary

Date:

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 27 September 2023

Question on Notice 2 (Proof Hansard page 7)

CHAIR: In the context of the new procurement clauses that you've put in place, we heard yesterday from TPB that it has a further number of investigations under way into a number of individuals and also the organisation, PwC. Have those occurrences been reported to you by PwC?

Mr Jaggers: No, I don't believe they have.

CHAIR: But wouldn't that be a requirement of the clause?

Mr Jaggers: Under the amendments to the clause they should be notifying us of any actions taken by a regulatory body, yes.

Senator BARBARA POCKOCK: And the initiation of new action, as we heard yesterday?

Mr Jaggers: We should be advised of the initiation of new action.

Senator BARBARA POCKOCK: And that hasn't occurred?

Mr Jaggers: I don't believe so.

CHAIR: So the first you heard of it was when we heard of it yesterday when we were advised by the Tax Practitioners Board?

Mr Jaggers: I believe it is, but I'd just need to check if there has been any other advice to us in relation to that.

Response

As at 27 September 2023, the date of the inquiry hearing, no notifications had been received under the new Significant Events clauses under the Whole of Australian Government (WoAG) arrangements managed by the Department of Finance.

As at 12 October 2023, Finance has received notification of significant events from PricewaterhouseCoopers.

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

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 27 September 2023

Question on Notice 3 (Proof Hansard page 7)

CHAIR: in a preliminary sense. They are activations that have happened, and surely under the new procurement clauses those should have been reported?

Mr Jaggers: In responding to that, let me just take on notice whether there have been any notifications to the department that I'm not aware of. I'll do that, and we'll come back to the committee quickly.

Response

As at 27 September 2023, the date of the inquiry hearing, no notifications had been received under the new Significant Events clauses under the Whole of Australian Government (WoAG) arrangements managed by the Department of Finance.

As at 12 October 2023, Finance has received notification of significant events from PricewaterhouseCoopers.

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 27 September 2023

Question on Notice 4 (Proof Hansard page 8)

Senator O'NEILL: I can almost hear, 'We already have that matter before you. Additional action isn't required.' I can hear the defence already, which if that's case is contemptuous. Can I ask: have you have received any notifications since the new clauses have been agreed to by any of the 414 members on the panel?

Ms Antone: We don't have the details with us today, but I can say we have had a number of suppliers engage with us to check whether it is the type of thing that should be notified. We've actually seen a lot of goodwill and engagement for this teething period in everyone's understanding of how these should be implemented and rolled out. I'm aware of a couple of instances where a supplier has reached out to say, 'Is this the type of thing that we should be notifying? We'd like to have a conversation.'

Senator O'NEILL: Could you provide on notice an outline of that for the committee so we understand exactly what that's like? It's good to see some goodwill operating.

Mr Jagers: Yes. We'll take that on notice and provide you an answer.

Response

As at 27 September 2023, the date of the inquiry hearing, no notifications had been received under the new Significant Events clauses under the Whole of Australian Government arrangements managed by the Department of Finance.

As at 12 October 2023, Finance has received notification of significant events from PricewaterhouseCoopers.

Where a supplier has contacted Finance to query whether an event or issue may be considered a Significant Event, the supplier has provided a verbal summary of the event or issue, including the general circumstances, location and connection to the supplier.

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

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 27 September 2023

Question on Notice 5 (Proof Hansard page 9, 10)

Senator BARBARA POCOCK: This company is today auditing a large number of government entities without question, and we heard serious new investigations beginning and no action has occurred?

Mr Jagers: I think I've said we will take on notice whether there has been any notification. Also we need to look at the particulars of the new investigations. They were talked about yesterday. We need to understand the timing of that and what would have been an appropriate time for a notification to us under those contracts. All of those things we will come back and take on notice and give you some more details on.

Response

Under the new notification of significant event clauses:

- the Supplier must immediately issue the Customer [The Commonwealth] a Notice on becoming aware of a Significant Event; and
- the Customer may notify the Supplier in writing that an event is to be considered a Significant Event for the purposes of this clause, and where this occurs the Supplier must issue a Notice under clause [X.2] in relation to the event within three (3) Business Days of being notified by the Customer.

Whether an event constitutes a significant event will depend on the details. The timing of notification may be impacted by time required to ascertain the facts and determine whether the event is a significant event.

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

As at 27 September 2023, the date of the inquiry hearing, no notifications had been received under the significant events clauses under the Whole of Australian Government arrangements managed by the Department of Finance.

As at 12 October 2023, Finance has received notification of significant events from PricewaterhouseCoopers.

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 27 September 2023

Question on Notice 6 (Proof Hansard page 15)

Senator DAVID POCOCK: Thank you. In the audit committee's recent inquiry, your submission explains, 'Government procurement achieves value for money through competitive, open, transparent, efficient, ethical and publicly accountable processes.' I am interested in what proportion of government contracts are awarded without an open tender process. Do you have that stat for me?

Mr Jaggers: I will take that on notice.

Response

The Commonwealth Procurement Rules (CPRs) provide officials the flexibility to conduct procurements to achieve their business needs. Open tender processes involve publishing an open approach to market and inviting submissions. Limited tender processes involve a relevant entity approaching one or more potential suppliers to make submissions when the process does not meet the rules for open tender under paragraph 10.3 or Appendix A of the CPRs. Contracts awarded from limited tender processes must represent value for money in order to commit government resources.

There are a range of circumstances where a limited tender may be the most appropriate procurement method. For example, the CPRs set out the following:

*10.3 A relevant entity **must** only conduct a procurement at or above the relevant procurement threshold through limited tender in the following circumstances:*

- a. when, in response to an open approach to market*
 - i. no submissions, or no submissions that represented value for money, were received,*
 - ii. no submissions that met the minimum content and format requirements for submission as stated in the request documentation were received, or*

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

- iii. *no tenderers satisfied the conditions for participation, and the relevant entity does not substantially modify the essential requirements of the procurement; or*
- b. *when, for reasons of extreme urgency brought about by events unforeseen by the relevant entity, the goods and services could not be obtained in time under open tender; or*
- c. *for procurements made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine procurement from regular suppliers; or*
- d. *when the goods and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons*
 - i. *the requirement is for works of art,*
 - ii. *to protect patents, copyrights, or other exclusive rights, or proprietary information, or*
 - iii. *due to an absence of competition for technical reasons; or*
- e. *for additional deliveries of goods and services by the original supplier or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of supplier would compel the relevant entity to procure goods and services that do not meet requirements for compatibility with existing equipment or services; or*
- f. *for procurements in a commodity market; or*
- g. *when a relevant entity procures a prototype or a first good or service that is intended for limited trial or that is developed at the relevant entity's request in the course of, and for, a particular contract for research, experiment, study, or original development; or*
- h. *in the case of a contract awarded to the winner of a design contest, provided that*
 - i. *the contest has been organised in a manner that is consistent with these CPRs, and*
 - ii. *the contest is judged by an independent jury with a view to a design contract being awarded to the winner. including: when procurements are below the relevant threshold; necessary for the protection of human health and essential security interests; or where there is an absence of competition for technical reasons.*

***Inquiry into the management and assurance of integrity by consulting services
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In 2022-23, there were 83,074 contracts published with a combined value of \$74.5 billion. Of these, 39,734 contracts (47.8%), valued at \$34.0 billion (45.6%) resulted from limited tender procurement processes.¹

The majority of limited tenders (\$23 billion or 68% of all limited tenders by value) are awarded by the Department of Defence reflecting the specialised nature of its procurement activity.

¹ AusTender data, as at 12 October 2023.

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 27 September 2023

Question on Notice 7 (Proof Hansard page 17)

Senator DAVID POCOCK: Thank you. I appreciate that. Finally, looking at your submission, you say, 'Officials have the power to exclude a potential supplier's tender response from consideration on various grounds, including if the supplier's practices are dishonest, unethical or unsafe.' Does this ever happen and, maybe on notice, how many times has this happened?

Mr Jaggers: I am not sure that we would have data on that. I will take it on notice just to see if there is anything we have in terms of data about when that has happened, because it is not something that necessarily would be recorded in AusTender—that we haven't gone to somebody because they have exhibited bad behaviour—

Response

The Commonwealth Procurement Framework is devolved, and individual entities are responsible for conducting their own procurements, which includes decisions around excluding potential suppliers. AusTender does not collect information on suppliers that are excluded from a tender process.

To support entities in their due diligence activities, the Department of Finance is preparing guidance on undertaking appropriate due diligence and, as announced by the Government on 6 August 2023, undertaking a review to explore options to increase the transparency and visibility of where Commonwealth contracts have been terminated for material breach.

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 27 September 2023

Question on Notice 8 (Proof Hansard page 19)

Senator O'NEILL: When the AFP commenced their initial investigations, following information from the ATO, were you advised that PWC was being investigated by the Australian Federal Police?

Mr Jagers: I was aware of the referral. That was made public at the time. My understanding is that there was a referral from the Treasury to the AFP, and I remember being made aware of that at the time.

Senator O'NEILL: Did that impact in any way on your supervision of Finance's engagement with PWC? Did you write to the board? Did you raise concerns with any ministers?

Mr Jagers: We have not written to the board in relation to that referral, no.

Senator O'NEILL: Did you make any note with regard to procurement to any of the departments?

Mr Jagers: The procurement policy note that the Finance Secretary issued in May, I think—

Senator O'NEILL: That was the first one?

Mr Jagers: That was the first one.

Senator O'NEILL: So nothing happened in 2019 with regard to the PWC investigation by the AFP? That did not trigger any action by the Department of Finance?

Mr Jagers: That referral to the AFP happened on or about the same time as the procurement policy note that was issued by our Secretary around 19 May.

Senator O'NEILL: This year?

Mr Jagers: This year.

Senator O'NEILL: I am talking about the initial referral to the AFP; we are talking 2019, I believe. I don't have the document here. You were not advised then?

Mr Jagers: I will have to check the record. I am not personally aware of it.

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

Response

On 24 May 2023, the Treasury publicly advised that it had referred the 'PricewaterhouseCooper-Collins' matter to the Australian Federal Police. (<https://treasury.gov.au/media-release/referral-australian-federal-police-pwc-collins-matter>).

With regard to the AFP investigation in 2019, the Department of Finance (Finance) first became aware of that earlier investigation as a result of media reporting in and around May 2023. The Department of Finance was not aware of the 2019 investigation prior to this.

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 27 September 2023

Question on Notice 9 (Proof Hansard page 20)

Senator O'NEILL: Can you understand why I would have been concerned about this previously? But, given what has been reported this morning, that PWC is going to change their board structure to have a non-executive chair, there is an indication that at least some of the findings from the as yet unread by us Switkowski review indicate significant governance failures at board level. Can I ask you to take on notice what action is required by the finance department, in a structural way, to investigate people who were involved with PWC, at the highest level, because what they did then is potentially an ethical implication for the current practice? You can't just leave a company and leave everything behind. There has to be some way for whatever happened in that company to travel with you into a new entity so that the government can be aware. Have you got any processes to pick anything up like that at the moment?

Response

The Commonwealth Procurement Framework is devolved, and individual entities are responsible for conducting their own procurements, which includes undertaking appropriate due diligence activities. This can include considering the past ethical performance of a potential supplier's employees.

To support entities in their due diligence activities the Department of Finance is preparing guidance on undertaking appropriate due diligence and, as announced by the Government on 6 August 2023, undertaking a review to explore options to increase the transparency and visibility of where Commonwealth contracts have been terminated for material breach.

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

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 27 September 2023

Question on Notice 10 (Proof Hansard page 20)

Senator O'NEILL: ... In response to some of the evidence you gave to Senator David Pocock, you indicated interaction with the ATO, some system and high-level interactions to determine whether a company was an SME or not. If a company is to engage with the federal government, do you seek to confirm that they are up to date with their payment of taxation to the Australian government?

Mr Jaggers: It is the Australian Bureau of Statistics that does the data on small to medium-sized enterprises, and they triangulate data from some sources. Could you repeat the second part of your question for me?

Senator O'NEILL: Do you check, before we engage with any consultancy—of any kind, small, medium or large—that they are up to date with their payment of taxation?

Mr Sebar: There is a procurement-connected policy which requires suppliers to submit what is called a Statement of Tax Record, which they can receive from the Australian Taxation Office, which advises the procuring official whether that supplier is up to date on its tax payments.

Senator O'NEILL: Okay. And do we have the same sort of verification about being up to date on superannuation payments?

Mr Sebar: I will need to check.

Response

The Shadow Economy Procurement Connected Policy, owned by the Treasury, requires that, for procurements with an estimated value over \$4 million (GST inclusive), Commonwealth entities require tenderers to provide a satisfactory Statement of Tax Record with their tender documentation. Tenderers must also obtain and hold a satisfactory Statement of Tax Record from all first-tier subcontractors that will be undertaking work that is individually valued at over \$4 million (including GST). Statement of Tax Records are issued by the Australian Taxation Office where an applicant meets the criteria. The Statement of Tax Record criteria do not include superannuation payments.

While the Shadow Economy Procurement Connected Policy does not cover superannuation payments, the Commonwealth Procurement Rules (para 6.7) state:

Relevant entities must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe. This includes not entering into contracts with tenderers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. Officials should seek declarations from all tenderers confirming that they have no such unsettled orders against them.

This would include unsettled orders of judicial decisions relating to employee superannuation payments.

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 27 September 2023

Question on Notice 11 (Proof Hansard page 20)

Senator O'NEILL: ... Do we have any confirmation that consultancies that engage subcontractors confirm that the subcontractors are up to date on their payment of tax and superannuation?

Mr Jagers: Senator, let us take that on notice. Mr Sebar has indicated that there is a procurement-connected policy. It came into effect in July 2019, described as a shadow economy procurement-connected policy. The Department of the Treasury owns and administers that policy. It is specifically related to supplier conduct and tax havens, but we will have to get back to you on the exact detail of your question, rather than providing an answer now.

Response

Please refer to the Department of Finance's response to Question on Notice 10 from the Inquiry into the management and assurance of integrity by consulting services (Consulting services) hearing of 27 September 2023.

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 27 September 2023

Question on Notice 12 (Proof Hansard page 20)

Senator O'NEILL: Thank you. You have indicated that there is a degree of attestation required—some statutory declarations et cetera. Could you take on notice: where people have made attestations that you have found inaccurate, what penalties have been applied, and on what occasions that has occurred?

Mr Jagers: We will take that on notice, yes.

Response

The Commonwealth Procurement Framework is devolved, and individual entities are responsible for conducting their own procurements, which includes appropriate due diligence activities throughout the procurement lifecycle. Entities should have processes that are proportionate to the scale, scope and risks of the procurement and consistent with the purpose of the procurement and the Framework.

The Department of Finance does not collate whole of government data on fraud. Section 10 of the *Public Governance, Performance and Accountability Rule 2014* places responsibility on accountable authorities to take all reasonable measures to prevent, detect and deal with fraud.

To support entities in their due diligence activities the Department of Finance is preparing guidance on undertaking appropriate due diligence and, as announced by the Government on 6 August 2023, undertaking a review to explore options to increase the transparency and visibility of where Commonwealth contracts have been terminated for material breach.

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

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 27 September 2023

Question on Notice 13 (Proof Hansard page 20)

Senator O'NEILL: Allegro is an international company, is it not—not an Australian company?

Mr Jaggers: Senator, let me take that on notice, if you don't mind. I will come back on it.

Response

Allegro Funds Pty Ltd (Allegro) is an Australian wholly owned private equity fund manager which has a number of investment vehicles, some of which have passive multi-country foreign investors. The Department of Finance is aware that the Treasury is currently assessing a Foreign Investment application from Allegro.

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 27 September 2023

Question on Notice 14 (Proof Hansard page 23)

Senator O'NEILL: And then, how often is AGSVA reporting to you about their concerns and how is that feeding into your discernment about the suitability of people who are on your supplier lists?

Mr Jagers: There is dialogue with security agencies and the Department of Finance. I am not personally aware of an arrangement where we have been made aware of a consultant breaching national security requirements. That does not mean that hasn't happened, but I am not—

Senator O'NEILL: Could you take that on notice.

Response

The Department of Finance does not collect aggregate data of security breaches by individuals across the Commonwealth. This request for information would best be directed to the Australian Government Security Vetting Agency (AGSVA) within the Department of Defence.

Both Commonwealth entities and the individual are responsible for reporting changes of circumstances as well as breaches of security to AGSVA for AGSVA to determine if a review of that individuals security clearance is necessary. The Protective Security Policy Framework provides information on the obligations of entities and individuals.

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 27 September 2023

Question on Notice 15 (Proof Hansard page 24)

Senator BARBARA POCKOCK: ... on 7 August the Four Corners program published very serious allegations about overspending, seeking funding for work that wasn't completed and so on in Defence. Have you or any part of the government undertaken any kind of response to those very serious allegations? We are about to hear from KPMG, so this is very relevant to the next section. We are going to have over a billion dollars worth of contracting and have very serious allegations. What action has been taken in government on that, or in Finance?

Mr Jagers: Senator, I am happy to come back to you on notice. There have been conversations between Defence and the Department of Finance about those allegations. It is clearly a matter for Defence to respond to, but I am happy to find out where we are up to in relation to those allegations and Defence's response and provide an answer on notice.

Response

On 7 August 2023, the Department of Defence (Defence) advised the Department of Finance (Finance) that they were aware of the allegations involving KPMG and Defence that were discussed on the ABC Four Corners 'Shadow State' episode that was available to stream on 6 August 2023.

Defence confirmed that an investigation and an audit were undertaken at the time the allegations were raised with the department. The investigation did not find any evidence to substantiate the allegations. The audit identified procurement process improvements that have since been implemented by Defence.

On 21 August 2023, Defence advised Finance that there were no outstanding issues post the original investigation conducted by Defence at the time the allegations involving KPMG were raised with Defence. Any further questions relating to Defence's response to the allegations should be directed to Defence.

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